



New Park Court

Robert Smith QC

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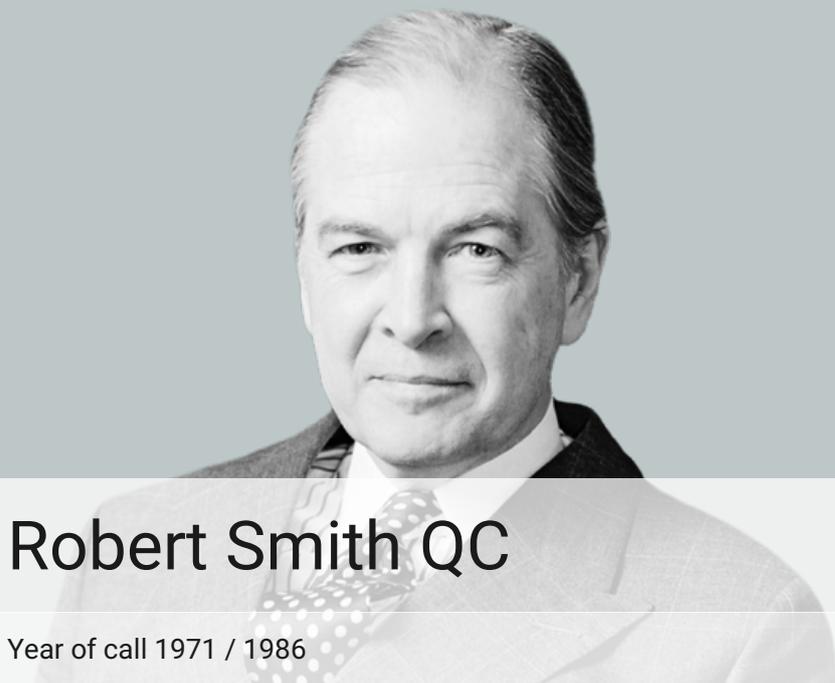
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Robert Smith QC

Year of call 1971 / 1986

For enquiries please call +44 (0)113 203 5504 or email

Robert Smith QC was Called to the Bar in 1971 and commenced practice on the North Eastern Circuit at 5 King's Bench Walk. These chambers had produced many 'high powered' appointments to the Bench including Lord Justice Cumming-Bruce, Mr Justice Veale and Mr Justice Payne and I was privileged to begin my career there. 5 King's Bench Walk was later to become a Circuit based set of chambers located in Leeds where they have remained ever since. In 2011 they amalgamated with the outstanding set of chambers at Broad Chare in Newcastle upon Tyne to become New Park Court Chambers.

I have remained in the same set of chambers throughout my career. When I began my career Circuit work was multi-disciplinary and with my pupil master, Gerald Coles, who was in due course to be appointed Queen's Counsel and ultimately Recorder of Bradford, I saw criminal and civil practice in the last year of the Assize and Nisi Prius system before it was swept away with the reform of the Courts. I had the opportunity to see and to listen to advocacy at the very highest level and to be taught the discipline of the common law, involving both criminal and civil litigation and some specialized work. I had the opportunity of being led in many cases as a junior by particularly able criminal trial advocates such as Harry Ognall QC and Gilbert Gray QC.

Once appointed to Silk in 1986 I continued to conduct both criminal and civil litigation with a strong emphasis on serious personal injury cases and clinical and professional negligence. I have been engaged in a number of notable civil cases, including acting for the victims of the Bradford City Football Stadium disaster in the successfully conducted contested litigation before Cantley J at Leeds Crown Court and advising in relation to passenger claims in the context of the Warsaw Convention (prior to amendments created by the Montreal Convention in May 1999) in a number of notable aviation accidents. These included the East Midlands airport crash which involved a British Midland Boeing 737-400 which landed on the M1 motorway at Kegworth on the 8th January 1989 when the flight crew mistakenly shut down the one remaining good engine.

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Eventually, more and more serious criminal cases were presented to me to advise upon and to act in and, coincidentally with the 'Woolf' reform of the civil courts, I became a specialist criminal practitioner. I still conduct some civil litigation but invariably do so when conducted jointly with the assistance of specialist civil practitioners (both juniors and leaders) and only where some issue arises which involves criminal expertise. I remain, primarily, a criminal trial advocate.

In recent years my professional work load has involved the prosecution and defence of complex and particularly serious criminal cases, with a particular emphasis on medico-legal and scientific issues, the defence and prosecution of professional defendants such as medical practitioners and health care professionals and the defence of corporate bodies, their senior managers and directors.

My cases have involved and continue to involve a wide range of situations in which the criminal law has been engaged including scientific issues, aviation, industry, coal mines, railways, food and consumer safety, educational establishments, the pharmaceutical industry, newspaper publishing and medico-legal issues. I have also advised on matters involving Parliamentary Privilege and allegations of contempt of the House of Commons. I have conducted cases involving Human Rights issues in both the Court of Appeal and the House of Lords.

I have advised upon and conducted litigation in the field of regulatory criminal law [in particular health and safety, bribery and corruption and the prosecution and defence of corporate bodies particularly in the context of the Health and Safety at Work Act 1974, the Prevention of Corruption Act 1906 and the Bribery Act 2010] and related litigation, including civil actions involving the police, administrative court cases, extradition issues and cases involving misfeasance in public office.

I have a particular interest in gross negligence manslaughter, particularly in the context of medical failings and in cases involving the medical implications of non-accidental head injury in children ('NAHI' – formerly described as 'shaken baby syndrome') and have been involved in many cases, both for the prosecution and the defence, in which the 'triad' of signs and their interpretation has arisen.

I have conducted a significant number of cases of fraud and alleged corruption, representing both individual and corporate defendants under investigation by the Serious Fraud Office. I am familiar with the practice of the US Department of Justice and the US Securities Exchange Commission in the context of the United States Foreign Corrupt Practices Act and the United States Exchange Act.

I remain committed to conducting a number of publicly funded criminal cases and consider that the criminal Bar has an obligation to do so.

Health & Safety

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Representative Cases

- *R v Jackson Transport (Ossett) Ltd*

This case was the first successful prosecution and conviction of a company for an offence of corporate manslaughter at common law [with linked HSWA charges against the company and the Chairman and Managing Director]. The defendant company was a firm of road tanker hauliers which failed to take proper action to protect the workforce from splashback of dangerous chemicals with fatal consequences.

- *R v Next Plc*

Instructed on behalf of the company in circumstances which involved the death of an employee using escape equipment during a training exercise and giving rise to charges under section 2 of the Health and Safety at Work Act 1974.

- *R v Next Plc*

Defence of the company arising out of the death of a senior engineer engaged on maintenance work on a high rise garment picking system in warehouse premises. The prosecution was stopped at the conclusion of the prosecution case on the Judge's ruling and on the ground that the prosecution were unable to establish a breach of the qualified duty imposed by section 2 of the Health and Safety at Work Act 1974.

- *R v Connolly & Kennett (Tebay - West Coast Main Line Fatalities)*

This was a major and complex prosecution for the Crown Prosecution Service and the Health and Safety Executive in respect of charges of manslaughter and breaches of the Health and Safety at Work Act 1974 arising out of multiple fatalities on the West Coast main railway line at Tebay in Cumbria. The prosecution resulted in the conviction for manslaughter of the principal in a small business and his foreman. The case involved the deliberate disconnection of the braking system on flat rail bogies in order to permit them to be coupled to road/rail vehicles. As a result, the bogies ran away in darkness just south of Shap Fell and struck a railway work force which was carrying out maintenance work on the line causing the deaths of four men and multiple injuries to others. The convictions were upheld by the Court of Appeal.

- *Shoreham Docks*

Advised the DPP and HSE on complex potential prosecution arising out of a mercantile shipping fatality in Shoreham Harbour.

- *R v JA*

Instructed for the defence of the manager of Daw Mill Colliery in Warwickshire, being one of the largest coal mines in Europe. The defendant was a highly talented and experienced manager who faced charges in respect of manslaughter and alleged contraventions of the Health and Safety at Work Act 1974, arising out of the death of a Deputy who was overcome by methane gas during operations to re-open 101's face for the purpose of salvaging powered supports. The case was evidentially complex, particularly from the point of view of the technical evidence. The prosecution case was demonstrated in the course of evidence at the Crown Court trial to be flawed to such an extent that it had to be abandoned by the Health and Safety Executive and Crown Prosecution Service before the conclusion of the prosecution case.

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- *R v York College*

Instructed on behalf of the prosecution in proceedings against York College arising out of the death of a young child in their nursery who was caught up in a rope attached to a slide. The child's death had occurred in the absence of supervision. York College was convicted at the conclusion of a trial at Leeds Crown Court before Coulson J.

Homicide

Representative Cases

- *R v Zoorah Gulam Shah*

Instructed on behalf of the prosecution in the first case of arsenic poisoning in England and Wales in the latter half of the 20th century. The defendant was charged with the murder of her husband by arsenic poisoning. This was the first investigation by pathologists and scientists in the context of non-accidental arsenic poisoning for decades. Pathologists, toxicologists and scientists were required to refer to historical research on the effects of arsenic poisoning. A hospital post mortem had determined that the deceased had died from natural causes. The case came to light as a result of the decision by the Coroner's Officer to seize a bucket containing the deceased's vomit and submit it for analysis. This resulted in a finding of a massive concentration of arsenic in the contents of the bucket which could not be explained other than by deliberate poisoning. The source of the arsenic was its concealment in a particular form of carrot cake (gajar ka halwa) which the deceased had a liking for. The deceased was exhumed and his hair analysed to reveal significant concentrations of arsenic. Motive was established. The defendant was convicted of murder.

- *R v Anthony Vickers*

Instructed to represent the prosecution before the Court of Appeal in a case involving a review of expert medical evidence relating to the death of the wife of a medical practitioner. Anthony Vickers was a general practitioner who was successfully prosecuted for the murder by Harry Ognall Q.C. (later to become Mr Justice Ognall) instructed on behalf of the DPP. Vickers was alleged to have administered a drug (CCNU – Lomustine) to his wife which was ordinarily used in the treatment of cerebral tumours. One of the side effects of the drug is the destruction of blood platelets and consequent anaemia. His wife died as a consequence of gross haematological disorders caused by the administration of the drug. The case was heard by the Court of Appeal 12 years after Vickers' conviction when he presented fresh medical and expert evidence to the Court. The fresh medical evidence was rejected and the conviction for murder upheld.

- *R v Thomas Shanks*

Prosecution for the murder of a nurse at Pinderfields Hospital Wakefield. The prosecution alleged that the defendant shot her with a semi-automatic firearm in a public car park in the course of an act of jealous



revenge. The defence was one of diminished responsibility based upon 'Gulf War Syndrome'. The defendant was a doctor employed at the hospital who had seen service with the SAS and the RAMC and who had had a distinguished military career, latterly in the first Gulf War. He had brought back from the Iraq war an AK47 firearm which he had concealed and which he had used to kill the deceased. His medical defence that he suffered from an abnormality of mind as a consequence of 'Gulf War Syndrome' was rejected by the Jury and he was convicted of murder.

- *R v Bieber*

Prosecution for the murder of a police officer and the attempted murder of another police officer in the City of Leeds by the defendant using a self loading pistol. The defendant was an American citizen who denied responsibility for the murder. He was sentenced by Moses J at the end of his trial at Newcastle upon Tyne to a whole life term. The case was referred to the Court of Appeal in respect of the human rights issue of whether a whole life term was compatible with Article 3 ECHR. The principle of whole life imprisonment was upheld by the Court of Appeal as consistent with Article 3 ECHR although a specified minimum term substituted.

- *R v Janet Charlton*

Successful defence of a woman responsible for killing her partner by the infliction of multiple axe wounds to the head. The deceased was a sexual pervert who, over an extensive period of time had demanded that the defendant should engage in various extreme sexual activities with him and with other men both publicly and in private. The defendant took a fireman's axe and struck the deceased over the head with it while he was kneeling, blindfolded and handcuffed and with a gag in his mouth in the bedroom of their home. The deceased had asked the defendant to handcuff him as part of the sexual activity which he had insisted upon. The defendant went on to inflict 17 further blows to the head of the deceased with the axe and then draped her suspender belt over the remains of the head. The defence advanced on her behalf was provocation/defence of another [her daughter] and that the defendant was suffering from battered woman's syndrome arising from the deceased's persistent depravity. The defence of self defence was rejected by the jury but the defendant was acquitted of murder and convicted of manslaughter on the ground of provocation. She was sentenced to 5 years' imprisonment for manslaughter which was reduced on appeal to 3 years' imprisonment.

- *R v Dr Howard Martin*

Prosecution of a general practitioner charged with the murder of three of his patients by the use of excessive doses of morphine and other drugs. All of the patients were either dying or in advanced stages of fatal illness. It was alleged by the prosecution that the defendant had hastened their deaths by administering strong opiates. The case involved the application of two important legal principles (1) the 'but for' principle in terms of causation and (2) the principle of "double effect." The defendant was acquitted by the jury in respect of all three charges.

- *R v Muzzaker Shah & Four Others*

Prosecution of a number of defendants for the motiveless murder of PC Beshenivsky, a police officer on duty in the City of Bradford who was shot by one of the defendants in the course of the robbery of a travel



agents. The co-accused were charged with murder on the basis of joint enterprise. The case also involved the attempted murder of PC Milburn, her colleague, who was also shot but survived. P C Beshenivsky and P C Milburn had answered a call to go to the travel agents just before they finished duty for the day and were shot on the pavement as the robbers emerged. The officers presented no threat to the defendants and the shooting was gratuitous.

- *R v Colin Norris*

Instructed on behalf of the prosecution to advise and thereafter to conduct the prosecution of a male staff nurse in relation to the alleged murder and attempted murder of elderly patients in hospitals operated by the Leeds National Health Service Trust. The five patients in question had all been admitted to hospital for surgical repair in respect of fractured hips. They were all elderly. One of these patients died in circumstances which gave rise to analysis of the deceased's blood and which showed that she had a massive quantity of insulin in her body. There followed an investigation of all suspicious deaths of this nature at these hospitals. The five patients the subject of the charges had all suffered sudden and unexplained hypoglaecemia. None of them was diabetic. There was evidence that insulin had disappeared from the ward fridges. The defendant, Colin Norris was working on the wards at the material times when they died. Colin Norris was convicted in respect of all five patients. The Court of Appeal reviewed and dismissed an appeal against conviction.

- *R v Guang Hui CAO*

The prosecution of a member of the Chinese community resident in Newcastle upon Tyne for the murders of two Chinese students in the City. Their deaths were particularly brutal. The likelihood is that the murders were carried out by way of retribution for non-compliance with orders given by a Chinese gang involved in an internet betting fraud.

- *R v Anthony Morley*

Unsuccessful defence of a man who was by occupation a chef – charged with murder – stabbed the victim to death and then removed sections of his flesh which was seasoned with herbs and then cooked with Provençale olive oil and eaten. Unsuccessful defence of diminished responsibility based upon a dissociative state due to confused sexuality. Court of Appeal [the Lord Chief Justice] – confirmed that the starting point for “cannibalism” was 30 years.

- *R v Stephen Griffiths*

Prosecution at Leeds Crown Court of a serial killer of prostitutes in Bradford. The defendant was responsible for dismembering and eating parts of their bodies.

- *R v Ness & Awan*

Prosecution at Newcastle upon Tyne Crown Court of the two accomplices of the notorious Raoul Moat. Ness was convicted of being a party to the murder by Moat of Christopher Brown. Ness and Awan were each convicted of being parties to the Attempted Murder of Police Constable David Rathband, shot on duty by Raoul Moat while the two defendants waited in a getaway car. Both defendants were also convicted of conspiracy to murder police officers and armed robbery.



- *R v Mann & Parr*

Prosecution of two prisoners responsible for the murder of a fellow prisoner in a cell at Frankland prison. The defendants cut open the abdomen of the deceased with the intention of eating parts of him. Both defendants were in custody in respect of offences of murder and attempted murder. The psychiatric state of one of the defendants resulted in the acceptance of a plea of guilty to manslaughter on the basis of diminished responsibility. The other defendant [Parr] pleaded guilty to murder.

- *R v Sudhanshu Garg*

Prosecution of a consultant urological surgeon charged with the manslaughter by gross negligence of a 32 year old patient at Bradford Royal Infirmary.

- *R v Thompson*

Prosecution of a defendant who caused the death of a man in the course of sado masochistic activity involving penetration of the rectum and sigmoid colon with instruments, including a wooden rolling pin and an electric toothbrush. The actions were found by the jury to have caused the death of the deceased after the wall of the colon was ruptured and material that had been introduced into the colon as a lubricant had entered the deceased's blood stream. The deceased had suffered many injuries by way of burns and cuts to the penis some of which had been inflicted after death. The defence case was that the deceased had consented to the activity in question and that it had not been 'dangerous.' The case resulted in consideration of the decision in *R v Brown* [1994] 1 A.C. 212 and a number of subsequent authorities. The defendant was charged with and convicted of 'deliberate and unlawful act' manslaughter and an offence of assault occasioning actual bodily harm.

- *R v Donald Graham*

Prosecution for murder arising from the disappearance of a woman named Janet Brown some 12 years before trial. The defendant was eventually charged with and convicted of her murder. The case involved complex circumstantial evidence and the application by Northumbria Police of the protocol for the investigation of missing persons. The deceased had booked space on a car ferry to France for a holiday. She left her dog in the care of a friend and left her home, seemingly to go on holiday. She never returned. Her family received postcards from France informing them that she had taken up residence abroad and was in employment there. Extensive enquiries were made via Interpol and various international agencies, ferry and airline operators. The defendant could be shown to have travelled to France at or about the time when the postcards had been sent to Ms Brown's parents. The defendant was proved to have obtained without authority all of Ms Brown's substantial cash deposits and to have defrauded her elderly parents. The deceased's body was never found, despite extensive searches by Northumbria Police of areas of farmland occupied by the defendant.

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Principal cases involving Non Accidental Head Injury in Children

Representative Cases

- *R v B [His Honour Judge Murphy QC Sheffield Crown Court]*
Successful defence of the father of an 11 week old baby charged with causing her permanent brain damage and disability by shaking. The case involved the so called “triad” of signs. The defence case was that the signs were due to infection with herpes simplex virus. The prosecution case and the diagnosis by paediatricians was demonstrated to be flawed. The prosecution was abandoned after extensive investigation of expert evidence during trial.
- *R v VS [Mr Justice Forbes & Mr Justice Holland - Trial & Re-trial]*
Successful defence of a mother charged with murder/manslaughter of her ten week old baby. The case involved the so called ‘triad’ of signs ie subdural haemorrhage, retinal haemorrhage and swelling of the brain. The prosecution advanced the conventional theory that the ‘triad’ was ‘diagnostic’ of shaking – the defence case was that this was systemic infection. Particular focus was directed to the fact that the baby had been vaccinated some days before her collapse by nursing staff who had not sterilized the area of skin where the vaccination was performed. The jury were unable to agree at the conclusion of the first trial. The prosecution abandoned their case against the defendant at the commencement of the second trial.
- *R v C [Mr Justice Holland]*
Successful defence of a father charged with causing grievous bodily harm to his child [permanent and serious brain damage]. The prosecution case involved an allegation that the baby had been shaken. The defence case was that this was pertussis infection. The case involved complex evidential issues relating to haematology, ophthalmology and neuro-radiology.
- *R v O'D [Mr Justice Globe – Leeds Crown Court]*
Successful defence of a young mother charged with manslaughter by shaking her baby. The baby was born prematurely and was suffering from lung disease. He was permanently in receipt of oxygen and suffered from apnoea. The prosecution based their case on the ‘triad’ of signs and claimed that additional features of the eye pathology lent further support to the triad and that the evidence supported the conclusion that the subdural bleeding, retinal and optic nerve sheath haemorrhaging and hypoxic ischaemic brain damage was due to an act of shaking. The case involved contested paediatric and neurosurgical evidence on both sides.
I have conducted numerous prosecution cases involving NAHI in children and those involving prosecution pursuant to section 5 of the Domestic Violence Crime and Victims Act 2004.

Defence cases involving Professionals, Managers & Company Directors

Representative Cases

- *R v PD*

Successful defence of a well-known Solicitor practising in the North East of England who was charged with attempting to pervert the course of public justice. The actions of Durham Police involved listening to a private and potentially privileged consultation between PD and his client using remote monitoring equipment which had been installed by Durham Police in such a way that the Police could eavesdrop on the conversation after the defendant and his client had been left together in the Interview Room where an interview under caution had just been conducted. The officers involved were responsible for numerous breaches of good practice. Their credibility was in tatters after an abuse of process hearing by way of a *voir dire* in a trial listed at Leeds Crown Court before Sir Geoffrey Grigson. Application to stay the proceedings as an abuse of the process of the Court on the ground that the conduct of the Police amounted to “directed” and “covert” surveillance within RIPA 2000 and was conducted without lawful authority. The prosecution was abandoned after the police officers gave evidence. There was a concurrent issue arising out of unlawful searches of the defendant’s home by Durham police exercising inappropriate powers under Section 32 PACE – and involving the seizure of computers without a Special Procedure Warrant and the reading of legally privileged files.

- *R v B*

Successful defence of the chairman of a major public company (FTSE 250) for alleged personal contraventions of an Improvement Notice. The case brought by the Health and Safety Executive failed after submissions were made on the defendant’s behalf that Sections 36 and 37 HSWA were inapplicable since: (i) causation was required to be proved (ii) in the absence of an ability to lift the corporate veil the acts or omissions of the accused were only within the scope of his authority as chairman of the holding company and the default lay with its subsidiary company.

- *R [VOSA / DVSA] v X & Y*

Retained on behalf of the Chairman and Sales Director of a particularly successful company (subsidiary of Close Brothers) engaged in the sale and leasing of commercial vehicles. The directors and two of their managers were charged with particularly serious common law offences including an offence of conspiracy to defraud the Traffic Commissioners of Great Britain arising out of the use of Operator Licences issued by the Vehicle and Operator Services Agency (now DVSA). The case involved a considerable body of technical evidence. It was tried at Leeds Crown Court over a 5 month period. Both defendants together with the two managers were acquitted by the jury at the end of this long trial.

What the directories say

"He is regarded as one of the most experienced and excellent silks in the country. His approach is meticulous, he is a very able advocate and he has an outstanding reputation."

Chambers & Partners 2019 (Crime)

"Highly recommended for a panoply of serious criminal cases."

Legal 500 2018 (Crime)

"The doyen of the North Eastern criminal Bar. He is simply the crème de la crème. You want him on every criminal case."

Chambers & Partners 2018 (Crime)

"Very experienced across a range of heavyweight cases."

Legal 500 2017 (Crime)

"He is the go-to silk for serious crime. He is extremely polished, authoritative and vastly experienced."

Chambers & Partners 2017 (Crime)

"A leading silk in the North East."

Legal 500 2016 (Crime)

"A gifted advocate, very thorough, conscientious and persuasive. He is the top person. Any problem you have, you go to him. His intellect, ability to relate to people and his advocacy all combine to make him brilliant."

Chambers & Partners 2016 (Crime)

"His practice includes cases that are scientifically and medically complex, or involve psychiatric issues."

Legal 500 2015 (Crime)

"A revered criminal practitioner who is the North Eastern Circuit's go-to-silk for complex health and safety litigation. He covers both defence and prosecution work."

Chambers & Partners 2015 (Health & Safety)

"The Godfather of silks on Circuit."

Legal 500 2014 (Crime)

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Appointments & Memberships

Head of New Park Court Chambers (2000-date)

Member of the Editorial Advisory Board of Blackstone's Criminal Practice (2010-date)

Visiting Professor at the University of Northumbria (2011-2014)

Deputy Judge of the High Court (1994-2008)

Recorder of the Crown Court (1982-2008)

Member of the Criminal Injuries Compensation Board (1989-1992)

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