

Medical Law & Patients' Rights

Summer 2008

Welcome to the first Sheffield Medical Law & Patients Rights Newsletter. This newsletter provides an overview of recent changes to medical negligence law and some of the landmark decisions that Irwin Mitchell has been involved in. In this issue there is also some information about the qualified nurses/midwives who provide medical support to the Medical Law & Patients' Rights Team based at our Sheffield Office. Let us know what you think of this edition and what you would like to see covered in future issues.

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Boy Receives Six-Figure Settlement after Suffering Brain Damage

A 15 year old boy has received a six-figure settlement after suffering brain damage whilst at hospital.

Joshua Boyce, who lives in Gleadless, Sheffield, had a congenital condition that left him unable to speak. He also had reduced movement and severe learning difficulties and other medical problems. As a result of this condition, Joshua also suffered with mild epileptic seizures.

However, despite these problems, Joshua was able to get around inside his own home including walking up and down the stairs safely and showed considerable intelligence.

As a result of his brain injury, Joshua had a number of operations over his life including several operations on his brain. As an in-patient, given Joshua's particular needs, it was thought necessary that special measures were in place to monitor and care for Joshua continuously.

In January 2002, when Joshua was 10 years old, he was admitted to the Sheffield Children's Hospital for further surgery to drain a cyst on his brain. Joshua was placed in a cubicle of his own which was not visible from the nursing station.

Christopher Boyce, Joshua's father, remembers, "I arrived at the ward the next morning and was met by the

paediatric consultant and the nursing supervisor. They told me that there had been a serious incident involving Joshua earlier that morning.

"A twelve year old girl had found Joshua lying on the floor. Staff attended and saw that Joshua had a curtain cord wrapped around his neck. He wouldn't respond and his lips were blue. He had suffered a cardiac arrest and a lack of oxygen to his brain.

"We would like to thank the girl who found Joshua as, without her vigilance, Joshua may not be with us now."

Following the accident, Joshua developed additional problems and it was thought that the incident made his pre-existing brain injury worse.

Joshua had problems with the right side of his body and had developed problems using the stairs, requiring help which he had not previously needed. He could also only walk about 20 yards before becoming tired.

His parents noticed an increased number of epileptic seizures with jerking, whereas before the admission into hospital, they had considered stopping Joshua's medicine as his epilepsy had greatly improved.



Tom Mather, Associate Solicitor

Joshua also became scared of being left alone, and found sleeping more difficult.

His payout was secured with help from Tom Mather, Associate Solicitor. Mr Mather said "It has taken nearly four and a half years for this settlement to be reached. Joshua has suffered significant additional injuries as a result of the accident he had at the hospital and this has led to him needing ongoing additional care.

We are satisfied that this money will help to make Joshua's life easier and will go some way to compensating him for the extra pain and suffering that the accident has caused. "

Joshua's settlement was approved at the Royal Courts of Justice in London.

Nurses in Law

There are four qualified nurses/midwives who provide medical support to the Medical Law & Patients' Rights Team based at our Sheffield Office. They help the team by being involved in the investigation stages of medical cases and assist clients with explanations of any medical issues that arise.

Jayne Currington is a qualified nurse who has provided support to the medical law team on the basis of her experience as a general nurse. She previously worked at a large teaching hospital acquiring experience in general medicine and surgery. Prior to leaving the NHS Jayne was employed as a sister in Accident and Emergency where she worked for 8 years. Over the past 10 years Jayne has been heavily involved in the Human Growth Hormone Litigation and the variant Creutzfeldt Jakob Disease Compensation Scheme. Jayne is one of the team members dealing with the investigation stages of the Fetal Anticonvulsant Litigation.

Dee Cavanagh has been with the team for several years after working in the NHS for sixteen years. After working in adult nursing and midwifery for 9 years, Dee acquired specialist experience in neonatology. During her last seven years in the NHS, Dee worked as a neonatal intensive care sister in a large regional unit. Dee specialises in obstetric and neonatal injury cases and is also closely involved in the investigation stages of the Fetal Anticonvulsant litigation. Dee also studied part time and has a law degree.

Nan Booth is a registered paediatric nurse, general nurse and midwife and has provided medical assistance to the medical law and patient's rights team for many years, on an extensive variety of cases. Prior to joining Irwin Mitchell in 1995, she had 21 years of experience in both the NHS and private sector health care within the UK and the Middle East. Her last post in the NHS was paediatric nurse manager involving a wide range of

specialities within paediatrics including intensive care, neurosciences and plastic surgery. Nan specialises in paediatric and obstetric cases and is closely involved in the obstetric brachial plexus paralysis (Erb's Palsy), Cerebral Palsy and paediatric epilepsy claims.

Phil Cawkwell is a qualified general nurse and has provided support to the team for several years after working in the NHS for nearly thirty years. During her last six years in the hospital setting Phil worked as a senior surgical ward manager. She continues to maintain her clinical expertise by working as a District Nurse on a regular basis. Phil has acquired knowledge in all aspects of adult care such as ICU (adults and paediatrics), medicine, surgery and orthopaedics. She is closely involved in the MRSA, Clostridium Difficile and Elderly Care cases.

Largest Settlement Case To-Date

Last year, Delyth Jones settled the case of Raphael v The Norfolk Suffolk & Cambridge Strategic Health Authority at the door of the Court, on the first day of what would have been a two week trial. The case concerned clinical negligence in the first few days of the Claimant's life, when there was a failure to test his blood sugars. The Claimant, who was 19 years old by the date of the trial, tragically suffered a massive hypoglycaemic fit. It was admitted that this caused brain damage, leading to profound learning disabilities, physical difficulties, and intractable epilepsy.

The current debate about the correct index for working out future costs was argued about in the run up to trial (i.e. whether the Retail Prices Index, or an index linked to average earnings should be used.) But, as the Defendants increased their offer on future care costs to £223,000 pa, periodical payments for the rest of the Claimant's life were agreed.

Life expectancy was not finally agreed, but, on Claimant's figure, a conventional lump sum equivalent of the whole settlement would have been over £8.2 million. As far as we are aware, this is the largest settlement for a single case to-date.

Helping Children with Reading

Over the last couple of years, Delyth Jones and several staff from Irwin Mitchell in Sheffield have been involved in the 'Right to Read scheme' through the charity Business in the Community. Volunteers give up an equal amount of IM and their own time to go into three local primary schools, to help boost the children's reading skills.

We've also been involved in various fundraising activities - for example, raising money for After School Club funds. We have been delighted to receive all sorts of thank you cards, and even yummy cakes, made by the children!

To Mediate or Not: That is the Question!

Cathie Delaney, Associate Solicitor in the Medical Law Team formally mediated a personal injury claim for a brachial plexus injury suffered at the time of the Claimant's birth in 1998 at a large teaching hospital in the region, as a result of alleged clinical negligence in the management of his delivery. Settlement was reached on the day of mediation.

The evidential difficulty that this case posed for the Claimant is that there was no contemporaneous record of a difficult delivery (shoulder dystocia) made by either the obstetrician or the attending midwife. This was confirmed in the witness statements of the clinicians. There was no paediatrician present at the birth. The only reference to any difficulty with the delivery was made by a paediatrician who examined the infant on the day after delivery and by the Claimant's mother.

The case was managed in that the Pre-Litigation protocol was followed. The Defendant denied negligence in their Letter of Response stating that the delivery was uncomplicated. The Defendant relied upon literature suggesting that Erb's Palsy lesions can arise in the absence of a shoulder dystocia.

It was significantly to the Claimant's advantage that the Defendant was unable to trace its paediatric witness who made the relevant note concerning the difficulty with delivery and this no doubt is one of the principal reasons that brought the Defendant to the negotiating table.

Given the evidential difficulties, the Claimant proposed mediating the claim. The Defendant agreed and mediation took place during which the Defendant put forward an offer to settle as one can only presume that the Defendant could not afford to run the risk of a Court questioning how the Claimant could have sustained an Erb's Palsy without shoulder dystocia being recognized, given the subsequent entries in the paediatric record.

In the final analysis, both parties appreciated that the case would principally stand or fall upon the judge's assessment of the factual witness evidence. It is upon the parties mutual recognition of litigation risk that settlement was achieved.

Following a rejection of the initial offer, the claim settled for £45,000, which was deemed a good settlement figure in the light of the evidential difficulties and the fact the Claimant has very few limitations with regard to the movement in his left arm.



Cathie Delaney, Associate Solicitor

Hip Replacement Surgery

We are acting for a local woman who underwent hip replacement surgery at Barlborough NHS Treatment Centre. This Centre is one of a growing number of Independent Sector Treatment Centres which are run by private companies, but where patients receive treatment free of charge. The aim is that these Centres will reduce NHS waiting lists for treatment. The Barlborough Centre currently carries out around 4,500 orthopaedic procedures a year for local people.

Our client was told there would only be a short waiting list if she had the operation at this Centre, rather than at her local hospital and so she decided to go ahead. The surgery should have been routine but unfortunately went badly wrong. It appears that the first surgery was not performed correctly, and the new hip had to be removed. Even when it was replaced in a second operation, the surgery was not carried out properly, and our client was left with a very bad result. Her hip dislocated and she had to be referred to her local NHS hospital for

further treatment. A further two operations were needed to remove the faulty artificial hip and insert a new one.

Our client's mobility is still very restricted and her social life has been badly affected. Had the operation been carried out properly in the first place, the result should have been excellent.

Back Problem led to Permanent Damage

Tom Mather, Associate Solicitor in the Medical Law team, had a female client with pre-existing back problems who attended the Barnsley Accident and Emergency Department on 17 December 2002 after experiencing numbness and urinary incontinence. There was a failure to appreciate the significance and extent of her condition, a developing cauda equina syndrome (disc pressure causing nerve injury which if not dealt with urgently can lead to permanent never damage affecting mobility, and bowel, bladder and sexual function). She was discharged and told her symptoms were gynaecological. It was not until a private referral to a neurosurgeon was arranged by her GP

in late January 2003 that her condition was properly diagnosed. Although urgent surgery was performed the damage was by then permanent. A claim was brought against the hospital for negligently failing to appreciate the seriousness of her condition. This was despite a detailed and thorough neurological assessment by an orthopaedic senior House Officer whose findings were not properly recognised by more senior staff. It was alleged that urgent CT scanning should have taken place with surgery on 18 December 2002 and that had this been done the claimant would have still made a full recovery.

Negligence was admitted shortly before settlement and the case settled for £530,000 to compensate for past, ongoing and future care, therapies, aids and equipment, transport and accommodation adaptations. The claimant was 38 at the date of settlement.

Work of the Public Law Team

Solicitors from Irwin Mitchell's Public Law team often work alongside clinical negligence and other personal injury fee earners to address additional issues which arise in relation to the current support needs of children with disabilities arising from birth trauma.

For example, in the case of Maryam Khan, a young girl with severe cerebral palsy, a clinical negligence case was still at the investigative stage but there were failures by various statutory authorities to work together appropriately and to provide necessary care support, therapies and funding for housing adaptations to meet Maryam's needs. The lack of provision was contributing to a deterioration in Maryam's condition so that she was suffering from severe muscle stiffness and spine curvature, and her parents were reaching breaking point due to the demands of caring night and day for Maryam and her younger sister.

Following interventions and negotiations by the Public Law team, a multi-disciplinary meeting was held between all the different professionals involved in Maryam's care and treatment, and the necessary provision was put in place. The local authority agreed to fund the necessary adaptations, including building a special extension to the family home with a bedroom and bathroom for Maryam so her parents would no longer have to carry her up and down stairs. Maryam also started receiving regular frequent physiotherapy and hydrotherapy at home, at school and during her all too frequent admissions to hospital. Arrangements were also made to ensure that Maryam received educational support during longer hospital stays.

Maryam also received specialist equipment including a specially adapted wheelchair which had been promised for over a year but not provided, and without which Maryam had been unable to travel anywhere except by ambulance, and at home had been confined to her bed because there was no other seating equipment which could manage her posture.

Moreover there was cooperation between health and social services in order to provide more regular respite for her, in a setting which could meet her complex needs, so as to give her family enough of a break to enable them to continue in their caring role.



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