

Medical Negligence Review

A review of some of our successful cases in 2008

Contents

1. Antenatal Care
2. Autism
3. Diabetes
4. Erb's Palsy
5. Inquest
6. Neurosurgery
7. Obstetric Care
8. Ophthalmology
9. Paediatric Care
10. Surgery
11. Other Activities
12. What others say about us
13. Further Information

1 Antenatal Care

McMenamin v Luton & Dunstable Hospital NHS Foundation Trust

Jake's mother suffered from a haematological disease called Primary Anti-phospholipid Syndrome (PAPS). The syndrome is associated with obstetric complications such as miscarriage, fetal death, clot formation in the placenta resulting in placental failure, pre-eclampsia and intra-uterine growth restriction (IUGR).

The central allegations against the Trust were the failures to treat her pregnancy as a "high risk" pregnancy and to advise, establish and enforce a suitable management plan for the pregnancy including ultrasounds and close obstetric surveillance.

In fact, Jake was born on 14 August 1996 at 34 weeks gestation by emergency Caesarean section because of fetal distress.

Had the obstetricians followed the management plan for a high risk pregnancy, IUGR would have been diagnosed before 30 weeks gestation. Close surveillance of the pregnancy would have found an abnormal Doppler study and would have resulted in delivery to Jake before he suffered any damage to his brain.

Paul McNeil was instructed to bring a claim against Luton & Dunstable Hospital.

Shortly before the Trial which was fixed for the 24 November 2008, the Defendant made a substantial offer to settle the case on a lump sum and annual payments basis. The lump sum will cover the cost of an adapted house and all the aids and appliances Jake requires. The yearly payments, which are updated for inflation, are sufficient to cover the cost of his ongoing care.

At the end of the case, Jake's mother said:

"Just to say how much we appreciate all your hard work that led to the compensation settlement that will make such a difference to Jake's life. Your attention to detail and great knowledge and skill in this particular type of case reassured us that the outcome would go our way."



Jake celebrating his "victory" with his family at the High Court

2 Autism

Smith v East and North Hertfordshire Hospitals NHS Trust

Romy Smith was born prematurely at 29 weeks. She was given an excessive dose of dextrose at the Lister Hospital when she was in special care and as a result suffered severe and permanent brain damage.

This caused cerebral palsy, severe learning difficulties and autism. Her communication and social skills are very limited and she needs constant care and will remain totally dependent on carers for the rest of her life.

Romy's parents, instructed **Paul McNeil** to bring the clinical negligence claim against the East and North Hertfordshire NHS Trust. The Trust had previously admitted liability but had made no offers of settlement. The case went to Trial in July 2008.

Mr Justice Penry-Davey ordered that the Trust should pay Romy a lump sum of £2.36m and index-linked periodical payments to cover Romy's lifetime care expenses. These will start at £96,000 a year, rising to £200,000 a year when she becomes 19. Exactly how much Romy will receive depends on her life expectancy because the annual payments are guaranteed for life and updated for inflation.

After the Trial, Romy's parents commented:

"We are absolutely delighted at the settlement that Paul McNeil has secured for our daughter. Throughout the whole time that Paul has worked with us, we have found him to be very caring, extremely skilled and highly organised.

He has kept our family's best interests at heart at all times and has always answered any concerns we may have had calmly, quickly and efficiently. We are enormously grateful to him for the way in which he conducted our case and we cannot praise him enough. We would not hesitate in recommending him to anyone."

3 Diabetes

AJ v North Cheshire Hospitals NHS Trust

Alison was admitted to hospital suffering from diabetic ketoacidosis. A central line for the administration of medication and fluids was placed in the wrong position. This was not recognised and as a result, Alison did not receive the necessary input of medication and her condition deteriorated.

By the time the doctors appreciated the mistake, she had been admitted to intensive care. Complications included an MRSA infection and at one point Alison was in a coma and it was felt she would not survive.

Happily she did survive but was left with a number of significant disabilities. Her injuries included a generalised and focal injury to her brain, resulting in cognitive and behavioural difficulties, damage to her lungs, a psychiatric injury and a serious disability causing clawing of the fingers on her dominant hand.

Samantha Critchley acted for Alison and she secured a formal admission of breach of duty in February 2006. Court proceedings were served in December 2006 and expert evidence was obtained from experts spanning seven different areas of medicine.

Judgment was entered in Alison's favour in April 2007. The case was complicated by the fact that she had a number of underlying health problems including diabetes, rheumatoid arthritis and back pain, for which she was already in receipt of Disability Living Allowance. This made quantifying the claim very difficult.

The hospital's starting offer in November 2006 had been £40,000. Following negotiation, the sum of £150,000 was secured on Alison's behalf. In addition, the hospital agreed to pay all of the legal costs. The award enabled Alison to move home to be nearer her family, which was her main goal throughout the course of the litigation. The case was funded by Legal Aid.

After the settlement Alison's parents said:

"[We] would like to thank you for all the hard work that you and your team have done in obtaining such a wonderful result for Alison. She is over the moon at the prospect of coming back to Bournemouth to live (so are we)..."

4 Erb's Palsy

M v Royal Berkshire NHS Foundation Trust.

Natalie was injured during her birth in 1998 whilst under the care of the Royal Berkshire NHS Foundation Trust.

At the end of the labour, Natalie's head was seen but there was difficulty in delivering the shoulders (known as shoulder dystocia). It was the claimant's case that the antenatal care was negligently managed, and there was a failure to deliver electively by caesarean section. There were other failures in the obstetric management, including the application of strong traction to her head.

As a consequence, Natalie suffered a severe traumatic injury to the nerves supplying her right arm, causing paralysis. She underwent four extensive surgeries to attempt to improve function in her arm in the first seven years of her life. Despite this, the claimant has been left with a permanent disability and the right limb remains for all practical

purposes, functionless. The claimant's mother brought the clinical negligence case against the Royal Berkshire NHS Foundation Trust. The hospital admitted negligence in the mother's care and invited proposals for settlement.

At a Hearing at the Royal Courts of Justice on 28 July, the terms of settlement were approved and **Samantha Critchley** recovered £405,750; the highest reported settlement in an Erb's Palsy case of its type. In addition to the substantial damages recovered by Natalie, the hospital was also ordered to pay the claimant's legal costs.

"Thank you again for making it a pleasant experience as these things can be very daunting... We now know that our daughter will have enough money to help her get through the rest of her life. We would encourage any parent to be very patient in a case like this and not to jump at the first offer given"

5 Inquest

Foster v University College London Hospitals NHS Trust

Gary Foster, a 27 year old graphic designer from Waltham Abbey in Essex, died after taking part in a government funded medical trial. He was suffering from testicular cancer and in the course of his treatment was, on seven occasions, given double the amount of chemotherapy he should have been prescribed.

Gary was treated in University College London Hospitals NHS Trust (UCLH). He was told that he had a 60% chance of survival and was offered a place on the medical trial which doctors told him would increase this. Gary agreed to take part in the trial believing his chances of survival would be greater and that he would receive a better level of care.

The trial, called TE23, was testing whether a combination of five existing

chemotherapy drugs was better at treating testicular cancer than the standard treatment of three drugs. From June until mid-September 2007 he made regular trips to UCLH in central London, to receive the drugs. On seven occasions between July and September, he received 30,000 units of one of the drugs, bleomycin, instead of 15,000.

Sadly Gary died on 14th October 2007 and the Coroner found that this was as a result of lung damage caused by bleomycin toxicity which occurred as a result of the overdose of the drug.

Mark Bowman represented Gary's family at the inquest into his death and is currently pursuing a clinical negligence case on behalf of the family.



Gary with his fiancée
Paula Collins

6 Neurosurgery

W v Princess Alexandra Hospital NHS Trust

W's claim concerned delays in the diagnosis of a non-malignant tumour in her spine. Following the onset of back pain and burning sensations in her feet and lower legs, W saw a rheumatologist who performed a spinal x-ray in October 2002 revealing the presence of a spinal tumour.

W's hospital failed to advise her of the x-ray results and failed to arrange for urgent MRI scanning. There was a delay of about 8 months before the MRI scan and referral to a neurosurgeon were eventually made.

By the time of the delayed operation, the tumour had invaded the nerves around the base of the spine and as a result, even after the surgery, W was left with an incomplete cauda equina syndrome which severely limits her mobility and affects her bowel and bladder function.

Richard Earle was instructed in place of other solicitors who had advised against taking the case any further. Specialist reports were obtained in the fields of neurology, neurosurgery and neuroradiology. These confirmed that the poor outcome would have been avoided with earlier surgery. Indeed, W

probably would not have needed a wheelchair for mobility.

In the legal proceedings, the hospital admitted errors for the delayed MRI scan and neurosurgical referral but contended that due to her age, the size and spread of the tumour that such delay did not make any difference to the outcome.

The case was listed for Trial in April 2008. A few months beforehand, the Claimant accepted the Defendant's offer of £400,000 damages together with her legal costs in settlement.

The case was initially privately funded and then conducted on a "no win, no fee" basis.

"A number of firms of solicitors that we approached told us it was a hopeless case and refused to help.

Thankfully we found Richard who was willing to "have a go".

We are so grateful for his dedication and perseverance which, against the odds, brought us the settlement we felt we deserved".

7 Obstetric Care

Osunde v Guy's & St Thomas Hospital NHS Trust

Benson Osunde suffers from severe spastic quadriplegic cerebral palsy and is blind. He also suffers from epilepsy and multiple learning difficulties. He requires 24 hour care and is totally dependent on others to meet all his daily needs.

His mother Monica suffered from post traumatic stress disorder and a prolonged period of moderately severe depression as a result of the trauma surrounding Benson's birth.

Paul McNeil acted for Monica and Benson Osunde in connection with a claim for medical negligence arising out of the birth of Benson on the 19 April 2002 at the Defendant Hospital.

We had previously secured interim payments to enable the family to move to suitable accommodation and on the 1 October 2008 the Court approved a settlement for Benson and Monica.

The settlement was a lump sum of £1.5 million together with periodical payments to cover the cost of care. These payments will continue to be updated for inflation for the rest of Benson's life.

Monica accepted the sum of £40,000 in respect of her claim.

W v Bromley Hospital NHS Trust

Samantha Critchley acted for the parents who lost their son as a result of undiagnosed pre-eclampsia during the last days of pregnancy which we alleged was negligent. This caused a placental abruption in the mother and the intrauterine death of the baby. After the birth, the mother also suffered a life threatening haemorrhage and other complications. Both parents suffered psychiatric injuries caused by the sudden and unexpected shock of witnessing the stillbirth of their child.

With competent care, the baby should have been born, uninjured, by caesarean section.

The Trust apologised and admitted liability and we secured a settlement in the sum of £30,000. The case was conducted on a "no win, no fee" basis.

8 Ophthalmology

P v The Gloucestershire Hospitals NHS Foundation Trust

Barnaby was born at the Cheltenham General Hospital on the 10 March 2001 at 30 weeks gestation.

His prematurity and low birth weight gave rise to a risk of developing Retinopathy of Prematurity (ROP) which could result in blindness if not treated. Sadly, that outcome occurred and Barnaby is functionally blind in both eyes.

The main issue in the case was whether the Ophthalmic Surgeon should have identified ROP when he examined Barnaby on the 24 April 2001. The hospital admitted in its defence that if ROP had been detected, Barnaby's eyesight would have been saved, leaving him with reasonable day to day vision.

Proceedings were issued on behalf of Barnaby in June 2007 and parties exchanged expert evidence from pre-eminent paediatric ophthalmologists. There was a significant difference in opinion between the experts as to what the treating Ophthalmologist could have seen at the 6 week examination.

The trial was fixed for the 27 October 2008 (on liability only) and shortly before this, the parties compromised on a 75:25 basis in Barnaby's favour.

Barnaby's mother accepted the offer on the grounds that there was a real risk that the case would have been lost at Trial. The amount of compensation to be paid to Barnaby is yet to be calculated. The case was funded by Legal Aid.

At the end of the case Barnaby's mother said:

"The process of having to re-live the events surrounding Barnaby's traumatic start to life was disturbing. The clear advice, support and understanding that you offered us both has made the ordeal more tolerable! I have always felt that you were really on "Barnaby's side" and that this has definitely assisted along the way. There have been several occasions throughout the case when I have been asked to consider options and make decisions that I have felt unqualified to answer and this is when I have most relied on your professionalism, expertise and integrity.

Barnaby is so important to me and with your help and effective management of the case he will have a brighter start."



Barnaby
Prevet

9 Paediatric Care

Ellerbeck v Barts & The London Hospital NHS Trust

In 1997 at the age of 6, Matthew Ellerbeck suffered a prolonged convulsion and was taken by ambulance to the A&E department of the Royal London Hospital. Herpes Simplex Encephalitis (HSE) should have been suspected and Aciclovir (an antiviral drug) administered immediately.

This was not done and Matthew sustained serious brain damage. The hospital accepted that they were negligent in failing to prescribe Aciclovir for over 30 hours. It contended nevertheless that the brain damage had occurred before Matthew had been admitted to hospital and was therefore unavoidable.

As a result, the hospital also contended that he would have been severely disabled in any event. Our experts agreed that HSE infections have a prodromal phase, where the virus provokes symptoms but causes no damage for a period of up to 5 days.

Reports were obtained and exchanged from leading experts in the fields of paediatric care, paediatric neurology, neuroradiology, neuropsychology and virology.

The Claimants' experts accepted that some damage would have occurred in

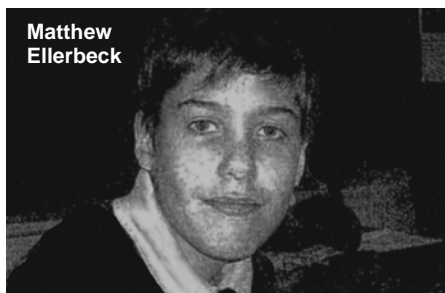
any event but most would have been avoided. We agreed that, but for the negligence and with appropriate treatment, Matthew would have led a relatively normal life, gone out to work, married and had a family. **Richard Earle** recovered damages of £3.85 million on Matthew's behalf.

The case was listed for Trial in July 2008 but following a discussion between the parties settlement was agreed by way of a lump sum and periodical payments which was approved by the Court.

The claim was funded by Legal Aid.

After the settlement Matthew's mother said:

"I was determined to press on and seek justice for Matthew. I am very pleased at the level of compensation which will make a huge difference to Matthew's life".



10 Surgery

V v St Georges Healthcare NHS Trust

V suffered from abdominal pain, bloating and diarrhoea. She was diagnosed as suffering from gallstones and was advised to have an operation to have them removed, which took place on 10 June 2003. During its performance, the surgeon noted a perforation in the accessory bile duct which he decided to drain and reassess the following day.

Following the operation, V's health rapidly deteriorated and she was transferred to ICU. An emergency laparotomy was performed the next day, following which she developed acute respiratory distress syndrome, biliary peritonitis, recurrent pneumothoraces, recurrent chest pain, foot drop secondary to critical care neuropathy and atrial fibrillation. V remained in ICU for many days and was discharged from hospital on 3 November 2003.

In May 2006, V instructed **Mark Bowman** with the benefit of LSC funding, to pursue a claim. Our expert surgeon confirmed that during the operation of 10 June 2003, the surgeon should have converted immediately to a laparotomy so that the accessory duct could have been ligated, preventing the biliary leak and numerous post operative and long term problems.

Proceedings were served on the Defendant on 24 May 2007. The Trust denied liability.

Further evidence was obtained on behalf of V from experts in care, neurology, psychiatry and respiratory diseases.

A third offer of £200,000 was accepted by V. The offer was felt to be an excellent settlement due to the fact that liability remained in dispute and there was debate as to V's life expectancy.

V received the full sum of £200,000 and all her legal fees. Afterwards she said:

"I am very happy and grateful for your help over the past few years. I could not have got where I am today without you. Whereas at one stage I had wished to accept the Defendant's first offer, thanks to your careful guidance, I now appreciate that I would have made a grave mistake to settle for such a sum. Thank you."

11 Other Activities

Paul McNeil spoke at the C5 Advanced Forum on Obstetric Negligence, he presented a paper entitled *Common Negligent Errors in Obstetric Cases: A Claimant Lawyer's Perspective* on 22 May 08.

www.personalinjury.ffw.com/news/paul-mcneil-speaks-at-c5-forum.aspx

Paul McNeil spoke at the Obstetric Talk: Common Negligent Errors in Obstetric Cases: A Claimants' Lawyer's Perspective.

Paul McNeil spoke at a Clinical Negligence Panel Meeting with AvMA on "Experts Revisited: Current Difficulties that may be encountered and how best to approach them" on the 13 November 08.

www.avma.org.uk

Paul McNeil spoke to the BISWIG Conference: Experts Revisited: Current Difficulties that may be encountered and how best to approach

Samantha Critchley gave a talk on "*Bringing the Action: Breach of Duty and/or Regulation*" at the MRSA and Other Healthcare Associated Infections conference organised by CLT Conferences on 4 November 08.

Samantha Critchley gave a talk on the "*Legal Aspects of Pre-eclampsia*" at the action on pre-eclampsia study days on 22 October and 7 November 08.

12 What others say about us

“Market sources deem this City-based outfit ‘a first class firm at the top of the tree for clinical negligence work’. The team may be small, but the strength and talent of its solicitors warrants its inclusion in the top tier. The group focuses on high-value complex cases and can often be found handling obstetric-related work; for example in 2006, the team achieved a £3.5 million settlement for a child suffering cerebral palsy for the misuse of a drug during labour. The firm represents clients across the UK and is developing a presence in the international marketplace, where it recently took on a case for a Hong Kong resident”.

Chambers, 2008

“**Field Fisher Waterhouse LLP** handles a wide portfolio of complex claims, and is not frightened to take on controversial cases. In 2006, the firm brought a High Court claim against Moorfields Eye Hospital in which it was argued, ‘*perhaps ingeniously*’ according to the Judge, that the Control of Substances Hazardous to Health Regulations when applied to clinical negligence claims should reverse the burden of proof. **Paul McNeil** heads a committed team that achieved excellent results in 2006. The firm has impressed counsel with its organisation, discipline and technical legal flair and clients find the firm supportive and sympathetic. Off the back of this, the firm rises a tier in our ranking”.

The Legal 500, 2007

“**Paul McNeil** who is endorsed by sources as being both ‘*incredibly tenacious*’ and ‘*formidable — he has a good tactical sense of cases and understands the strengths and weaknesses involved*’. McNeil is a long-established force in the field and an active member of several key panels and organisations, including Action Against Medical Accidents (AvMA) and the Royal Society of Medicine”.

Chambers UK, 2007

13 Further information



We have expertise in claims in the following areas:

- Clinical negligence
- Accident & emergency
- Anaesthesia
- Cardiac
- Cerebral palsy
- Dentistry
- ENT surgery
- Failed sterilisation
- Fetal medicine
- Gastroenterology
- General medicine
- General practice
- Gynaecology
- Hospital infection
- Intensive care
- Keyhole surgery
- Neurosurgery
- Obstetrics
- Orthopaedics
- Ophthalmology
- Paediatrics
- Psychiatric care
- Vascular surgery

For free initial advice call us on Freephone

0800 358 3848

or email

www.personalinjury.ffw.com



Our Contacts



Paul McNeil

t. +44 (0)20 7861 4019
e. paul.mcneil@ffw.com



Rodney Nelson-Jones

t. +44 (0)20 7861 4022
e. rodney.nelson-jones@ffw.com



Samantha Critchley

t. +44 (0)20 7861 4263
e. samantha.critchley@ffw.com



Richard Earle

t. +44 (0)20 7861 4041
e. richard.earle@ffw.com



Mark Bowman

t. +44 (0)20 7861 4043
e. mark.bowman@ffw.com



Cutting edge expertise

Caring for our clients

Commitment to our cases

For free initial advice call us on Freephone
0800 358 3848
or email
www.personalinjury.ffw.com

Field Fisher Waterhouse LLP 35 Vine Street London EC3N 2AA
t. +44 (0)20 7861 4000 f. +44 (0)20 7488 0084 info@ffw.com www.ffw.com

This publication is not a substitute for detailed advice on specific transactions and should not be taken as providing legal advice on any of the topics discussed.

© Copyright Field Fisher Waterhouse LLP 2009. All rights reserved.

Field Fisher Waterhouse LLP is a limited liability partnership registered in England and Wales with registered number OC318472, which is regulated by the Solicitors Regulation Authority. A list of members and their professional qualifications is available for inspection at its registered office, 35 Vine Street London EC3N 2AA. We use the word "partner" to refer to a member of Field Fisher Waterhouse LLP, or an employee or consultant with equivalent standing and qualifications.

