



Neutral Citation Number: [2021] EWHC 165 (QB)

Case No: QB/2017/003820

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1st February 2021

Before :

MR JUSTICE FORDHAM

Between :

OP
- and -
LANCASHIRE TEACHING HOSPITALS
NHS FOUNDATION TRUST

Claimant

Defendant

Sally Hatfield QC (instructed by JMW Solicitors) for the **Claimant**
John Whitting QC (instructed by Hempsons Solicitors) for the **Defendant**

Hearing date: 01.02.2021

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. The purpose of today's hearing is for me to consider whether the proposed settlement of the damages claim in this case is in the best interests of the claimant. I am going to use the phrase "the claimant" because this is a case in which an anonymity order was made back in October 2018 and that anonymity order continues in effect. The claimant is aged 15. Acting by his father and litigation friend he brought these clinical negligence proceedings against the NHS Foundation Trust arising from his neonatal management at the Royal Preston Hospital. The brief circumstances are these. He was his parents' first child; his mother's pregnancy was uneventful but he was born by way of emergency caesarean section on the morning of what I will call 'Day 1' in 2005 upon the detection of signs of fetal distress. His mother remained in hospital, having just had a caesarean section. She wished to breastfeed. Contemporaneous midwifery notes record the baby being put to the breast with no apparent problems. However, over the course of the night of 'Day 2' to 'Day 3' it is now clear that the claimant was becoming hypoglycaemic as a result of insufficient nutrition. He was found on the morning of 'Day 3' cold and dangerously ill. Steps to feed him were implemented but were tragically too late to avoid severe brain injury as a result of hypoglycaemia. The claimant's mother had almost no command of English. Allegations in negligence were raised against the Trust for failing to ensure that she understood the requirements of a breastfed newborn, and that she understood signs of concern that needed to be brought to the attention of midwifery staff.
2. The defendant NHS Trust denied liability. However, shortly before the liability trial fixed for October 2018 the parties were able to reach a compromise agreement whereby, without admission of liability, the defendant would pay to the claimant damages representing 80% of the value of the claim. That compromise was approved by HHJ Pearce sitting as a Judge of the High Court on 23 October 2018. The matter then progressed towards an assessment of damages hearing, listed for today, 1 February 2021. Last month, in January 2021, the parties were able to reach agreement – subject to the approval of the Court – that the defendant would pay to the claimant (a) a lump sum of £4.5 million and (b) periodical payments for care and case management (i) from December 2021 at £157,500 per annum and (ii) from December 2024 at £230,000 per annum. The overall capitalised value of that award is approximately £13 million. I need not go into great detail for the purposes of this ruling but it is very clear that the claimant has complex needs. He has, accurately, been described as 'grievously injured'. He has 4 limbed cerebral palsy, with global developmental delay, visual impairment and epilepsy. He does have some motor ability, to sit, and walk a short distance, but he is very unsteady and requires constant attendance. He has spinal scoliosis. He has no speech or useful hand function, lacks continence or the ability to feed himself; his epilepsy has proved intractable to drug treatment thus far. His life expectation is expected to be at least to the age of 45. His condition is permanent. Except for the possibility of some improvement in his epilepsy by further treatment modalities, he will remain profoundly dependent for all activities of daily living. It is clear that a very substantial financial package would be necessary to help cater for those complex needs.
3. The proposed settlement in this case has been calculated on the basis of identifying appropriate ranges in relation to all relevant elements on the basis of the full value of the claim and then adjusted to reflect the 80% recovery which, as I have described, was the subject of the 2018 compromise of the claim. I have had the benefit of reading a

very thorough advice of Ms Hatfield QC which sets out the reasons why she and the legal team consider that a settlement in this form and in these figures is in the claimant's best interests. I have considered that advice carefully together with the other papers in the case to which I have been referred including a report prepared by an independent financial adviser which in particular focuses on whether the settlement constitutes a suitable balance between a lump-sum invested and lifetime periodical payments. Having considered all of those materials I agree that this is a sensible settlement from the claimant's point of view. I am satisfied that the figures and the way in which they are structured and the balance between lump-sum and periodical payments is suitable, fair and appropriate. I am therefore happy to give my approval to the settlement and an order in the form proposed can be made. I also approve as part of the order a component of the lump-sum which is paid out to be paid out to the claimant's parents. The claimant's parents can now work towards the recruitment of a full-time care regime with the periodical payments awards which will be 'index linked' in the sense of being linked to the carer worker index under a mechanism (called ASHE 6115) which has been approved by the Courts. The lump sum award will be put towards relocating the claimant and his family into suitably adapted accommodation and in funding his therapy and equipment needs. A professional Deputy will manage the damages sum with his parents in order to meet those needs.

4. The claimant has been cared for to date by the tireless devotion of his parents. Leaving aside some limited external support in recent years they have tended to his every need. Mr Whitting QC on behalf of the NHS Foundation Trust has today in open court recognised the severity of the claimant's injuries and condition and the challenges that he and his family have faced, every single day, and will continue to face. On behalf of his clients, Mr Whitting QC has paid tribute to the claimant and the family for their fortitude and for the quite exceptional care that has been provided and will doubtless continue to be provided. Ms Hatfield QC who represents the claimant has described today how the family has kept him so well and looked after him with such care, such love and such devotion. I would like to express my own admiration for what the claimant's parents have done and continue to do, in these terribly difficult circumstances. I would like to associate myself, as the Judge approving the settlement, with the tributes that have rightly been paid by both barristers at today's hearing.