

PX (By his Father and Litigation Friend AX) v THE SECRETARY OF STATE FOR HEALTH (sued as WEST MIDLANDS STRATEGIC HEALTH AUTHORITY (NHS WEST MIDLANDS))

This £1 million claim, which gained the approval of His Honour Judge Gary Burrell QC at the High Court on 9 November 2015, was one of the oldest birth injury cases which the QB Masters collectively could recall dealing with. Frank Burton QC and Richard Davison of 12KBW represented the Claimant. The birth was in 1965. The Claimant was delivered at his home by his mother's GP after a very protracted and difficult labour. He was born in the unfavourable occipito-posterior position and sustained severe brain damage.

The central allegation was that he should have been brought to hospital and delivered by caesarean section which would have avoided an episode of profound perinatal hypoxia. The Defendant's case was that there was insufficient reliable information about the exact circumstances of the birth to substantiate the Claimant's claim. They maintained that such evidence as was available suggested that the labour was progressing satisfactorily and that there was no indication for admission to hospital.

At a Joint Settlement Meeting in October 2015 the parties agreed to settle the Claimant's case for a lump sum of £675,000 and a Periodical Payment of £15,000 per annum payable during the life of the Claimant. Expressed as a lump sum, the overall value of the settlement was £1 million.

Comment

The age of the case meant that none of the medical personnel involved were still alive; further, the majority of the medical records had been lost. Had the Claimant had capacity (and had the limitation period therefore been running against him) it seems unlikely that a Section 33 application would have succeeded. The case is an example of an uncomfortable reality for defendants, which is that the passage of long periods of time can avail little where the alleged negligence has rendered the claimant a protected party.