

Case Note: Re AB



The Claimant now aged 58 years suffered an accident at work. He was assisting in attempts to free a seized hydraulic ram blade in a compactor, when a tensioned metal chain snapped, recoiled and struck the Claimant's head at high velocity causing a left fronto-temporal-parietal depressed skull fracture; a severe & life threatening traumatic brain injury, incorporating significant subdural, extradural and intraparenchymal haematomas and traumatic subarachnoid haemorrhage.

The injury is to be considered at the worst end of the brain injury spectrum, as evidenced by the initial recording of a GCS of 4/15, the radiological changes described and a period of post traumatic amnesia that likely extended beyond 2 months. The injury is of a type from which profound permanent personality and neurocognitive sequelae, particularly with language and auditory memory functions, were to be expected. It was an exceptionally severe head injury. Verbal cognitive abilities were severely impaired. His verbal comprehension difficulties had a very significant impact on his level of understanding and his ability to communicate with others. He had difficulties reading. He did not reliably recognise or comprehend numbers and his writing was limited to overlearned tasks such as writing his name and address. He had significant difficulties with attention. His memory was poor. His thinking remained rigid, literal and concrete. Complex cognitive activities were beyond him. In the context of these deficits, the Claimant was vulnerable to exploitation. He had difficulty with planning, organising, problem solving and initiative. He lacked both cognitive and emotional empathy. He presented as rigid, controlling and egocentric. This had had a profound effect on his relationship with his wife, who suffered from poor mental health.

Nevertheless his recovery had been remarkable. By the date of trial he relied heavily on routine and structure. The Claimant was a Protected Party and would remain a Protected Beneficiary. He lacked capacity to make decisions related to his health and welfare. His marriage was at risk of break-down. There was a question whether he had capacity to decide whether he should divorce. His wife was herself vulnerable and a claim was made for the care he would have provided to her had he not been injured. An element of care reflected the possibility of an emergency should his wife unexpectedly leave the house and "go missing." This extra element of care might balance the risk of the relationship breaking down. Whilst the experts (neurology, neuropsychiatry, neuropsychology and care experts) agreed that he continued with considerable cognitive difficulties, the Court had to balance his needs with his own desire for independence and his rejection of full time support. He was safe and competent in many daily activities. Thus the care package eventually proposed provided for some hands on care, the remainder being "light touch" or "hands on the tiller" supervision with structured planning of his week and provision for emergencies. At one stage the possibility of deprivation of liberty applications to the Court of Protection should he refuse the care package proposed was envisaged.

The case involved an interesting issue as to the risk of the claimants marriage breaking down and resulting in divorce with the cost of any ancillary proceedings and his capacity to decide whether he should divorce or not and any further applications for the court of Protection to determine any issue in his best interests. The debate re PPOs was the more difficult by reason of the differences of opinion as regards the extent of care.

Complicated calculations were undertaken by financial experts as to the life time needs and investment advice was obtained. The case settled t £4.2M. The High Court judge who approved the settlement described the case as "*exceptionally complex*".

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Six Pump Court Chambers