

Issue 4

Jones –v- Southwest Strategic Health Authority

Charles Lucas & Marshall had a very significant case reported in the journal of the Association of Personal Injury Lawyers (APIL) “PI Focus”. A copy is on the next page. A doctor employed by the defendants in an obstetric delivery suite failed to recognise the warning signs that showed that the Claimant was distressed prior to her birth.



Delivery by caesarean section was too late and Lucy Jones was born with very severe physical and mental disabilities. Since birth she has been dependent for all aspects of her care and has very limited communication.

Experts assessed her annual care requirements to be in the region of £220,000 per annum.

The actual cost of Lucy’s care will of course vary over time. Experts suggest that her life expectancy is more than 20 years.

If an award had been made on the conventional “lump sum” basis, Lucy would have to bear the risks of :

- Living beyond predicted life expectancy after funding had run out.
- Falling investment returns rendering the lump sum less valuable.
- Changes in taxation treatment.

For some years now it has been possible for the Court to approve a settlement made up in whole or in part by periodical payments. It is further possible and advantageous for periodical payments to be indexed linked to the actual costs of care.

Treating the award in this way removes some of the risks mentioned above and provides a great deal of reassurance to the Claimant’s family that even, if as is to be hoped, Lucy lives longer, and even if the costs of care increase, Lucy’s needs will be satisfied without having to cut corners.



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Government cuts and the “compensation culture”

Cutting the costs of claims is the objective of reports by Lord Justice Jackson, Lord Young and the Lord Chancellor, Kenneth Clarke.

It has been suggested that the NHS has paid out billions of pounds in the recent past with a considerable proportion being paid to lawyers rather than successful Claimants.

This is inaccurate: the number of claims against the NHS has remained fairly constant and although the legal costs paid out to the NHS last year exceeded £700 million pounds , there is a total NHS budget of £122 billion pounds.

Kenneth Clarke has recently announced that LSC public funding (legal aid) for medical negligence claims will cease. He suggests that there are “other forms” of funding. However the majority of clinical mis-

haps tend to be undergone by people in the lower socio economic groups. These are the very people less likely to have legal expense insurance and/or the ability to locate and pursue a claim through a specialist clinical negligence lawyer who will offer a Conditional Fee Agreement (no win no fee).

Very often in the investigation of clinical negligence cases, the investigation stage is essential in enabling specialist lawyers to predict accurately whether a case is viable and give an opinion on the chances of success. Removing LSC public funding and limiting cost expenditure must necessarily reduce the chances of justifiable cases proceeding to a just result. Costs cutting should be no justification for turning a blind eye to negligence and depriving seriously injured victims of the compensation they require and are entitled to.

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Case Report: Jones –v- Southwest Strategic Health Authority

Quantum: brain damage at birth; serious disability.

Settlement before Mr Justice Hamblin in the High Court Queens Bench Division at the Royal Courts of Justice on 21 July 2009.

Dennis Matthews of Crown Office Chambers, London, instructed by Michael Berrett of Charles Lucas and Marshall Solicitors, Wantage, Oxfordshire, for the claimant.

William Edis QC of 1 Crown Office Row, Temple, London, instructed by Sheryl Gearing of Beachcroft, Winchester, for the defendant.

Case report submitted by Michael Berrett of Charles Lucas and Marshall Solicitors.

Lucy Jones was born on the 17th of February 1985. Tragically she sustained brain damage at birth and as a result is seriously disabled. Her parents have devoted themselves to Lucy's care and wellbeing ever since. It was only when she was 19 and as a result of a chance comment made by another CLM client that it occurred to Mr and Mrs Jones that it might be possible to secure compensation for Lucy's injuries.

Lucy is now 24 years of age. She suffers from severe spastic quadraparesis and is wholly dependent upon others for all of her needs. Although very seriously disabled physically, Lucy has a sparky personality and insight into her condition. It is hoped that with the assistance of technology and therapy now available, she

will be able to communicate more successfully. At present her communication is poor. The balance of medical evidence suggested that she lacked capacity to manage both the litigation and her financial affairs.

Medical evidence suggests that she has a life expectancy to between the ages of 48 and 50.

On the Claimant's side it has felt that an award for pain suffering and loss of amenity of £250,000 was appropriate. Past losses were claimed in relation to earnings, care, case management, accommodation, transport, aids and equipment, therapies, Court of Protection costs and travel expenses and sundry items. The Claimants past loss total was approximately £836,000. The defendant's figure, based on the Schedules that were exchanged, was £367,519.

As to future loss of earnings, care, case management, accommodation, transport, aids and equipment, technology, occupational therapy, physiotherapy, speech and language, Court of Protection and other miscellaneous costs were included in the Claimants schedule. Future loss totalled approximately £7,376,000. Compared with other cases, the sums claimed for care and case management could be considered to be on the high side in view of the fact that Mr and Mrs Jones are fit and healthy and determined to continue to be involved in Lucy's care for the foreseeable future. Equally the sum spent on purchasing alternative accommodation and the amount it is proposed to spend on converting it could have been open to challenge. Any attempt to predict what career path Lucy might have followed and what earning she might have achieved was of course fraught with uncertainty.

The Defendant's assessment resulted in a future loss figure of £4,462,000. Hence, adding interest to the figures, the Claimants total was a little over £9,300,000 and the Defendant's

assessment a little over £5,400,000.

Negotiations reach the point where the defendants ultimately offered following in settlement:

- A lump sum of £2,500,000
- Periodical payments of £240,000 per annum linked to the 80th percentile of ASHE6115, the first payment to be made in December 2010 but the amount then payable to take into account any increase in the index between 2009 and 2010 and payment of the Claimants costs.

Testing the offer on a lump sum basis, applying a multiplier of 19 to the periodical payment gives an overall lump sum value for the offer of just over £7,000,000. This was just short of the mid point between the sum claimed by the Claimant and the value of the claim assessed by the Defendant.

Financial advice was obtained and concluded that it was undesirable for Lucy to carry the mortality risks and investment risks associated with the conventional lump sum award. The advice was that it was clearly in Lucy's best interest to conclude the claim on a periodical Claimant's basis.

It was considered by those advising Lucy that the terms offered were very attractive as the periodical payments appeared to be sufficient to provide for care and case management and the lump sum was likely to provide a significant contingency fund even after meeting Lucy's immediate capital needs for the adaptation of her property. The terms of settlement were accordingly approved by Mr Justice Hamblin in the High Court Queens Bench Division at the Royal Courts of Justice on the 21st of July 2009.