

**Darren Banham -v- The Pennine Acute Hospitals NHS Trust**

**Trauma; witnessing death caused by clinical negligence**

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On 20th December 2001 Darren was at home with his parents when his father collapsed. On telephoning 999 his mother was advised to begin resuscitation. Darren, who was 11 at the time, was present during the telephone call and then helped his mother to get his father on the floor to begin this. Whilst Mrs Banham undertook resuscitation, Darren held the telephone speaking to the emergency operator. The paramedics then arrived and Darren's father was transferred to hospital. On attending hospital Darren was advised that his father had died. Darren therefore witnessed the sudden and unexpected death of his father in extremely traumatic circumstances. Darren's father however had recently attended the Defendant's Accident & Emergency department complaining of a history of dizzy spells. He had an extensive medical history. He had been diagnosed with severe coronary disease and was awaiting surgical treatment but had nevertheless been discharged from Casualty without investigation.

A separate claim in relation to the death of Mr Banham was settled to include damages to members of the family as beneficiaries under the Estate.

Darren was diagnosed as suffering a severe post-traumatic stress disorder, consisting of distressing and severe symptoms, caused as a result of witnessing his father's death. An early settlement in relation to Darren's injuries however was inadvisable because it was apparent that assessment of the prognosis of his illness would be difficult until some time had passed, in view of the fact that he was a minor.

The Defendants refused to pay for early rehabilitation which might have improved his situation. No therapy or treatment was made available to him under the NHS. The Defendants subsequently served psychiatric evidence which suggested that a great deal of improvement had anyway occurred in Darren's condition. This evidence was criticised substantially by the expert psychiatrist instructed for the Claimant because Darren had been interviewed by the Defendant's expert psychiatrist, only in the presence of his mother, whom he clearly sought to protect from the extent of his feelings in view of her own loss.

The Claimant's expert psychiatrist obtained a more accurate picture of the severity of Darren's symptoms by interviewing him alone. The evidence provided by this method enhanced the value of the settlement and Darren's symptoms eventually began to settle.

The claim settled in the sum of £14,500.00 which was approved by the Court.

This case required careful handling because the nature of Darren's psychiatric injuries meant that he was vulnerable to settling matters early and at an undervalue in order to be able to avoid the necessary discussions about the issues in the case. Such discussions were distressing for him. The Claimant's psychiatric evidence however was instrumental in effecting an increase in the value of the claim on the basis that the psychiatrist had been able to bring out the full extent of Darren's symptoms, having interviewed him in a protective environment in which he was comfortable enough to express himself free from other considerations relating to the litigation.

The case also highlights the importance of avoiding early settlement at an undervalue, particularly in the case of a minor, where the passage of time allows for a much more accurate view of future prognosis and therefore an enhancement of the settlement value of the claim.

Darren indicated that he felt that he had received excellent service throughout the claim and was grateful for all the help given to him to close a difficult a chapter in his life.

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Claire Horton is the Solicitor who heads up the Clinical Negligence department and she is a member of the Law Society Clinical Negligence Panel and has over 19 years experience in Claimant Clinical Negligence claims. Claire has acted for a number of claimants who suffer from cerebral palsy who have been successful in obtaining settlements in excess of £1 million.