

Dealing with clinical negligence

Sheila Brill describes her journey towards bringing a clinical negligence claim on behalf of her daughter, and the sense of justice she now feels as a result.

"My stomach lurched. I stepped out into the hall, my heart pounding. As I stood there, the letterbox opened again and what looked like half an envelope started to appear followed by the sound of the postman's retreating footsteps. Two A4 brown envelopes began to open up from their folded state in a kind of terrifying, slow-motion choreography each revealing a slightly opaque window with our names and addresses. To the right of the envelope window, franked in red was our solicitor's name and address.

"I'm going to find out now. We're just going to have to live with the consequences of what happened on the 10th and 11th May. It was no one's fault."

The arrival of the envelope was to be the start of a legal process that lasted over six years.

Ours was the story of a mismanaged labour that led to the birth of our firstborn with catastrophic brain injury. As a mother, I was thrown into a situation where, alongside caring for my sick baby, my post-partum state of mind was compromised by the profound realisation that things should have been very different indeed.

A case to answer?

We didn't know whether the hospital had a case to answer. It was recommended that we contact Leigh Day, one of the UK's leading clinical negligence law firms. Following an initial meeting, they asked us to write down our recollections of the labour. The information we provided turned out to be sufficient to suggest we might have a case against the health authority. Leigh Day subsequently accepted our instructions to pursue a case of clinical negligence. A preliminary report was commissioned from an expert obstetrician:

"Those responsible for the conduct of induction of labour did not provide the appropriate standard of care. The facilities in the venue chosen for the induction were inadequate. The standard of care throughout labour was gravely inadequate..."

As I subsequently wrote in my memoir: "It made our story real, that someone, somewhere, believed there was potentially a case to answer. We weren't a couple of small children stamping



our little feet because something had happened that we didn't like."

It was hard to know what the future would be like, having to prove wrong had been done.

Difficult

And so, the legal case began. I had been warned that it would be difficult to read the accounts and opinions of experts, as they would write about my baby in dispassionate terms. Evidence was gathered. Precedents were examined. Interpretations were made. The language appeared brutal to us. We heard phrases like 'foetal distress', 'the subsequent clinical course was alarming' and 'intractable brain damage'.

We learned that a clinical negligence case looks at the likely future of the injured baby and, in our case, it wasn't a pretty picture. And there was no guarantee that, despite extensive legal work over a six-year period, there would be a successful outcome. Alongside a lengthy legal case, we were dealing with our daughter's complex needs.

When something like this happens, there is an immediate emotional response and, of course, different people respond in different ways. Because I was experiencing PTSD (unrecognised for many years), I had an uncontrolled visceral reaction to what was happening. My husband, Peter, is a naturally more optimistic person and comes from a medical family, so his response was more pragmatic and focussed on the potential implications and outcomes. Despite our different responses, we worked as a team to balance our daily lives with the ongoing stresses of the legal case and its unemotional processes.

Make no mistake, undertaking litigation requires strength and resilience. It means getting on with life while accepting that any attempts to achieve justice will impact one's daily existence.

A need for money did not drive this process for us; we were lucky enough to

have financial security, so it was not top of mind to contemplate a future without enough money to care for our child. Of course, we didn't understand at the time what the ultimate costs would be.

Justice

Most parents never have to consider their child's life expectancy but it is the stark reality of this kind of litigation as it informs any final financial settlement, should the case be successful. In the event, we settled before it went to trial. There is always a risk of losing a complex case such as this and no hospital trust wants to see its reputation being dragged through the courts. We did, however, have to appear at the High Court in London to have the settlement ratified - an

experience in itself, which took an entire chapter of my book to describe. Those directly involved were never made to face the consequences of their actions in public. The best we received was an apology from their lawyers without any acceptance of responsibility.

Were we glad we brought the case and received redress and some element of justice for Josephine? Yes. Would we prefer for this never to happen to any other family? Of course.

Should all parents-to-be be assured that their children will be born in safe, well-managed environments? That question should never even need to be asked.

Brain injury at birth: A guide for parents from Leigh Day Solicitors

Tips for surviving litigation for clinical negligence.

- As soon as possible after the birth, write down everything you remember in as much detail as possible.
- Be prepared for frequent expert medical assessments of your child. Some of these can appear insensitive in their style or the manner of their reporting. Try not to let them upset you.
- Always ask what medical terminology means if you don't understand.
- Ask your solicitor to warn you if you're likely to hear difficult or upsetting information at a meeting or in a letter or email.
- Take some ownership of your diary. You will already be bombarded with medical appointments; ensure your solicitors are sympathetic as to how you manage your time.
- If possible, go to all meetings with lawyers and expert witnesses with another adult so that you don't have to remember everything yourself. Use your phone to record meetings.

NB: It's important to understand that litigation can be a long process with no guarantee of a successful outcome.

www.leighday.co.uk



About Sheila Brill

Sheila Brill, Josephine's mother, is the author of *Can I Speak to Josephine Please?* (published by Resilient Books). Sheila is a public involvement partner, working as a co-teacher at the University of the West of England, and an interviewer for paediatric nursing candidates.