

## CASE PLAN - INVESTIGATIVE HELP

Format in accordance with Funding Code Guidance Para 15.3.9.

### NAME OF CLIENT

Master AB

### NAME OF FIRM

G & Co.

### NATURE OF PROCEEDINGS

Clinical Negligence

### **CASE INFORMATION**

#### **A. Summary of Case**

Master AB was born on the 10th March 1999. He suffers from cerebral palsy. On the limited information available this resulted from asphyxia at birth. The allegations are that asphyxia occurred because of the failure of the Hospital medical staff to monitor and supervise sufficiently the mother's labour. There was apparently substantial delay in involving the Consultant in charge of her case and poor communication between key members of the medical team. A complaint was pursued by the mother to the Hospital Trust and the report offered an apology for certain breakdown in procedures.

#### **B. Objectives**

The objective is to obtain compensation for the client for pain and suffering, loss of amenity and for past and future financial loss including a claim for care. The present valuation of the claim is in the region of £2 million. The prospects of success are at present unclear and can only be assessed after the completion of the Full Investigative stage of the case plan which includes the pre-action protocol. At that point a clear picture will have emerged and the likely issues in the case more readily identified and the opponent's position will be known.

## C. Case Analysis

The claim is likely to be based on allegations of negligent obstetric management of the mother's labour particularly at birth but following further investigation may extend to post-birth neo-natal management.

### Case Issues

Describe legal issues of liability, causation, limitation or quantum separately and the prospects of success on each.

#### **a. Liability: Describe the issues and assess the chances of success:**

The issues are whether the obstetric management of the mother and the immediate post natal treatment of the child fell below the relevant standard of care.

The prospects of success are presently unclear but on the information currently available there is a real possibility that the treatment of mother and child was negligent. Expert evidence required.

#### **b. Causation: Describe the issues and assess the chances of success:**

The issue is whether it can be shown on the balance of the probabilities that the injury suffered is attributable to the medical treatment provided to mother and child.

The prospects of success are presently unclear but on the information currently available there is a real possibility of showing that the injury was caused by the negligence of the Hospital staff. Expert evidence required.

#### **c. Limitation: Describe the issues and the chances of success:**

Limitation cannot be in issue.

#### **d. Quantum: Describe the issues specify quantum and who assessed it:**

The issues relating to quantum will be the extent of:

- a) General damages for pain suffering and loss of amenity
- b) Special damages for financial loss including care

Should the case proceed an initial assessment of quantum will be made by the conducting solicitor. Advice will be taken from an experienced Junior Counsel and very likely Leading Counsel.

**The favourable facts are:**

- 1) The version of events given by the mother (which is suggestive of negligence) is partially corroborated by her husband and her own mother present at the hospital at certain critical times.
- 2) The report into the mother's complaint made certain admissions as to 'unacceptable delay' in calling for the Consultant in charge of the mother's labour and observed "a less than efficient communication" between various members of the Hospital staff.

**The unfavourable facts are:**

- 1) The condition of cerebral palsy can occur for reasons other than negligence in treatment.
- 2) The records of the Hospital are yet to be obtained and 'unfavourable' facts could emerge then.

**D. Funding Code Assessment**

The prospects of success are at present unclear and substantial Investigative Work is required before the prospects can be determined. The value of the claim is assessed at £2 million. Costs to settlement are estimated in the band of £25,000 - £50,000 and costs to trial estimated at up to £100,000. There are reasonable grounds for believing that when the Investigative Work has been carried out the claim will be strong enough to satisfy the Funding Code criteria and Full Representation in terms of prospects of success and the particular costs/benefit clinical negligence criterion in the Funding Code for very expensive cases. The case falls within Cost Band 1 for the purposes of the Affordability criterion. There are no elements of wider public interest or overwhelming importance (within the definition of the Funding Code).

**E. Case Theory**

A firm prediction of success cannot be made at this stage. A full investigation needs to be carried out. It is reasonable to suggest on the basis of the facts presented to us by the mother and supported by others and based upon our experience derived from handling similar previous cases that there are reasonable prospects of showing a breach of duty.

**CASE ACTIVITIES & COSTS INFORMATION**

<b>F. &amp; G. (i) Costs To-Date</b>	
<b>WORK</b>	<b>COSTS</b>
<p><u>Legal Help</u></p> <p>Two attendances on client's mother and father (2 hrs)</p> <p>4 telephone calls</p> <p>Two letters</p> <p>Completing application for LSC Funding (½ hr)</p> <p><u>Investigative Help</u></p> <p>Medical Records. Obtained, sorted. Paginated, and considering all relevant medical records, and notes preparing synopsis and core bundle (Panel Member 4 hrs, Assistant Solicitor 3 hrs).</p> <p>Proof mother. Obtaining detailed statement from mother following receipt of medical records (Panel Member 3 hrs).</p>	<p>Legal Help</p> <p>Profit Costs 91.00</p> <p>Counsel's Fees None</p> <p>Disbursements <u>None</u></p> <p><b>Sub-total Costs</b> <b><u>£135.05</u></b></p> <p><b><u>Investigative Help</u></b></p> <p>Panel member 7 hrs @ £150p.h. 1050.00</p> <p>Assistant sol 3 hrs @ £ 75p.h. <u>225.00</u></p> <p><b>Sub-total Costs</b> <b><u>1275.00</u></b></p> <p><b><u>TOTAL COSTS</u></b> <b><u>£1,410.05</u></b></p>

**(ii) Future Overall & Staged Costs**

KEY EVENTS & DATES	WORK	TIME ESTIMATE IN HOURS		COSTS
		SOLICITOR	COUNSEL	
	The outstanding work can be broken down into the following stages			<b>RATES APPLIED:</b> Regulatory Rates as within first £25,000. The above rates reflect a claim for 100% enhancement based conduct of the case by a member of the Law Society Clinical Negligence Panel.
<b><u>Stage One</u></b>	<b><u>Stage One</u></b>			
Instructing Experts October/November 2000	Instructing Consultant Obstetrician on liability. Instructing Consultant Paediatric Neonatologist on liability and causation. If liability report favourable instructing Consultant Paediatric Neurologist on causation (Panel Member).	3 hrs		<b><u>Stage One</u></b>
Consideration of reports and report to LSC April/May 2001	Consideration of reports raising supplementary questions. Discussions with mother and report to LSC (Panel Member).	3 hrs		<b><u>Solicitor</u></b> <span style="float:right">£</span>
Conference with Counsel May 2001	Preparing instructions to Counsel to advise on merits in conference and in writing (Panel Member).	1 hr		Panel member 17 hrs @ £150p.h. <span style="float:right">2550.00</span> Travel 1 hr @ £33.25p.h. <span style="float:right"><u>33.25</u></span> <span style="float:right"><u>2583.25</u></span>
Counsel's Advice May 2001	Attending conference with Counsel and client and experts (Panel Member).	4 hrs		<b><u>Counsel</u></b>
	Travel 1 hr	1 hr		Junior Counsel's fees for Conference and Advice <span style="float:right">1250.00</span>
				<b><u>Disbursements</u></b>
				Experts fees <span style="float:right">4500.00</span>
				<b>TOTAL s</b> <span style="float:right"><b><u>£8333.25</u></b></span>

		<u>SOLICITOR</u>	<u>COUNSEL</u>	
Protocol action June - September 2001	Consideration of Counsel's Advice and supplying copy to LSC preparing and submitting to LSC revised case plan.	2 hrs		
	If counsel's advice favourable, drafting or preparing letter of claim and considering letter of response with mother and experts (Panel Member).	2 hrs		
	Miscellaneous routine correspondence and telephone calls on client, counsel & experts.	2 hrs		
<b>OPTION A: SETTLEMENT</b>	<b><u>FUTURE WORK: OPTIONS FOR CONCLUSION OF CASE</u></b>			
	Profit Costs	£55,000		
	Experts Fees	£30,000		
	Counsel's Fees	<u>£15,000</u>		
	Total	<u>£100,000</u>		
	(See case of client WW previously undertaken by firm).			

<p><b>OPTION B: CONTESTED HEARING ON QUANTUM</b> (5 day hearing with Leader &amp; Junior)</p>	<p>Profit Costs           £100,000 Experts Fees           £40,000 Counsel's Fees        <u>£30,000</u> Total                    <u>£170,000</u> (See case of client XX previously undertaken by firm).</p> <p>Experts assumed to be: Care, Occupational Therapy, Accommodation, Physiotherapy, Employment, Technological Aids, Speech &amp; Language Therapy.</p>			
<p><b>OPTION C: CONTESTED HEARING ON LIABILITY &amp; CAUSATION</b> (10 day hearing with Leader &amp; Junior)</p>	<p>Profit Costs           £100,000 Experts Fees           £55,000 Counsel's Fees        <u>£50,000</u> Total                    <u>£205,000</u> (See case of client YY previously undertaken by firm).</p> <p>Experts assumed to be as above.</p>			
<p><b>OPTION D: CONTESTED HEARING ON QUANTUM, LIABILITY &amp; CAUSATION.</b> (10 day hearing with Leader &amp; Junior)</p>	<p>Profit Costs           £100,000 Experts Fees           £65,000 Counsel's Fees        <u>£50,000</u> Total                    <u>£215,000</u> (See case of client ZZ previously undertaken by firm).</p> <p>Experts in addition to above: Obstetrician, Neonatologist, Neurologist.</p>			

<b>(iii) Costs Summary</b>				
	<u>Profit Costs</u>	<u>Counsel's Fees</u>	<u>Disbursements</u>	<u>Total</u>
Section F. & G. Part (i) Costs	£1,410	£0	£0	£1,410
Section F. & G. Part (ii) Costs	£2,583	Junior Counsel £1250	£4500	£8,333
<b>Total of F. &amp; G. Part (i) and F. &amp; G. Part (ii)</b>				
<b>H. Cost Sharing Agreement</b>				
There is no cost sharing agreement.				

## CASE MANAGEMENT INFORMATION

<b>I. Team Personnel (including Solicitors Employees, Experts and Counsel and/or Solicitor Advocate)</b>
<p>The case will be handled by Mr. Z a specialist clinical negligence practitioner and Partner in the firm which holds a clinical negligence franchise. He has significant experience of dealing with cerebral palsy cases. Particularly the work in the investigative stage will be carried out by him (save for the assistance of an Assistance Solicitor and a Medical Legal Assistant in relating to the pagination of the medical records). Subsequently, should the case progress beyond the investigative stage the Assistant Solicitor would become more involved eg. dealing with quantum aspects.</p> <p><u>Experts</u></p> <p>The experts to be instructed (subject to availability) are Professor AA, Consultant Obstetrician who has huge experience in medico legal work and is author of numerous text books on obstetrics. Holds Chair at PL University.</p>

Mr. BB, Consultant Paediatric Neonotologist has been engaged in the firm in other cerebral palsy and has given authoritative reports. Is impressive in Court.

Mr. CC, Consultant Paediatric Neurologist - extremely experienced Consultant. Author of numerous articles in relation to his field of expert.

Counsel

Mr. DD will be instructed to advise initially. He is a Senior Junior Counsel who has specialised in clinical negligence cases. He has considerable experience of cerebral palsy claims in particular.

Mr. EE QC - it is likely that Leading Counsel will be instructed at some stage. He has been instructed in the past by the firm. He is one of the most experienced Leading Counsel specialising in clinical negligence cases with a reputation for giving clear and reliable advice at various stages in the litigation.

**I confirm that a copy of this case plan has been sent to the client/litigation friend. He/She has been advised that if the case is successful some of the costs of the work set out in the case plan may not be paid by the other side and instead would be taken out of the clients compensation.**