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Story behind £15 million damages to boy disabled at birth



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Why was the figure so high in this record-breaking case and why did it take so long for justice to be achieved?

Who could fail to be touched by the heart-rending story of Suzanne Adam's 12-year-long fight for her son's record-breaking payout from the NHS last week?

James Robshaw, who is severely disabled, was starved of oxygen at birth, resulting in cerebral palsy, a lifelong neurological condition that affects muscle control and movement. James's settlement is

reported to be around the £15 million mark and is one of the highest ever medical negligence awards against the NHS. Why was the figure so high in this case and why did it take so long for justice to be achieved?

Such large payouts may attract headlines due to the misunderstanding that they include punitive damages, when they are in fact calculated according to a victim's needs. The law aims to put the victim in the position they would have been in had the injury not occurred and so for James, the money in question will have to last a lifetime.

A claim like this will typically include:

- A lifetime's worth of care and therapy, sometimes featuring 24-hour specialist nursing care managed and coordinated by a brain injury specialist
- Specialist equipment plus maintenance/replacement costs
- Essential adaptations to a house, and in some cases the build of a bespoke home with carer's accommodation and therapy space
- Compensation for loss of earnings over a working lifetime

It adds up, but James's case is unusual. His physical injuries appear to be complex; all four limbs are severely affected and he communicates through a machine he controls with his eyes. But his intelligence appears intact and the judge described him as "a very active, quite exceptional young man". This very ability and potential will affect damages, justifying cutting-edge technology. For example, a victim unable to communicate the thoughts of a sound, or indeed exceptional, mind may be awarded damages for the latest, extremely expensive, enabling technology. James appears to be such a person. His claim for lost earnings will also be higher because of what he might have achieved in life.

But why such a long time? The family and legal team must be able to confidently advance a valuation of the claim, preferably with hard evidence in support, and this may mean trying out a care package for a long period to inform the assessment of future care and therapy needs. It may also be years before the impact of the injury is known.

However, it is the delay in resolving who is at fault that causes most heartache. We do not know why liability in this case was not resolved for six years. My own experience is that where such large sums of money are at stake, the NHS will fight hard. The NHS does need time to investigate, and this is its right as a defendant. But I suspect that policy considerations are also in play, including the need to create the impression that they are taking a tough line to deter future claims and to "wear down" current claimants. There may also be political pressure to resist claims.

In strong cases, this approach is counter-productive and costs the NHS more money in legal costs. I have seen many cases in which liability has finally been admitted just days before trial, with massive wastage in legal costs.

The delay is also damaging to victims. Until negligence is admitted, there can be no advance payments for ongoing care, meaning families struggle to meet the complex needs of their injured children. In cerebral palsy cases, early intervention is key to achieving optimal medical outcomes.

Assistance can be sought from the NHS, local authority, and charities, but resources are thinly stretched and availability and quality vary by area. Families can be reluctant to allow an imperfect patchwork system of care into their already fragile lives.

The NHS is right to defend some claims but should pick its battles. The best opponents identify cases with merit and admit liability at the earliest possible stage. The same applies to claimant lawyers like myself; we must resist the “kitchen sink” claim and abandon bad points promptly. We all want the same outcome: genuine victims compensated fairly, quickly and efficiently to reduce their suffering.

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