

Adding insult to injury – the litigation journey for birth injured clients

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What I'm going to talk about

- My talk is titled “Adding insult to injury – the litigation journey for birth injured clients” and I’m going to cover 5 topics:
 1. **The destination:** where we’re trying to get to
 2. **The route:** how we’re going to get there
 3. **The injury:** how that insult causes further injury
 4. **The insult:** why that journey is an insult
 5. **A possible solution:** what we as navigators and guides can do to help

The Guardians 1986 - Points of view Advert



The destination

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What's the destination?

- Just one: money.
- Blunt tool.
- Aim of compensation?
- Is it suitable?
- Other aims?
- Spin offs

The route

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The route to compensation - the legal tests we have to satisfy

- Limitation: the claim must be brought in time,
- Liability (aka negligence or breach of duty) : the standard of medical care received must have fallen below an acceptable standard (i.e. below adequate on the spectrum) and,
- Causation: that substandard medical care must have caused or contributed to a specific and identifiable injury, and
- Quantum: the injuries sustained as a result of the negligence have some financial value.

The route : limitation

- The headlines:
 - 3 years from the date of the negligence: or
 - 3 years from the date you knew or ought to have known about the negligence: or
 - 3 years from your 18th birthday: or
 - Unlimited time if you lack capacity

The route: liability

- The headlines:
 - “liability” or “negligence” is treatment (or lack of treatment) which was below the standard that the patient could reasonably expected to receive;
 - from a reasonably competent clinician in the same field: and
 - there is no responsible body of doctors or clinicians in the same field (however small) who would support it.

The route : causation

- The headlines:
 - What damage has been caused by the negligence as opposed to the underlying condition or the consequences of non-negligent treatment?
 - Can we prove the link between the negligence act and the damage?

The route : quantum

- The headlines:
 - What financial value can we attach to the damage that has been caused by the negligence?
- Two parts to the award:
 - General damages: designed to compensate the claimant for the pain, suffering and loss of quality of life they've injured as a result of the symptoms caused by the negligence. Based on precedent.

The route : quantum

- Special damages: money spent and money lost as a result of the symptoms caused by the negligence. E.g. cost of care cost of medical treatment, travel expenses to and from the hospital, prescription charges, loss of earnings etc.

The injury

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The injury

- The index event
- The fear
- The guilt
- The admission
- The grief
- The anxiety and worry

The insult

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The insult

- The legal system.
- How to access it?
- Where to access it?
- Trust issues

The insult

- Intrusion of privacy
- Repetition
- Examinations and assessments
- Negativity
- Triggering of more guilt
- Time commitment involved
- Emotional toll
- Stuck in the past

The insult

- Are they calling me a liar?
- Possibility of failure
- Possibility of trial
- Possible outcomes of trial

A possible solution

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Lawyers as a solution

- Treat each parent and child as a person rather than “a client” or a patient” and looking at what we do through their lens.
- Total honesty about the route ahead
- Explain the process, and the impact of the process
- Listen
- Talk about and acknowledge the emotional impact
- Be a human – understand and empathise

Lawyers as a solution (continued)

- Offer support and assistance outside the legal process
 - Put them in touch with specialists who can help them manage their feelings or conditions
 - Put them in touch with relevant organisations or charities
 - Put them in touch with other people who have been through the same life events and the same sort of litigation

Lawyers as a solution (continued)

- Focus not on the client as the subject matter of a claim, but as a whole, complex human being, living a whole and complex life.

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