

Welcome...

It gives me great pleasure to introduce the second edition of Catastrophic Injury News produced by the specialist catastrophic injury team at Rix & Kay Solicitors LLP.

The aim of our bi-annual publications is to provide you with a snapshot of the type of cases that we have the privilege of being involved in and also alert you to special interest topics and up-to-date news on this specialist area.

Frances Pierce Head of Catastrophic Injury Team

Brain Injury Awareness Week 2008 - 31st March to 6th April

Case Study Follow up to Conference

Many of you who attended Rix & Kay's conference in November (Who decides now? Working together to implement the new Mental Capacity Act) expressed a wish to have a follow up conference to deal specifically with real life cases that were briefly discussed in groups at the last conference. This follow up conference is currently being arranged to take place at the end of April.

The follow up day will be an ideal opportunity for those working in Social Services and Local Authorities, as well as other sectors dealing with vulnerable people, to develop knowledge and skills to deal with difficult cases such as they are likely to come across on a daily basis.

Real life cases will be discussed in groups and then opened up to the conference. The case studies will include issues relating to culture, religion, finances, dementia, obesity, intrusion of the press, family involvement, neglect, abuse, etc. Available to each group will be legal experts from the private sector and Local Authority, an expert in adult protection and someone to advise on the ethical issues the cases give rise to.

Those of you working with vulnerable people should find this conference very interesting and informative. Prior attendance of the October conference is not a prerequisite. Anyone attending who may wish to discuss a case that they are currently dealing with, please let us know. If you would like to attend the conference in April, or to find out more, please contact: BeccaCoffey@rixandkay.co.uk or telephone 01825 745 360.

Claimant Solicitors in Damages Victory

Claimant catastrophic injury solicitors scored a major victory in the assessment of damages in January of this year in a ruling by the Court of Appeal that confirmed damages for seriously injured people dependent on care staff should not always be linked to the retail prices index (RPI). The Court of Appeal upheld the Claimant's arguments that indexing payments to RPI, which measures the costs of living, means claimants can lose out because RPI has been lower than the annual rise in earning in the care sector for many years.

Claimants can now opt for payments to be linked to the annual survey of hours and earnings (ASHE) instead. The ruling was one of the most important decisions for decades on the assessment of damages for future care. This ensures that those who employ carers will be in a better position to pay them appropriate rates without fear of running out of funds.



KABIF

Kent Acquired Brain Injury Forum have mapped the provision of acquired brain injury services in the county of Kent. For more information, please see www.kabif.org.uk



'Rix & Kay are experts in this field.'

We can help you, a friend or relative, if you have suffered a catastrophic injury.

Your first consultation is free of charge.

Headway, Tunbridge Wells & District, 20th Birthday

On 21st January, at the new Headway Centre, Milestones, 3 Culverden Park, Tunbridge Wells, TN4 9QT, Headway Tunbridge Wells & District celebrated its 20th birthday. The list of achievements of this Headway Group over the past twenty years has been phenomenal. Their support for people with acquired or traumatic brain injury has been unrelenting.

They are very keen to encourage fundraising and have an ideas pack available if anyone would like to arrange an event during the year. For more information, please telephone 01892 619001.

Traumatic Aneurysms Following a Brain Injury

Traumatic aneurysm formation is a rare complication of a head injury. Rix & Kay recently acted for a man who suffered a severe brain injury after a fall who then went on two years later to suffer a brain haemorrhage after a bleed from an aneurysm. The question was, was this a traumatic aneurysm caused by the brain injury or was it a typical saccular aneurysm commonly seen after brain haemorrhage but unrelated to the brain injury.

As a direct result of both, our client required 24 hour care from his family and it was important for us to be able to show that there

was a link, otherwise the claim for damages might be limited to a 2 year loss only.

Experts involved in the case on both sides were of the opinion that there was no link but they were unable to advise on the reasons why there was no link. Our client's family were convinced that there must be a link. Research in this area is limited but a brain injury nurse working in this area had remembered reading research on this subject, she had been working with our client and very kindly let us have a copy of the literature, we were then able to have a conference with the author of the research who is a neurosurgeon at Queen Square.

Having looked at our client's MRI scan and noted the history, our expert concluded that

there was no link between the brain injury and brain haemorrhage because traumatic aneurysms are rare, found in less than 1% of intracranial aneurysms and most frequently associated with penetrating trauma. Traumatic aneurysms are primarily located in the peripheral cerebral vasculature or in the skull base whereas saccular or more common aneurysms occur on the Circle of Willis, arteries which supply blood to the brain.

Traumatic aneurysms do not have a definable neck to clip, unlike saccular aneurysm which are usually treated by clipping or coiling.

The interval between injury and presentation of a traumatic aneurysm may be from hours to months or years but greater than 90% of



The Consequences of Brain Injury on the Family Stress

A brain injury does not only happen to the injured person but also to their family and loved ones. It can be a major source of stress for all close family members, many of whom go through a steep learning curve about what it all means. The process often starts with acute stress at the time of the trauma and is followed by anxiety sitting by the bedside of the one you love, helpless to intervene beyond talking to them and touching them, desperately looking for the first signs of recovery.

The road is often a long and painful struggle and family members are involved in that struggle. The path to some kind of perceived normality is a long one. The family are a lifeline to the injured relative. They can provide comfort, reassurance and support. Family members and friends often do this in their own way and they too have a transition to make, as the full impact of the brain injury is realised.

Families often go through high levels of anxiety, hope, despair, anger and frustration and have negative feelings and quite often feel guilty that they may somehow be responsible for what has happened, or that they can get on with their lives. Family members can often take on the role of therapist and at times unaided. They try to redevelop any lost skills for their loved one, which can be a source of friction for all concerned. Emotional and behavioural problems are common, particularly in the transitional stages.

The dedicated care of close family members is crucial to recovery but it can also result in the loss of outside interest for them and resentment. It is common for there to be a withdrawal of support from friends and wider family members as they get back to leading their own lives.

Local Government Powers Extended

The Local Government and Public Involvement in Health Act 2007 has introduced a number of changes to health and social care providers.

Under Section 2, the Local Authority will have a wider general power to do anything that they consider is likely to promote or improve the social wellbeing of their area, which may be for the benefit of all persons or for an individual person, either resident or present in their area. The power will include provision for a Local Authority to provide accommodation to any person and under Section 77 of the Act, this power extends to Parish Councils.

Section 117 creates a duty on Local Authorities and Primary Care Trusts in the Local Authority area to prepare a Strategy Document, setting out an assessment of relevant needs in its local area. These are needs that the bodies consider it could meet to a significant extent. The bodies involved must co-operate with each other. (It will be interesting to see whether any joint funding will be achieved as a result).

The Act also sets out under Part 14 provisions relating to the abolition of the Patients' Forums and the establishment of Local Involvement Networks (LINks). There has been an amendment to the National Health Act 2006, which now creates a duty on strategic Health Authorities to involve Health Service users in consultation and publicise such reports.

Close family members, as a result, can experience a sense of social isolation or a feeling of being trapped or burdened. There is often poor communication between the family and health professionals. Families often have severe financial concerns, as well as a legal battle, which adds to their stress.

Eventually adjustment takes place but that is a difficult task and changes in personality tend to impose a greater strain on a family unit. Grief can set in for what has been lost but how do you grieve for a person who is still with you? The support that would exist, had there been a death, is not given automatically to support a family when someone sustains a brain injury.

There are ways of helping to cope with the stresses and strains. Some tips that some of our clients' family members have found helpful include:

Banking Guide on Managing Accounts for the Mentally Incapacitated

The British Banking Association has produced a guide for their members, setting out what to do if a person is managing the financial and property affairs of someone who may lack capacity to look after some or all aspects of their own financial affairs.

It gives guidance on how a bank account can be opened and money managed on their behalf. It applies to England and Wales. It makes clear that Banks and Building Societies will need evidence of the Attorney's identity, including his address. Given that this information is not required in a Lasting Power of Attorney prescribed form, it will trigger problems for attorneys trying to prove their identity for money laundering purposes.

For more information, please see:
www.bba.org.uk/content/1/c6/01/04/41/mentalcapacity/2007.pdf



- Look after yourself physically and recognise your own needs
- Make time for yourself in the day
- Be aware of resources available
- Share experiences with other families who have been in the same situation as you
- Seek help from someone in the rehabilitation team - clinical psychologists are usually the best people to consult
- Try not to isolate yourself
- Understand that the emotions you are experiencing are common and natural coping strategies for someone in your position
- Don't be afraid to seek help yourself.

presentations occur within 2-3 weeks of injury.

Our client's aneurysm had the appearance of a saccular aneurysm and had a neck and body and was capable of being coiled, it had occurred within the Circle of Willis and had bled 2 years after the trauma and for all of those reasons our expert concluded that our client's aneurysm was not a traumatic one, so was unrelated to his accident 2 years previously.

We were therefore unable to show a link between our client's brain injury and his brain haemorrhage, but we did manage to show that had our client had his brain haemorrhage without his brain injury on the balance of probability he would have made a better recovery and therefore the brain injury caused

60 % of the damage suffered. This was because by the time our client had his brain haemorrhage his brain had already been injured and, because of this, our client lost the chance of a reasonable recovery from his brain haemorrhage, an opinion not supported by the defendants.

The defendants had argued from the outset that our client had made a good recovery from his brain injury and at the time of his brain haemorrhage he did not require any care and was capable of doing some work and therefore their liability finished two years after his brain injury. Once liability was settled in favour of our client, the defendants made a substantial offer of damages.



Maidstone & Tunbridge Wells Hospitals Clostridium Difficile Outbreak

Many of you may have read the Healthcare Commission's report into the handling of the outbreak of Clostridium Difficile at the hospitals in Maidstone and Tunbridge Wells.

There are many hurdles in respect of bringing a claim against a hospital. Time is running out for the first outbreak that took place in 2005 and the second in 2006. The families only have three years from the date of the event.

Normally, a claimant would want to wait until the outcome of criminal proceedings before starting a civil action. Establishing liability under the higher criminal standard of proof would assist a civil claim in negligence against the NHS Trust, but delaying the issuing of a claim until then would cut further into the limitation period.

The stand-alone cases of infection suffered in hospital historically have not had good prospects for success. In respect of the MRSA claims, these were successful where there were other elements in support of a claim. MRSA infection for instance is commonly found around surgical wounds so now an MRSA claim would be more likely to succeed if this is one of several elements, such as a claim that surgery was conducted unprofessionally, but unlike the MRSA bacteria, C. Difficile affects the intestine, so claimants would need to show that the hospital processes were lacking and allowed the bacteria to spread. This would entail a detailed review of all the hospital's processes and even if these were found to be inadequate, the hospitals would still have the defence that they had taken all reasonable steps expected from an NHS Trust in their position.

In this regard, the Health Commission's report is useful but only goes so far in support of the families. The Commission concluded:

"The trust had no effective system for surveillance of C. Difficile. As a consequence it missed an outbreak in 2005 that involved 150 patients.

Some patients with conditions from which they might have been expected to have made a full recovery were prescribed broad-spectrum antibiotics, contracted C. Difficile and some died. The clinical management of the majority of patients with C. Difficile that we reviewed fell short of an acceptable standard in at least one aspect of care.

When the second outbreak was declared in 2006, the cohorting arrangements were unsatisfactory and it took four months to establish an isolation ward. The infection control team were not managed properly and standards of cleanliness and infection control were not good. Subsequently the number of cases has reduced to below the levels before the outbreaks. However, as late as April 2007, we found unacceptable examples of contaminated equipment.

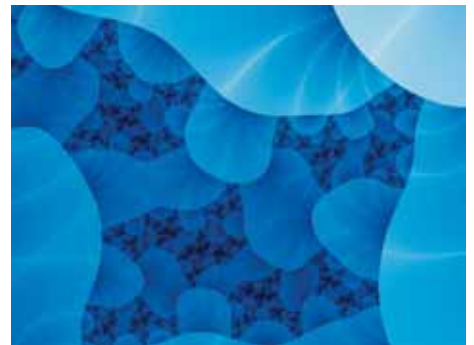
The trust did not make the outbreak public for two months and then produced figures which almost certainly underestimated the numbers of deaths. We estimate that approximately 90 patients definitely or probably died from C. Difficile in two and a half years, 60 of these during the outbreaks from October 2005 to September 2006. It is not correct to conclude however that 60 patients died because of the care they received. Some would have died even if they had had the best care."

To succeed the families have to show that their relatives died as a result of the hospital's failure and the report is of limited help with that. The report looked at approximately 500 people who died and found that only 90 actually died of C. Difficile. Proving causation (the cause being the negligence rather than the medical problem for which they were being treated) is therefore tricky. Even if established, damages are likely to be low or even non-existent. Most of the patients who died were elderly and were unlikely to have dependents.

The hospitals may be able to defend themselves by arguing that they took all the steps that were reasonably practical in the circumstances. Courts will take into consideration the budgetary constraints under which the hospitals operate. The Health & Safety Executive, if they have considered criminal sanctions, are unlikely as a matter of public policy to prosecute. They will be guided by the interest in prosecuting in terms of taking into account the scale of the outbreak and the number of people who suffered from it. Any fine levied would need to be proportionate. Many of the hospitals have little or no funds. The Health & Safety Executive are likely to conclude that it would not be appropriate to start prosecutions to levy fines when they would be

hard-pushed to meet them.

From April this year, liability in the case of an infection outbreak could also be assessed under the Corporate Manslaughter and Corporate Homicide Act due to come into force shortly. Senior hospital managers could be at risk of prosecution if they are held responsible under Section 25 of the new Act, if it can be shown that they failed in their supervisory duty.



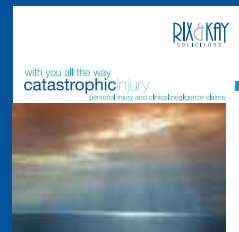
Welfare Benefits Update Carers Earn More Without Losing Out

From 1st October 2007, the maximum amount of money that carers in Great Britain are allowed to earn without losing their entitlement to Carers' Allowance (CA) has risen from £87 to £95 per week, after expenses such as income tax and National Insurance contributions have been taken into account. (See the Social Security (Miscellaneous Amendments) (Number 5) Regulations 2007 (SI 2007/2628)).

The current rate of Carers' Allowance is £48.65 per week.

CA is designed to provide help for someone who forgoes full time work to provide at least 35 hours of care a week for a severely disabled person who receives Attendance Allowance, an equivalent rate of Disability Living Allowance, Care Component, or a specified minimum level of Constant Attendance Allowance with an Industrial Injuries Disablement Benefit or War Pension.

The increase in earnings limit is an interim measure, ahead of the Government's review of the National Carers Strategy. The forthcoming strategy will look at how CA could be reformed to meet needs more effectively.



To download our
Catastrophic Injury brochure,
please visit our website
www.rixandkay.co.uk

Frances Pierce, Partner Catastrophic Injury Division

Frances specialises in catastrophic personal injury and clinical negligence work and heads the Catastrophic Injury Team at Rix & Kay.

She has been a member of the Law Society's Personal Injury Panel since 1996, is on the Headway Personal Injury Solicitors List and actively supports Headway. She is Chairwoman of the campaigning group Kent Acquired Brain Injury Forum and sits on the Legal Services Commission's Special Cases Unit as well as being the Honorary Secretary of Kent Law Society.

Frances' commitment to her clients and their families extends beyond the immediate business of their case – she really cares. Most of her work involves those with severe brain injury or spinal injuries, amputees or fatalities.

Sheila Riches, Senior Solicitor Catastrophic Injury Division

Sheila is a Senior Solicitor in the Catastrophic Injury Team. She joined Rix & Kay in 2007. Sheila specialises in catastrophic injury work, both personal injury and clinical negligence.

When acting for a client and their family, Sheila uses her skills to support them all throughout the legal process to ensure that, whilst nothing can change the past, as much as possible is done to support the family in the short and long term. Ensuring that a client recovers maximum damages is always a priority.

Sheila has been an AvMA panel member since 1999, is on the Headway Personal Injury Solicitor's List and was actively involved in setting up the Sussex Acquired Brain Injury Forum (SABIF).

She graduated with an MSc in Medical Ethics from Imperial College, London in 2006. Prior to being a solicitor Sheila was a sister in a neuro-intensive care unit.



For more information please contact
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telephone on 01825 745 360.

Please see our website for more details and individual profiles at www.rixandkay.co.uk as well as for forthcoming events.

If you know of anyone who would like a copy of this newsletter then we are more than happy to add them to our circulation list.

Please email their details to
BeccaCoffey@rixandkay.co.uk.

Behaviour Post Brain Injury

Victoria Toy, our Trainee Solicitor, writes ...

"As part of my training with the CICN department, I have been fortunate enough to attend a number of talks on brain injury and its effects. One such talk was hosted by Chailey Heritage and welcomed guest speaker Dr Ron Savage, Vice President of the North American Brain Injury Society with over 30 years experience of helping children and adolescents with neurological disorders.

Dr Savage explained that after a brain injury, it is common that individuals will experience some sort of emotional or behavioural change. Behaviour is controlled within our brain by the frontal and temporal lobes. Damage to the frontal lobe can make you impulsive, haphazard and prone to explosive behaviour, whilst damage in the temporal lobe can cause sufferers to overreact to situations. In his experience he has found that many people who have suffered a brain injury feel that their emotions are emphasised and struggle to control them. Examples of such behaviours are verbal and physical abuse to oneself or others.

He suggests that in order to manage unwanted behaviour those suffering from a brain injury, or those caring for them, can help by understanding what triggers these behaviours, how to manage them during the outburst and after the behaviour has occurred. Examples of external triggers can be everyday activities, as simple as a request to get dressed or elements out of our control such as noisy or busy environments. Other triggers may be those resulting from the brain injury itself such as the inability to communicate effectively or poor memory.

Monitoring and recognising the triggers can help you stay calm when they occur. Dr Savage recommends noting these triggers in order to help avoid these situations. With triggers beyond your control, recognising the signs of beginning to get agitated may help. Once you start getting angry, you might notice your heart race and feel flustered. When you notice such signs it is important to try and stay calm.

If you have suffered a head injury, your processing speeds may be affected and can be even more so when agitated. This can result in it being even harder to express yourself when emotional causing further frustration and cause the anger to escalate.

If caring for someone with a brain injury, Dr Savage recommends keeping their activities structured and organised, which can help sufferers manage the world around them. If the unwanted behaviour has already started to manifest, changing the environment or the subject onto something more positive to take the attention away from the behaviour may alleviate these heightened emotions.

He has found that redirecting the anger or

aggression is useful and believes it is vital not to dwell on the behaviour. If someone is frustrated about what they cannot do post brain injury, focus on what they can do. If nothing else, physical activity may help sufferers vent their emotions. Sometimes those with brain injuries struggle to understand the feelings of others and can be critical or show little empathy. Practising situations like this can help those with brain injury learn how to respond appropriately.

Dr Savage describes brain injury as contagious; it affects the entire family. Educating and training families coping with brain injury to understand its effects will enable them to cope more effectively with unwanted behaviours. Encouraging an environment for open communication between the family and reinforcing dignity and respect for those with brain injury are key to overcoming issues.

Dr Savage feels that above all it is important to understand that being angry or frustrated is not unacceptable behaviour, these feelings are natural and all part of coming through a brain injury and with help these outbursts may become less frequent."

Mental Incapacity

The Public Guardianship Office commissioned research called "Empowering You" carried out by a Mori Poll, which confirmed the following:

- 86% thought it was important that their wishes should be respected with regard to what medical treatment they would receive if they became unable to make their own decisions.
- 80% believed that it was important that their wishes should be respected regarding how their money should be spent.
- 59% of those aged 65 and over have made no provisions at all for how their finances would be looked after, should they become unable to do so themselves.
- 31% said they had not thought about it at all.
- 23% of people have made preparations of how their finances would be looked after, if they became unable to make decisions because of an age related illness.

For more information regarding Lasting Powers of Attorney or advanced decisions, please contact: Stella Mullane of Rix & Kay Solicitors LLP on 01825 761555, E-mail StellaMullane@rixandkay.co.uk.



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