



**Erb's Palsy Group**  
024 7641 3293

# Erb's Blerb 117

Magazine of the Erb's Palsy Group Early Summer Issue 2022

*Hello everyone,*

## and welcome to our second newsletter of 2022 – how quickly time is passing by!

welcome to our early summer issue, we have had some gorgeous weather during March and April, let's hope it continues throughout the coming months.

We have lots of excellent articles this issue- especially around our year long theme of Mental Health issues arising from the trauma of this injury. We hope you find them helpful – if you would like to share your story, then get in touch- we'd love to hear from you, e mail; [info@erbspalsygroup.co.uk](mailto:info@erbspalsygroup.co.uk)

**Karen Hillyer**

## STUDY DAY BACK!

The trustees are delighted that as Covid restrictions have eased we are now able to continue with our Study Days for Health Care Professionals – this year we are targeting Physiotherapists and Occupational Therapists - so if you have a contact with your local Physio team – could you ask them for their e mail address ? We can then e mail them details about the event and how they can register. We have a great range of Surgeons and Therapists booked to share Best Practice techniques for treating children and young adults with the injury – if you do find an e mail address if you could send it to [info@erbspalsygroup.co.uk](mailto:info@erbspalsygroup.co.uk) that would be hugely helpful.

## YOUNG ACHIEVER AWARDS 2022

You can read about our 2 Young Achiever award winners in this issue- they have both astounded the Trustees with their achievements in spite of their injuries – they are very motivated and are a great example for our members.

## LAST BOOKING FORM FOR THE FUN DAY

In this issue is your FINAL booking form before the closing date for registering to attend our **Family Fun Day** in **Harrogate**- so if you haven't booked- make sur you do – the deadline is looming!

## COMPETITION



We have a great competition inside, for writing a story – does your youngster have the writing bug? If so get them to send Debbie their stories – further details inside !

## T-SHIRTS



Many thanks to everybody who purchased group T shirts and Hoodies from Jodie – they have been well received and are still available to buy



# Donations

**Thanks** to all those members who have made donations recently- our funds are getting low after 2 years without the opportunity to have fundraising events- **so we are VERY grateful** to those who have been able to contribute.

Many thanks to **Bobby Richards Grandmother Anne** for her continuing support- we do appreciate it !

Huge Thanks to **Steven Bulter** and the Charity Committee of **Cygnus Alpha**- Steven who is dad to the lovely Abbie kindly nominated the Charity for a donation from the team and we were delighted to received **£500** – thanks so much to Steven and everyone involved !

Thank you to **Ms A Malone** who kindly sent a donation of **£50** in the name of **Montie Brown** – we are very grateful for your kindness.

**Ges Souter** sent a lovely donation of **£46.50** from the **Dufton Coffee Morning Group** – thanks Ges we do appreciate your kindness.

**Norman** and **Bev Broom** are the grandparents of **Max Hole**. They recently organised a Black Tie Dinner event and donated the proceeds of **£104 + Gift Aid** to us – how thoughtful- thanks so much for all your support for the Charity.

**Mia- Ella** raised a fabulous **£350** for the Charity – you can read how she did it later in this issue !

**Amazon Smile** donations this quarter raised **£229.12** - remember it's all money for nothing !

**Thanks to everybody who held a FACEBOOK fundraiser** recently- we had a payment directly into our account of **£107**

We have received several donations in memory of **John Randall** who was the Grand dad of Isla May one of our members, John died recently and his lovely family asked for donations to our charity in lieu of flowers at the funeral -at the time of printing this newsletter John's funeral hasn't taken place so we can't give a total figure for the funds raised, but so far we have had a **£50** donation plus gift aid from Susan Nicholls and a **£30** plus gift aid from Ian Redding in Johns memory- daughter in law Leanne sent us this note;



John and the family



John and Isla May

**John** was very involved with Isla-May and her Erb's palsy. Isla was born nearly 12 weeks early with bilateral injury and had a compromised immune system so we never wanted to take her on the underground so for the first couple of years of her life John drove us to all her Bolsover street appointments and sat in the car doing his newspaper crossword!! Isla had surgery at Stanmore and he drove us to that and then a year later he himself had surgery at Stanmore they had a connection , they were very close.

John was a follower of your Facebook and was in awe of so many peoples achievements and the compassion the members showed to each other.

**Do you run  
your own  
business?**

**Do you work  
for a retail  
company?**

**Do you have  
contacts  
with product  
suppliers?**



**Are you able to make or obtain for us, a high, quality donation/prize for our  
Charity Ball Raffle?**

We are already on the lookout for Hampers of goodies such as confectionery, alcohol, food products, toiletries, stationery and/or Vouchers for gifts, high street shops, days out, etc. although these must be UK based not locality specific please as guests at the ball may not be local to the area the voucher is for. We would of course be willing to credit you/the company with any donation in the Blerb newsletter and on all our social media outlets. Please feel free to include any promotional materials/business cards with the prize.



If you think you can help, please  
get in touch with **Debbie** or  
**Karen** at:

**Robinson.debbie@sky.com** and  
**info@erbspalsygroup.co.uk**

**THANK YOU!**

Please note: Any perishable items need to be dated  
after September 30th 2023 and preferably later.



# Mia-Ella's Blue Hand Day Fundraiser!

Hello, my name is Mia-Ella and I am 9 years old. I have a little sister, Sophia who is 1 years old. Sophia has Erb's Palsy in her left arm.

When she was born she had a birth injury which left her with Erb's Palsy. She works very hard every day on her physio and I help where I can. When Sophia was 5 months old she had to have surgery in Leeds. That's quite far from our house. I had to stay with my auntie. Sophia came home and she just smiled and laughed even though her arm was taped to her body. She had to have a nerve graft surgery. Mummy says they took nerves from her legs to help the poorly nerves in her arm. I love my little sister so much and I love to help her. The Erb's Palsy Group is a charity that helps people with Erb's Palsy and their families too. They are really great! They have helped our family lots and my mummy talks lots about Karen and Jackie. They are really helpful. When Mummy told me about Blue Hand Day I wanted to help. So I challenged myself to walk 15,000 steps in 1 day!! I wanted to raise £150. I managed to achieve over 20,000 steps and I've raised £350 for the Erb's Palsy Group. I really hope that the money helps lots of families like mine. My little sister makes me very proud, she always smiles and laughs even though she has to go to lots of appointments and do lots of physio. The physio helps her get stronger. I'm writing my very own story about my sister called 'Superhero Sophia and her magic arm', I hope that by writing a story I can raise awareness of Erb's Palsy and what it means.



20,058  
Steps



88  
Floors



8.08  
Miles



2,935  
Cals

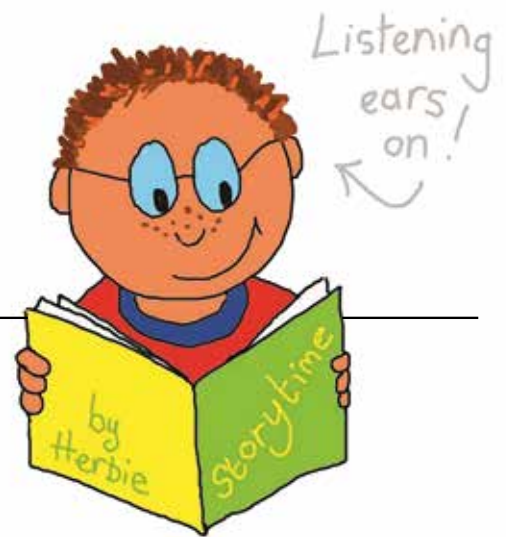


# National Writing Day is an annual celebration of writing designed to inspire people across the UK to get writing.

In honour of National Writing Day on Thursday June 23rd 2022, we would like to invite our younger members to put pen to paper and write us a story about their adventures with Herbie. This can be a story or comic strip or even a poem, with or without illustrations.

The winning entries (there are 2 age categories) will be featured in the Blerb and our social media pages, with the winners receiving a full set of the Herbie Books and a £20 Book Token each, to treat themselves to some new books. What would you buy?

**We can't wait to read your adventures!**



## ENTRY REQUIREMENTS

You must have Erb's

Category 1: 8 years old and Under

Category 2: 8 – 12 year's old

Closing Date: Saturday 9th July 2022

No more than one side of A4 please  
Entries can be handwritten or typed  
and must be emailed or sent to Debbie  
Robinson @ [Robinson.debbie@sky.com](mailto:Robinson.debbie@sky.com) or  
26 Browning Hill, Coxhoe, Durham DH6 4HB

## PEARL ANNIVERSARY BALL

SATURDAY 30TH SEPTEMBER 2023

LEEDS MARRIOTT HOTEL

PLEASE SAVE THE DATE TO JOIN

US CELEBRATING 30 YEARS OF

THE ERB'S PALSY GROUP

WHILST ALL PLANS ARE STILL IN THE NEGOTIATION STAGE AND SUBJECT TO CHANGE, PLEASE THINK POSH FROCKS, CASINO TABLES, PHOTO BOOTH, LIVE MUSIC AND 3 COURSE DINNER WITH RECEPTION DRINK. TICKET AND PRICING DETAILS TO FOLLOW.



So my husband Andrew and I were ready to start a family. This didn't come easy and I discovered I had PCOS so ended up having fertility treatment.

Anyway March 2001 we found out we had hit the jackpot and was pregnant.

Pregnancy went perfectly and we were so excited.

Due date was 28th December 2001.

Christmas day we were at our friend's and waters broke... here we go!!

Went in and nothing further happened so induction was decided for 27th Dec.

Went down at 11am-ish and I was started off.

All was going well so we thought then we heard the words 'this baby is back to back'.

They let her head get out and then realised she was stuck...they said her shoulder was stuck behind my pelvis but as her head was out C section wasn't an option.

All panic set in the red buzzer was pressed crash team came in and my husband was pushed out the way....

Eventually after forceps, ventouse and Wrigley's forceps, me being cut, she was out!!! Phew..

Those words though. ...Mrs Johnson we need to speak to you about your baby will haunt me for the rest of my life!!!

They told us she had Erb's Palsy/shoulder dystocia which we had never heard of.

In amongst all this I had retained placenta and was whisked off to theatre.

Next day my consultant came in off holiday to see me and told me I had given his junior doctor a run for her money!!!

We then saw the superintendent physio who explained we would need to do physio 10 times a day with her at home.

She used the Toronto scale to assess her.

We proceeded with the physio and I'm not going to lie, she cried we cried.

The day she lifted her arm was like winning the lottery!!

It did the trick as at 1 year old they said she was 90% back to full use of her arm.

She took it in her stride as a toddler and just adapted with the arm when playing.

Chloe is now 20 years old, and has been an inspiration she still suffers with a lot of pain often in the shoulder and does struggle some days. She is a very strong, determined young lady.

She is pursuing a claim against the hospital before she turns 21 as she feels it's wrong they get away with this sort of thing.



Gill x



# BOOKING FORM FOR 2022 FUN DAY

SATURDAY JUNE 25th 11AM – 4.00PM

Pavilions of Harrogate, Great Yorkshire Showground, Harrogate, HG2 8NZ

NAME

ADDRESS

POST CODE

NAMES OF ALL ADULTS ATTENDING

**\*\*Have you enclosed your entry fees? Adults £5\*\***

Remember – Adults and Children with Erb's are FREE

**PLEASE LIST THE NAMES AND AGES OF ALL CHILDREN ATTENDING**

*Ages are required as this information is vital for insurance purposes.*

Name      Age

**Please list here any special dietary requirements:**

Do you give permission for any photographs taken at the Fun Day to be used in the newsletter or on the EPG website?

YES

NO

**Do you require acknowledgement of your form?**

(Please enclosed a stamped addressed envelope)

All cheques or postal orders should be made payable to the ERB'S PALSY GROUP or you can pay via our 'Donate' button at [www.erbspalsygroup.co.uk](http://www.erbspalsygroup.co.uk) stating payment is for this booking.

Please send completed booking forms with your payment to:  
KAREN HILLYER, 60 ANCHORWAY ROAD, COVENTRY CV3 6JJ.

To arrive **NO LATER THAN JUNE 1st 2022**



ison harrison  
solicitors

## A Look Back At... The Yorkshire Law Firm Challenge 2021

At the height of the pandemic, Yorkshire law firm Ison Harrison decided that 2021 should be a year remembered for more than just masks and social distancing. So, they set out on a 12-month fitness challenge to improve well-being and raise money for 5 very special charities.

The plan was to raise £3,000 by completing as many virtual laps around the perimeter of Yorkshire as possible, through running, cycling and walking. Not only that, but they teamed up with Welcome to Yorkshire's #Walkshire campaign to encourage walks around their region, sponsoring a different walk each month.

Of the 5 chosen charities the firm raised money for, the Erb's Palsy Group was one of them. Given the longstanding connection with Ison Harrison and the fact that they are the North of England's only recognised Erb's Palsy solicitors recommended by the Erb's Palsy Group, we were delighted that they included us in their Yorkshire Law Firm Challenge.

The end result meant the total money raised reached £5,000 and each of the 5 charities (including us!) received £1,000 each.

This was such a fantastic achievement for all involved, not only raising money for charity but also improving individual well-being with fitness and improved mental health.



The Ison Harrison  
team completed:

**18,664** miles

That's 41 laps of Yorkshire!

**4,387** activities

What an incredible team effort!

**585,164** feet  
climbed

That's 83 times up the Yorkshire Three Peaks!

Total amount raised

**£5,000**

5 charities get £1,000 each



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solicitors

Call Ison Harrison Solicitors today on

**0113 284 5000**

or email [mail@isonharrison.co.uk](mailto:mail@isonharrison.co.uk)



Erb's Palsy Group



# Thank you to EVERYBODY

... who has ordered T shirts from Jodie – we are delighted to say that we have already had £84.98 donated from sales – so if you fancy spreading the word or have an event coming up- why not consider ordering a T shirt or Hoodie from Jodie's store.

Stacey Pritchard ordered matching t shirts for Mia- Ella and baby sister Sophia, and Stacey had a hoodie and she was delighted with the quality of the garments and the speed of delivery !

**Here we have Mia- Ella and Sophia modelling the shirts !**



Sophia



Mia Ella and Sophia



Stacey and Sophia

**PURPLE PANDA BEAR**

**GET YOURS NOW**

100% of proceeds will be given to the **Erb's Palsy Group** so they can continue with their great work

Now being sold on our Etsy Store  
[@purplepandabearco](#)  
Find a list of prices, sizes and variations

The advertisement features a large white t-shirt with a blue handprint logo and the text 'Erb's Palsy Group' below it. To the right of the t-shirt, there are three smaller images of t-shirts in different sizes. The background is a light purple gradient. In the top left corner, there is a logo for 'Purple Panda Bear' featuring a panda face. Below the logo are icons for Instagram, Facebook, and Twitter.

## Case study:

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**At Royds Withy King we have successfully settled a claim for a mother for £12,000 for the psychological injury caused to her as a result of the traumatic birth that led to her child's brachial plexus injury. We wanted to highlight this case and others like them for Maternal Mental Health Awareness Week (2nd to 8th May 2022) which focuses on the impact on mothers following a traumatic birth. This ties in with our own awareness campaign #WhatAboutMum?**

**The reason for writing about this now is that having recently received two admissions of liability for the Erb's Palsy injury caused, the reaction of both mothers to the news has been profoundly difficult to hear. They both sobbed when told that the Hospital Trust have accepted their actions caused their child's injury.**

Having worked with the families for some time to get to this point, I sadly recognised the fact that there remains unnecessary guilt and personal blame on the part of parents, and mothers in particular. When I am in receipt of an admission of liability I can say "It's not your fault, it never was but now I hope you can believe that"; the relief, sadness and anger are palpable.

### **Mum's claim**

We act on behalf of a 5-year-old girl who sustained a left-sided brachial plexus injury at birth, which resulted in a Group 2 Erb's Palsy Injury. We successfully settled liability on her behalf whereby the Hospital conceded her Erb's Palsy injury would have been avoided.

In our Letter of Claim we had also put forward a claim for Mum for psychological and physical injury as a direct result of the traumatic birth. We obtained supportive expert evidence from a psychologist that Mum had suffered an Adjustment Disorder with Anxiety and following disclosure of that report, a settlement was negotiated albeit no specific admissions were made as to any injuries suffered by the mother.

As the child's case is ongoing, the facts have been anonymised.

The key issue in the mother's case which led to the injury to her daughter and led to her psychological injury, was the failure to listen to her request for an early induction of labour in light of indication of a large baby. This was against a maternal obstetric background of four previous very large babies all delivered by early induction of labour at 37/38 weeks with no injuries and thus her fifth pregnancy, which was the subject of our case, should have been no different.

Mum was seen by a Consultant at almost 36 weeks pregnant but they did not wish to discuss induction of labour until 39 weeks. Mum expressed her unhappiness about this to her midwife and a second opinion was requested. However, despite the increasingly large size of her baby there was a failure to understand Mum's concerns, take into account her history or counsel her about the different modes of birth, including early induction of labour and caesarean section if appropriate and any consequences for both Mum and baby should shoulder dystocia occur.

Mum was finally taken in for induction of labour at 40+5 weeks. Sadly, her daughter then experienced shoulder dystocia and it became an emergency situation. Various manoeuvres were used to deliver her and she was born with great difficulty weighing over 5 kilos. During the delivery excessive traction was used and as a result she sustained a Grade 2 Erb's Palsy to her left arm.

When we first investigated the case, it was very disheartening to read in the notes and records that Mum's active wishes for an early induction of labour and her concerns about what may happen if she was allowed to go to full term were basically ignored. Whilst the claim initially focussed on the injury to the child, we quickly realised that there was also a psychological injury to Mum in relation to the physically traumatic birth compounded by

the fact she felt she had not been listened to.

Whilst as an outside observer, I could say categorically, "You did everything you possibly could, there was nothing else you could do, the onus was on them to listen and not to cause injury as they were the professionals", I also appreciate that is not as easy to accept

One thing that I could help with as part of the legal process was getting a formal Letter of Apology from the Trust. My client said that "Before the admission of liability, I felt complete and utter guilt. I wondered if I had pressured them more would they have done something else? Following the admission, I felt relief. They [the Trust] have taken away guilt and blame about why she has her injury but I still have a little bit of blame for myself – I know I shouldn't but I do." As a result, in the report obtained for the claim, our expert psychologist commented that "Self-blame has only significantly improved since the hospital admitted liability". I hope that will continue.

Erb's Palsy cases can be complex and technical, requiring specialist medical knowledge to pursue. My client here has said "I don't think I would have done anything about it [bringing a claim] if my husband had not seen the Legal Clinic being run by Royds Withy King on the Erb's Palsy Group website and we got in touch.... I really wanted the Consultant to know what they did wrong and take responsibility for it. I also don't want someone else to go through what we did; it was not about the compensation, it was about that."

If you believe that you or your child may have an Erb's Palsy case or a linked maternal injury then please do contact us, as we would only be too happy to talk it through with you.

**Lucy Norton**

Senior Associate



Within the last article I briefly touched on the benefits of using a Personal Injury Trust and Alternative Investment Strategy for a settlement compared with the options provided under the Courts Funds Office (CFO).

These are briefly summarised as follows:

- A higher level of support to the individual after the age of 18 and throughout their lifetime via the appointment of trustees (professional and/or family members).
- The settlement is ring-fenced and disregarded as capital in relation to any entitlement to means-tested benefits.
- Greater flexibility and decision making on the underlying financial plan and investment strategy for the settlement.

With continuing record low interest rates, meaning cash accounts are unable to keep up with the inflation, and inflation reaching a 30 year high in the first quarter of 2022, it has never been a more pertinent time to consider how funds will work post-settlement and how a sustainable and robust financial plan (via the use of a Personal Injury Trust and Alternative Investment Strategy) can help protect the funds awarded against depreciating in real terms over an individual's lifetime.

### **What is inflation?**

The simple definition of inflation is a decrease in the purchasing power of money due to the increase in the price of good and services. In the UK this is measured either via the Retail Prices Index (RPI) or the Consumer Prices Index (CPI). Both CPI and RPI measure the costs of a representative basket of household goods, RPI includes mortgage interest rates whilst CPI does not.

RPI tends to measure at a higher rate than CPI however both indexes were excessively above the governments consumer price target of 2% per annum at the end of February 2022. (The rate of RPI reached 8.2% whilst CPI reached 6.2% in the year to February 2022).

### **Why is this a concern for settlement funds?**

Typically, the overall legal settlement awarded to an

individual will be comprised of different elements of funding for varying items and services required over a claimant's lifetime (such as therapies, equipment, care etc). It is likely therefore that for many recipients a large proportion of their settlement will be allocated to meet longer term needs which may arise in the future (5-10 years +). It is also likely that these items and services will have increased, at least in line with, if not above, the rate of inflation over the long term (for example care and therapy costs have increased at a faster rate than inflation over recent years).

Inflation can be detrimental to the sustainability and longevity of a settlement over the long term if a prudent and realistic financial plan is not put in place. If funds are held in a low interest environment over a prolonged period, it is likely that the interest received will not be equivalent or keep pace with the rate of inflation, meaning that more of the settlement will need to be used in the future to meet expenditure needs.

### **What are the options post-settlement?**

There are two main options to consider for the settlement once the final settlement terms have been agreed:

- (1) Leave the funds with the Courts Funds Office (CFO) until the individual reaches 18 years of age at which point the CFO will pay out the settlement (plus interest and any growth) to the individual so that they can decide what to do with the funds.
- (2) Use a Personal Injury Trust and Alternative Investment Strategy which can continue beyond the age of 18 and allow a bespoke financial plan to be implemented to meet short term and long-term needs.

#### **• Court Funds Office Strategy**

Typically, if the individual has less than 5 years to the age of 18 at the time of settlement most of the funds (more than 50%) will be held within the CFO Special Cash Account which currently pays an interest rate of 0.10% per annum (AER).

Whilst cash can be viewed by some as a safe haven for the funds, the divergence between interest rates and inflation over a 10 year period can be seen in the graph below:

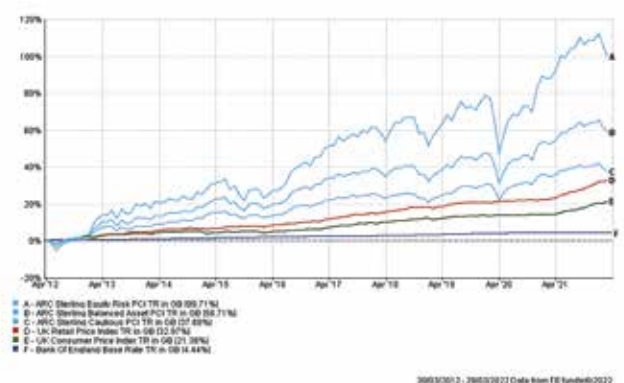


The average gap between the Bank of England Base Rate and Inflation (RPI) is 2.85% per annum over the last ten years. If £10,000 had been allocated to a purchase a specific item during this period and placed into a cash account paying an interest rate equivalent to the Bank of England Base Rate, a shortfall of £2,853 would have occurred between the level of interest received and the increase to the cost of the item (now £13,297) over the last ten years.

#### • Alternative Investment Strategy

An alternative investment strategy can be tailored to the individuals needs and their plans for the settlement. This can vary from one person to the next for various aspects including but not limited to; funds required in the short term, the amount allocated to the medium/long-term and available for investment, the timeframe for investment and the level of risk applied to the investment strategy.

To provide an indication of the past returns generated from a potential alternative investment strategy, the returns generated from the ARC PCI Indexes could be considered:



The ARC Indexes demonstrates the performance of a realistic and sizeable peer group of investment strategies at vary risk levels (cautious, balanced and steady growth). They include the performance of over seventy investment houses contributing data ensuring that the index is unique in coverage and scope. They provide a way of considering past returns across a broad spectrum of portfolios within

the same approach to investment risk. Please note that past performance is not a guide to future returns.

The above data demonstrates that all ARC Indexes have provided returns above inflation (CPI and RPI) over the past 10 years. Based on a £100,000 investment this would have equated to £137,680 for the Cautious Index, £158,710 for the Balanced Index and £199,710 for the Steady Growth Index.

#### Key Considerations of an Alternative Investment Strategy

- **Independent Advice:** meaning that any recommended strategy is unbiased and can be selected from the whole of the market to ensure suitability.
- **Expenditure budget:** to balance short-term expenditure needs and plan for potential long-term needs. This will help underpin the amount available for investment over the medium to long term (5 years +).
- **In Depth Risk Profiling Assessment:** to ensure that any recommended investment strategy is tailored to the determined approach to investment risk and agreed level of volatility.
- **Multi-Asset Portfolio:** to ensure diversification across asset classes (types of investment) and geographical regions with the aim of reducing volatility and enhancing returns.
- **Clear and Competitive charges:** Total On-going Charges should be clearly documented and competitive (i.e. 1.50% per annum or below for all costs included in the on-going management of the strategy).
- **Regular Meetings and Monitoring:** these should be at least annually to ensure that the investment strategy remains suitable to the individuals needs and plans.
- **Cashflow Forecasting:** to demonstrate the sustainability of the investment strategy and financial plan over the lifetime of an individual or up to a key date/age and to assist with financial decisions or large capital expenditure.

#### Dune Financial Planning Ltd: Initial Financial Advice Services

We provide our Alternative Investment Strategy Reports free of charge and without obligation so that families may consider the options available to them post-settlement in further detail.

#### Nicola Hartley

Chartered Financial Planner  
For Dune Financial Planning Ltd  
March 2022



## Physical and Psychiatric Injuries Following a Traumatic Birth

### Background

When parents have been through a traumatic delivery where their child has been injured, inevitably the parents focus is almost always solely on their baby, the impact of their injury and what the future may hold for their child.

Amongst all this stress and anxiety about the child's future, the impact of events on others involved in the birth (particularly the mother) can often be overlooked.

In this article we look at the impact a traumatic delivery can have on others present at the delivery and the legal options where the parents as well as the child have suffered harm.



### Injuries Mothers can Sustain

Following shoulder dystocia, whilst the child may suffer an Erb's Palsy injury, mothers can also suffer substantial physical/psychiatric harm as well.

Injuries sustained can include:

- Severe perineal tears.
- Nerve damage due to a long and obstructed labour, for example damage to the sacral plexus or pudendal nerve.
- Psychiatric harm - for example Post Traumatic Stress Disorder ("PTSD") or depression.

The consequences of these injuries will vary from mother to mother, but problems can include:

- In the case of psychiatric harm:
  - Flashbacks to the events of the birth accompanied by waves of panic.
  - Phobic avoidance behaviours i.e., a need to avoid circumstances that might initiate flashbacks.
  - Hyper vigilance and a constant sense that bad things are about to happen.
  - Fatigue, poor concentration and panic attacks.
  - Feelings of amotivation, anhedonia, tearfulness, sleep disturbance, lowered self-esteem and poor concentration.
  - Feelings of worthlessness and feelings that life is not worth living.
  - Difficulty bonding with the baby.

Contact our legal experts

Ready to talk?

01392 207 020

enquiries@tozers.co.uk

www.tozers.co.uk

# TOZERS

- In the case of physical injuries:
  - Urinary urgency/stress incontinence.
  - A lack of awareness of bladder sensation.
  - Faecal incontinence or difficulty evacuating your bowels.
  - Loss of sexual function and sensation in the perineum.

The consequences of these injuries can be significant, impacting upon the mother's ability to care for her baby (and any other children), help with everyday domestic chores and employment/career progression.

## Legal Background

It is important to remember that childbirth is not without risk and that the potential problems described above are not always avoidable.

For example, pregnancy itself can have an impact upon bladder and bowel function and in some cases cause problems such as stress incontinence. This is due to the strain carrying a baby and giving birth generally places upon the pelvic floor musculature and is particularly the case following multiple pregnancies.

Similarly, a protracted/obstructed labour (which might cause nerve damage) cannot easily be predicted and may therefore have been unavoidable even with best care.

Further, whilst there are well recognised steps to overcome shoulder dystocia this emergency, even if managed appropriately, can still be traumatic and could still lead to psychiatric harm.

In some cases, however, problems such as those described above can be avoided, particularly for example, if delivery should have been achieved by caesarean section.

Bringing a successful claim therefore relies upon establishing either:

- That the pregnancy/labour should have been managed in a way that would have avoided a vaginal birth and thus the traumatic events and injuries sustained; or (in the case of say a perineal tear)
- That there was a failure to recognise, treat or appropriately repair the maternal injuries sustained.

Where a mother also has a potential legal claim, this will usually be run alongside the child's case as there will be an overlap in the evidence required on the management of the pregnancy and birth.

Further evidence is however often required from consultant psychiatrists (commenting on any psychiatric injuries sustained) and other experts such as urogynaecologists, or colorectal surgeons, depending upon the physical injuries sustained.

## Action to take if you think you may also have a claim

While a child with Erb's Palsy will have until their 21st birthday to bring a claim, any claim for injuries sustained by the mother must (save for in very limited circumstances) be brought within 3 years of the date of the incident.

Therefore whilst, initially, focus is often (understandably) on the baby and their recovery, it is important to consider whether you want to bring a claim yourself from the outset.

Contact our legal experts

Ready to talk?

It is also important to look at it early on, because if you have Legal Expenses Insurance this may cover you for bringing a claim, but many policies have reporting time limits within which the insurer must be notified of a potential claim.

If you do not have Legal Expenses Insurance, then a claim can usually be brought on a “No win - No Fee” basis.

## A Mother’s Perspective

I was injured during childbirth with my first child.

I sustained significant injuries to my back, pelvis, bladder and bowel as well as extensive psychiatric injuries.

It was very difficult to deal with at the time. I could not pick up my child without help and had to be assisted with toileting and showering.

As a mother and professional, it was extremely hard to bear.

I had months of physiotherapy, gynaecological appointments and bladder and bowel input. These coupled with the excessive amount of hospital appointments my child had for their own injuries took its toll.

I became extremely anxious and paranoid. I began to restrict visitors into the house as I believed people thought I was not a fit mum and would take my child away. I started to hallucinate and would see things that were not there.

I spiralled deeper and deeper, my own depression intertwining with the difficulty of caring for a disabled child and did not know where to turn for help.

I engaged in pharmacological treatment as well as EMDR for PTSD and several rounds of CBT.

Sometimes I felt as though I was making progress and other times I felt as though I had taken ten steps back.

Slowly as my physical injuries started to heal and I sought help for my psychological injuries, things improved.

It was a slow process but many years on I am in a much better place.

Some of the things I learnt along the way or that I wish I had known at the time:

- Talk to people - you are not hiding it - they already know!
- Allow yourself time to heal and recover.
- Seek help for all of your injuries - it is very easy to want to concentrate on your baby. However, you need to be well too.
- Try and establish a set routine - this is especially good for those suffering with psychological injuries.
- Practice positive thinking - we are very good at empathising with others but not so good at empathising with ourselves - The NHS have developed a positive thinking app which you can utilise for free.
- Listen to your body - if it is telling you to slow down then do it!

## How can Tozers help?

For any further information, or for advice on bringing a claim please contact our dedicated medical negligence legal experts.

[enquiries@tozers.co.uk](mailto:enquiries@tozers.co.uk)  
01392 207 020



## Simon Mansfield

**Partner & Solicitor**

[s.mansfield@tozers.co.uk](mailto:s.mansfield@tozers.co.uk)  
01392 209 592

Contact our legal experts

Ready to talk?



# LAST CHANCE

CLOSING DATE FOR BOOKINGS IS THE 1ST JUNE



**DATE:** Saturday 25th June 2022 11am – 4pm

**VENUE:** Pavilions of Harrogate, Great Yorkshire Showground, Harrogate, HG2 8NZ

Please join us for a host of fun activities!

We have activities for all the family from toddlers to grandparents and everyone in between.

## Dont miss out

### Book your place today!

#### **Catering Arrangements:**

Grab Bag Picnics provided for all members (to include a sandwich, crisps, flapjack, fruit and a bottle of water or fruit shoot)

Mobile Café selling hot and cold drinks plus snacks will also be available

#### **Activities**

Mini Golf Table Football Yoga  
Drumming Climbing

Crafts Escape Room Splat  
Physio Space Ball

Air Twist VR Experience  
Archery Buzz Wire

Face Painting Jewellery  
Henna Farmyard

Playzone Tombola Raffle  
Sweets Treasure Hunt

Name the Duck Football Scratch  
Game Merchandise

**Booking Essential – forms available in this edition of the Blerb**

# A Roadmap for Making a Medical Negligence Claim



If you think you may have a medical negligence claim, it can feel quite daunting knowing where to start with the process.



**Ison Harrison Solicitors** have put together this handy roadmap to show you some of the steps involved in a claim. Each case has to be approached based upon its own unique facts, but hopefully the following gives an idea as to what is involved. Remember, it is your lawyer's job to guide and advise you at each and every step. Always ask questions if you have any. A Lawyer's should present their advice in clear plain English, but even the best of us slip into using legal terminology by habit.

1

Choose a specialist clinical negligence solicitor recommended by the Erb's Palsy Group. Many solicitors hold themselves out to be clinical negligence specialists, but the reality is most are not. You get one shot at a legal claim and it is therefore important that you choose wisely.

2

Pick up the phone and have a chat. Tell us about what has happened and when. We will listen carefully and ask you questions in order to illicit the information we require in order to determine whether we consider there is merit in the potential claim. Jotting down a timeline in advance may help you. If you have any complaints documentation or copies of any internal investigations, please ensure you have these to hand and can email them across so we can have a read of the same.

3

If we consider there is merit in a potential claim then we will arrange to have a further conversation in which we will set out your funding options and talk these through with you. You will have sight of the terms in writing before you agree to anything. Only once you are happy that you understand the agreement and agree to the terms will a retainer, (contract) be formed.

4

Discuss Funding Options & Put in Place.

5

We will then start the process of obtaining all relevant evidence, (e.g. medical records, text messages, photographs, complaints documents, hospital protocols and witness statements) and instruct medical experts such as Midwives and Obstetricians to comment on the standard of care provided and a nerve expert to comment upon whether this is likely to have caused an avoidable injury.

Once the necessary reports have been obtained you will be sent a copy and we will contact you to discuss the next steps.

*Side Note: If a report is unsupportive, the claim may not be able to proceed past this point.*

6

We will prepare and send a Letter of Claim to the defendant. This letter sets out the facts of the case, the allegations of negligence and the injuries caused as a result.

The Defendant then has 4 months to investigate and respond to the allegations however they may require extra time in order to investigate the matter fully before they respond.

The response should provide either admissions and/or reasoned denials. You and your experts will be provided with a copy. Provided your experts remain supportive of the claim it will continue.



ison harrison  
solicitors

Call Ison Harrison Solicitors today on

**0113 284 5000**

or email [clinneg@isonharrison.co.uk](mailto:clinneg@isonharrison.co.uk)

## 7 Two different paths

### ✗ Liability in dispute

If liability is denied we are likely to instruct a Barrister to consider the merits of the claim in conference with you and your experts to determine whether the claim is strong enough to commence court proceedings.

Following the commencement of court proceedings a timetable will be set down to proceed to trial. The trial may be to resolve liability alone or it may be for both liability and quantum, (i.e. the value of the claim - see below). Along the way each side will exchange the evidence upon which they rely and every attempt will be made to try and settle the claim without the trial taking place.

### ✓ Liability Admitted

If the Defendant admits liability, we will be able to enter judgement to formally record the fact that you have won your claim and request a payment on account of damages.

Interim payments are when you receive part of your personal injury compensation before your claim has finished.

These payments can be used to put in place and fund a care package which might include (but not be limited to) aids and equipment, private therapies and care.

8

We will then turn our attention to quantum, (i.e. the value of your claim). This is done by gathering more evidence, including additional expert evidence in order to prove what your past and future losses are and are likely to be. E.g. past care provided voluntarily by friends and family and likely future care required because of your Erb's injury, loss of earnings and pension if you have been unable to pursue your intended career path, adaptations to vehicles to enable you to be able to drive a car and so on.

The Defendant will carry out their own investigations and instruct their own set of experts.

*Please Note: At this point you/your child will need to attend appointments so that they can be seen by both sets of experts and you may need to be visited in your home.*

9

In line with the court timetable expert evidence will be exchanged with the Defendant and there will be an opportunity for the experts to have meetings to see if they can narrow down the issues in agreement/disagreement.

A conference with the Barrister and your experts will usually take place before anything is exchanged.

10

There will be an opportunity to have a meeting with the Defendant to discuss settlement and try to reach an agreement.

*Please Note: Offers can be made at any point during the claim.*

11

Settlement of your claim will usually be achieved during a joint meeting or shortly after. If you are under the age of 18 or do not have capacity court approval of the settlement will be required to ensure the settlement amount is right and to consider how the damages should be held and controlled. Will will advise you on the options. Often a trust is appropriate so as to provide the balance between accessibility, security, investment of part of the monies and to avoid losing out on means tested benefits now and in the future.

If a settlement is unable to be agreed the case will proceed to a Trial.

*Please Note: Only a very small number of clinical negligence cases ever go to Trial.*

For help and advice on starting a clinical negligence claim, our team are always here to help. Call Ison Harrison solicitors on **0113 284 5000** or visit [www.isonharrison.co.uk](http://www.isonharrison.co.uk) to send an enquiry.

# SHOW US *YOUR BLUE HANDS*



Since we weren't eligible for Comic Relief funding as we don't have an annual income of £250,000 or more, we asked our members to participate in 'Blue Hand Day.'

We asked you to share our amazing graphics (produced by Lucy Cooksley) and post photos of yourselves with a blue hand.

In addition, any money you could spare in donations to help our organisation as we were excluded from applying to Comic Relief for much needed funding.

We are delighted to say that during this event, our online donations (excluding external fundraising events) amounted to an incredible...



And you shared some amazing photos around social media:



Here is the lovely Max sharing his blue hands which friends and family shared around Facebook



Here is Theo and his family sharing their Blue Hands for the EPG



And here is the gorgeous Sunny supporting the campaign



Otis and his family really embraced the challenge!



And just a day after we announced our fundraiser Mia-Ella set us a fundraising page to support her walking 15,000 steps. She smashed her target and raised an incredible £350 for the group!

**Some more pictures trending throughout the week:**

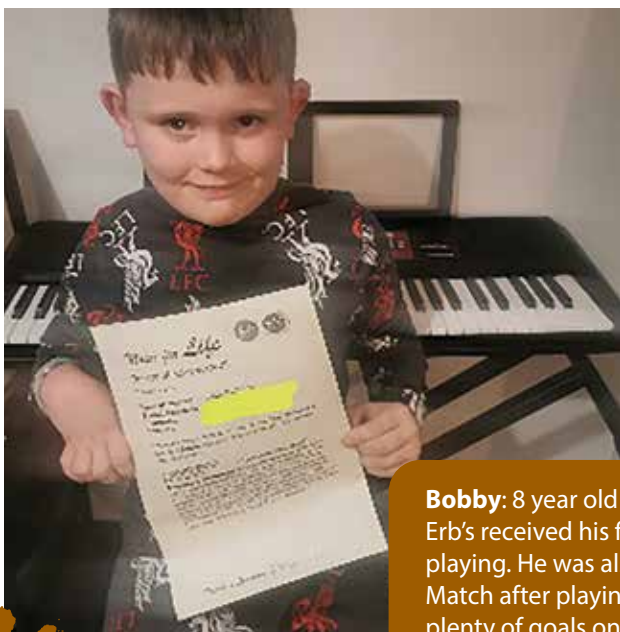


# Achievements



**Ava:** Recently awarded Gymnast of the day during her class ... for performing a pull up/chin up on the bar. Mum Sophie said, 'I was ready and prepared for the tears as I thought there would be no way she could do it. But in true fashion, she proved me wrong! She needed a little extra guidance from her coach, but after that, she completed the move all by herself'.

**Lyla:** Lyla has worked so hard on her fine motor skills and made herself a bracelet. Keep it up Layla!

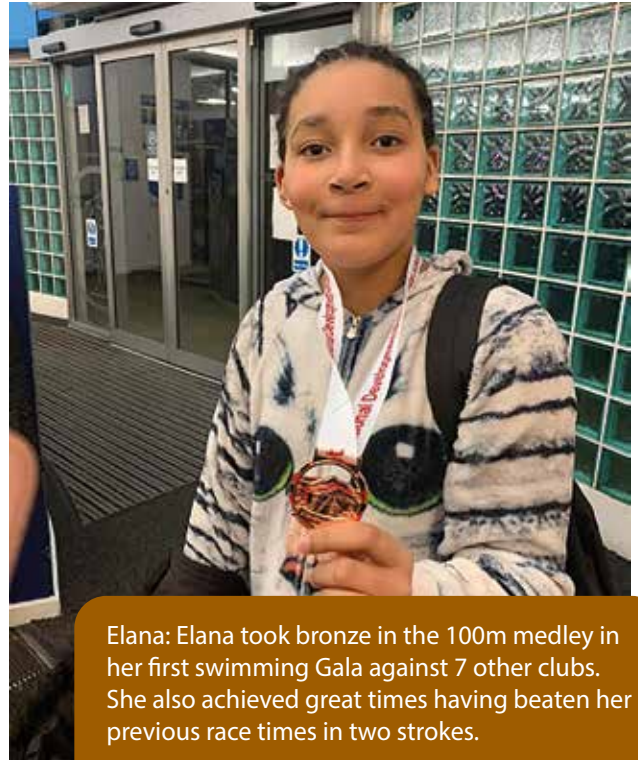


**Bobby:** 8 year old Bobby who has right Erb's received his first award for his piano playing. He was also awarded Man of the Match after playing goalie and saving plenty of goals one handed!





**Benjamin:** Enjoyed his first skiing lesson and hopes to use his new skills on the slopes in Italy on a school trip later in the year.



**Elana:** Elana took bronze in the 100m medley in her first swimming Gala against 7 other clubs. She also achieved great times having beaten her previous race times in two strokes.

Elana then went to her first Para Swim Meet and took home 2 silver medals! Well done Elana!



**Otis:** Little Otis has used a combination of games and encouragement and can now use his Erb's hand to use a spoon – great work Otis!

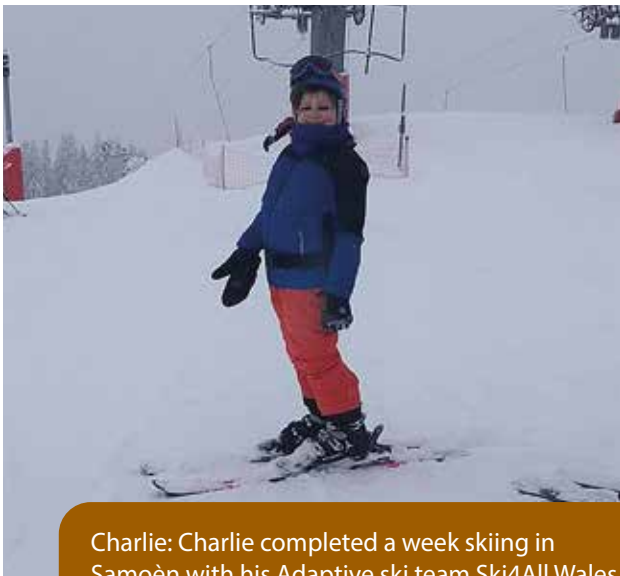


**Avneet:** Avneet has left Erb's and has been swimming with her brother Ranveer since October 2021. She has learnt to swim the length of the pool unaided! Mum Jaspreet says she is "so so proud of her".

**Rhys:** Rhys has started volunteering weekly at his local mini train station shunting and diving the trains.



Josh: Josh has been promoted in Cadets to 1 star Cadet. He has passed his rifles, shooting and physical training tests.



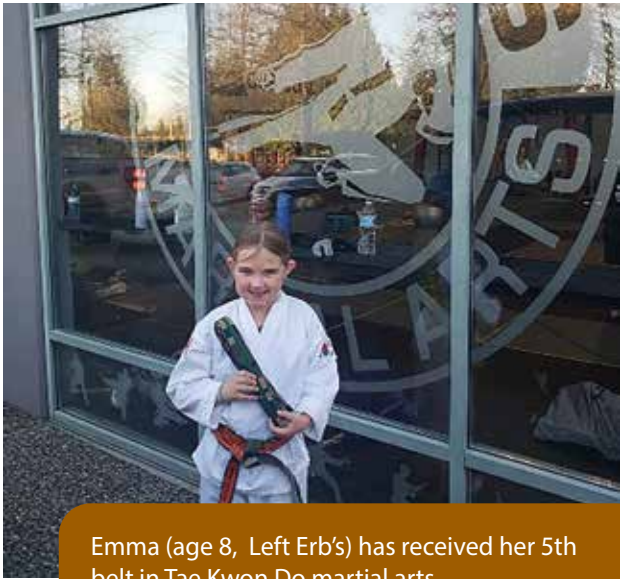
Charlie: Charlie completed a week skiing in Samoën with his Adaptive ski team Ski4All Wales.



Ava Rose: 4 year old Ave Rose has started guitar lessons.



Sophia: Sophia has recently achieved her RDA riding proficiency grading!



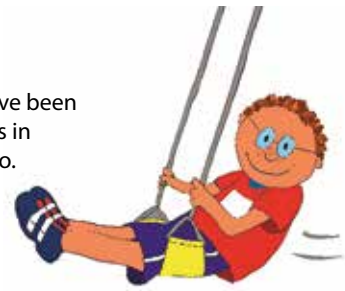
Emma (age 8, Left Erb's) has received her 5th belt in Tae Kwon Do martial arts



# Hi Everyone!

It's so good to see you again! The sun is finally coming out to play and I hope you have been enjoying getting outside. In Spring I love to go out and take notice of all the changes in nature, the leaves growing, the flowers start to appear, I love seeing baby animals too.

I have made a spring bingo for you below, see how many signs of spring you can spot and tick them all off. I would love to hear from you with how you got on, feel free to send me an email at [info@erbspalsygroup.co.uk](mailto:info@erbspalsygroup.co.uk), you can even include a photo if you like!



Bird's nest	Rainbow	New buds on trees	Lamb
Flowers in bloom	Try a spring vegetable	Birds singing	Cherry blossom
Spot a puddle	Find a feather	Bee	Fly a kite
Spot shapes in the clouds	Butterfly	Draw a spring picture	Ladybird

## Your Pets!

Thank you to those of you who wrote to me about your pets after the last issue. I've put them below for us all to see how amazing your animal friends are! Thanks for sharing

We have a dog called Albie. He's 1 yrs old. And we adopted him 2 weeks ago, from a friend of Auntie Kimi. He has fluffy ears and big fluffy paws. We like it when he comes up on the sofa for cuddles. He barks a lot, especially when he wants us to throw his ball. He loves having us near him, and will whine very early in the morning for us to come downstairs. This is when we play with his toys with him. He will then sit at the bottom of the stairs, barking and whining, telling mummy to get out of bed.

From Evie and Jake Web



These are our dogs

Oliver, Buster and Teddy. Buster is very excitable and loves to run.

Oliver is more laid back and likes cuddles and Teddy loves to chase balls and have lots of treats.

They all love to go on the beach and chase the birds.

From Theo and Neil Bamber



This is our cat Luna. She is 6 years old and we adopted her 3 years ago from the Cats Protection League. She likes to sit next to our hamster cage in case there is a chance she can catch Bubbles our hamster! We like it when she sleeps on our beds and when she purrs loudly. She is very loving and loves to be around people.

From Max and Theo Hole



*Herbie's Page*

## JOKE CORNER

I have some animal jokes for you to try out on your friends:

How excited was the gardener about Spring? **So excited he wet his plants!**

Why are potatoes good detectives? **Because they keep their eyes peeled!**

Why are frogs so happy? **Because they eat whatever bugs them!**



## Orthotics Developments and Erb's Palsy

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Orthotics is a term used to describe devices which help to improve the function of innervated muscles and the skeleton. Such devices are generally used externally (i.e., the user wears them), and so are not like implants. There have been some extremely exciting developments in orthotics in relation to Erb's palsy recently. In this article, we will look at one device which is currently being trialled with the Dorset Orthopaedic Orthotic team – the MyoPro device.

### What is it?

MyoPro is a form of powered brace that is used to regain function in arms and hands, and so to restore the ability to perform everyday tasks. It is designed to help with a range of conditions (not just brachial plexus injuries). MyoPro detects muscle signals from the surface of the skin. This in turn activates small motors, which move the hand and arm in the intended manner. This means that even with greatly reduced strength and movement in the affected arm, the user can still perform a wide range of tasks, from lifting to more complex sets of movements, such as turning the pages of books, holding a cup of coffee or heavier objects. With practice, quite fine sets of movements could be facilitated by this prosthesis. Over time, it is likely that the muscles themselves will benefit from the brace as usage will facilitate their growth and function. The technology has the potential to help sufferers of Erb's palsy with many aspects of self-care (e.g., making a meal, dressing), education and work. Providing at least an approximation of normal function in the affected arm could open up a wealth of possibilities in the workplace.

### Who can benefit?

Currently, only older children and adults with Erb's palsy would be eligible for the prosthesis, as the minimum height requirement is 5' (there is also a minimum weight requirement). The prosthesis is also not suitable for patients with significant contractures at the level of the hand, wrist or elbow, and the degree of shoulder pain has to be manageable (if it is not, the prosthesis would be very difficult for the user to tolerate). The preliminary studies suggest that patients who retain some degree of active range of movement in the affected shoulder will do better with the prosthesis.

Whilst this is an exciting development, it is important to remember that this is one product amongst many. If you are considering the use of orthotics, it would be sensible to obtain clear expert help in order to ensure that the product(s) you are reviewing are likely to meet your needs. Bringing a claim is likely to give you easy access to expertise of this sort, and if you are bringing a claim, it would in our view be well worthwhile exploring with your legal team whether orthotics could assist.

### Conclusion

If you are bringing a claim for Erb's palsy, then it is worth considering the issue of orthotics carefully. Careful provision of specialist equipment can prove invaluable both educationally and in the workplace.

If you and your child have been affected by this issue, and you are seeking legal help, please feel free to get in touch.

**By Dr Joachim Stanley, Paralegal.**

# Post-natal depression can hit anyone...

... any time after the birth of their child. It can creep up on you and slowly take hold, or it can just come out of nowhere, with-out warning.

I ignored the signs that I was heading deeper into depression, the nightmares became more frequent and so did the flashbacks, but I carried on and made myself work harder, I ignored what was going on which in the long run didn't help.

The worst thing you can do is not ask for help, I didn't, I thought asking for help would land me into trouble and my child would be taken away from me.

Sam was 18 months old before I broke down. I'd kept going and didn't stop after his birth, I was ridden with guilt and fear over what had happened, I felt I'd failed as a mother, it was my fault that he was injured, but I kept it all hidden from everyone including my husband, I was burning the candle at both ends keeping myself busy, so I didn't have to relive what had happened at his birth.

Then it happened, one day I gave up and broke down, looking back it was the best thing I did, I just didn't think so at the time. I blamed myself for everything that had happened. Karen had told me months earlier that I wasn't at fault, but it didn't sink in on that day. I'd left Sam with his grandparents so I could meet with my friend, now this friend of mine knows me better than myself, she knew I was struggling even though I wouldn't admit it. That day she just let me talk, cry, passed me tissues and hugged me when I needed it. Honestly that's all I remember not a lot else, but I felt the world lift from my shoulders a little. The next thing I knew I was sitting in my GP surgery waiting to ask for help. I was finally diagnosed with PTSD and sent for counselling.....

Counselling didn't work for me. The counsellor I had couldn't cope with what I was telling her after just 3 out of 6 sessions, she was horrified at what had happened during Sam's birth and suggested I needed extra help in the form of psychotherapy. I wanted to get my head straight I was still worried Sam would be taken away if I was seen as an unfit mother, so I agreed and signed the referral forms straight away.

Things didn't go to plan. I was still hurting and more so when I was told there was at least an 18 month

wait before I could start any type of therapy as I wasn't at risk to myself or my child. I couldn't believe it I had started to unpick things and get my head round them, yet I was being told to wait. I began to retreat back into my shell, I thought I could sort myself out on my own, I couldn't it took a lot of time with my best friend and a lot of talking with her and another friend.

Nearly 2 years went by before I even got anywhere with the psychotherapy, I ended up turning down the offer as Sam was nearly 5 and, on his way, to school. I was feeling less anxious about what had happened, the flashbacks and visions had subsided, it was really only his birthdays that didn't help, the weeks running up to them were hard, but I got through them.

I kept on climbing the mountain and had a few stumbles along the way, but I was always helped up back onto my feet with a hug or a chat when needed.

I can't say how near the top of the mountain I am nowadays but I can look back down it and see where I helped myself by helping others, where I was given a hand up when I stumbled and slipped backwards and I'm not ashamed to say that even after nearly 18 years I still get the odd bad day, but I know when I'm slipping and twist my way out of it.

The best but hardest thing is to take care of yourself, I know it's not easy when you've got a family to look after but take time out, even if it's just a walk somewhere, put your favorite music on, stick your headphones in a walk, dance and sing to your hearts content, you may feel silly, but if I can do it so can you. Another thing I found useful was to have write everything in a personal journal, good and bad then you have something to look back on when you're ready.

Most of all find someone you can talk to and share your feelings with, don't keep them trapped inside of you it will make it harder to untangle in the long run.

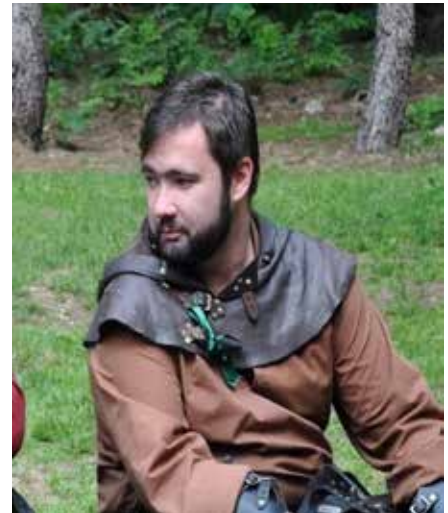
**Jackie xx**

## Life with BPI - Blog, January 2022

Emma, Gavin and Eloise



**Erb's Palsy Group**



### How do you feel about having Erb's palsy?

#### Emma

*Having Erb's palsy doesn't bother me as it's all I've ever known and is what makes me who I am; it's my identity.*

#### Eloise

*I'm okay with this as I won't let it define what I do and who I am.*

#### Gavin

*I often do not feel much about having my Erb's. Because a lot of my interests and skills lie in other areas, I don't feel that it interferes much. Even though I engage in hobbies that it does have an effect on, I've not often found it to be much of a drawback most of the time. I find my own way of doing things rather than letting it hold me back.*

### **Carolyn Jackson from Balfour + Manson explains about making a Clinical Negligence claim in Scotland**

Embarking on a court action can be an incredibly daunting process, particularly where it relates to the wellbeing of your child, but, should you choose to go down this path, your solicitor will do everything they can to ensure things run as smoothly as possible and keep you informed along the way. If you or a loved one have been injured as a result of negligence, then you are entitled to seek compensation for the loss arising from that injury. The consequences of clinical negligence can be catastrophic and life-long. It may impact your ability to live the life you would have otherwise, whether that is preventing you from participating in certain hobbies, pursuing a particular career, or providing assistance to loved ones. All of this will be factored in as part of the legal process.

#### **So what's involved?**

You may choose to make a complaint before instructing a solicitor. There is usually a deadline for complaints to be made (though the Health Board has some discretion in this respect). Typically, if more than 12 months has passed since the incident in question, a complaint will not be investigated. If there is an ongoing complaint, you may wish to hold off for the outcome of this before formally instructing a solicitor. A formal response to a complaint can be a useful starting point for your solicitor.

If you decide to instruct a solicitor, they will usually go through certain administrative steps to open up a file for you. Thereafter, they will recover all of the relevant medical records before instructing reports from relevant independent medical experts (such as midwifery experts, obstetricians, orthopaedic surgeons etc.). The test for clinical negligence is high, and can be difficult to meet. The courts can be reluctant to find that a professional person has breached their duty of care. Three facts must be established in order to prove a breach of duty:

- 1) That there is a usual and normal practice (in a specific situation);
- 2) That the clinician in question has not adopted that practice;
- 3) And that the alternative course of action adopted is one which no ordinarily competent clinician would have adopted if acting with ordinary care.

It is only a clinician of the same specialism as the person whose actions are being criticised who can comment on breach of duty (in other words, whilst your solicitor may consider the actions to be questionable, a claim can only progress if support is obtained from an independent medical expert).

Obtaining a supportive report on breach of duty is only part of the picture. In order to pursue compensation, you must also be able to prove that the breach of duty has caused (or at least materially contributed to) injury and/or loss. This question might have to be addressed by another independent expert of a different specialism to the person who commented on breach of duty. Of course it is impossible to look into a crystal ball and determine what the picture would have looked like 'but for' the breach, so the court requires that the link between the breach and the injury/loss be shown on the balance of probabilities, rather than definitively.

It is only if both tests can be satisfied (breach of duty and causation) that you can seek compensation; however, success is not guaranteed. The burden of proof lies with the person bringing legal proceedings (the pursuer). If the defender produces reports from similarly qualified experts which suggest there was no breach of duty of care, or that the actions were not causative of any injury/loss, then you have to be able to demonstrate that such an opinion cannot be logically supported. This is a high bar to meet.

In addition to obtaining reports on breach of duty and causation, your solicitor may also instruct a number of experts to comment on the value of your case (such as a care expert, occupational therapist, employment expert, accommodation expert etc.).

Once initial reports have been obtained, it is likely that your solicitor will intimate your claim on the defender. This may result in negotiations regarding a settlement; however, failing that, a court action may be required.

#### **Is there a time-limit?**

In all actions relating to personal injury (including clinical negligence), court proceedings must be raised within three years of the incident in question, or the date on which you became aware of the issue; however, actions relating to injury of a child must be raised within three years of their sixteenth birthday (so there is a little more leeway for cases involving children). If a person does not have legal capacity, there is no time limit to an action being brought.

#### **What happens in court?**

If court proceedings are required, your solicitor will put together a document setting out: the parties involved; what



you are asking the court to do; and the background to the case (if your case is particularly complicated, your solicitor may instruct an Advocate - an independent lawyer who specialises in preparation and presentation of cases in court - to draft this document). This document is called an Initial Writ in Sheriff Court actions, and a Summons in Court of Session actions. Depending on the value and complexity of your case, the court action will likely either be raised in the All Scotland Sheriff Personal Injury Court or the Court of Session (the highest civil Court in Scotland). The Initial Writ or Summons will be sent to the court for warranting or signet (depending on the court), and then served on the defender. If the action is to be defended, the other side will lodge defences, responding to the averments made within the Initial Writ or Summons.

The court generally takes an active role in court proceedings, setting a number of deadlines to keep things moving and ensuring the lines of communication stay open between the parties. The idea is that the court requirements will help parties to narrow the issues in dispute and encourage settlement without the need for a full evidential hearing, if at all possible. This part of the process can still be fairly lengthy, with an evidential hearing sometimes being fixed for a couple of years after the court action is raised; however, the majority of cases settle without the need for a full hearing.

If your case does go to a full evidential hearing you may have to give evidence, alongside a number of other factual and expert witnesses, before a Judge, who will then make a decision on the matter. It must also be borne in mind that this decision may not be the end of the matter as there is always the possibility of an appeal. In essence, medical negligence cases can go on for many years before reaching a final conclusion.

### **Medical negligence and Erb's Palsy**

Erb's Palsy is not always negligently caused, and can sadly happen in spite of excellent medical care; however, there are circumstances in which it can be caused by the actions of a clinician. One such situation may arise where there has been shoulder dystocia (an obstetric emergency where there is obstructed labour following delivery of a baby's head and the shoulders become stuck). In this situation, injury can be caused by a clinician (such as a midwife or doctor) failing to perform the correct manoeuvres or to follow the hospital guidelines and ultimately pulling too hard on the baby's head in an attempt to release the shoulders. If this can be proved, it might be possible for the court to award compensation for the injury sustained.

### **Who can make the claim?**

If a claim is being made on behalf of a child, his or her parents can represent them as legal guardians. From the age of 12, a child is presumed to be of sufficient age and maturity to

instruct a solicitor in any civil matter; however, they may choose to let their parents act on their behalf.

### **How will I fund it?**

There are a number of options for funding an investigation into clinical negligence, and a court action:

- 1) Depending on your income and capital, you might qualify for legal aid funding, and your solicitor can advise you on this during your initial call.
- 2) If you have insurance of any kind (such as home, travel, motor insurance), it is worth checking whether you have legal expenses cover included in this. If so, you should contact your insurer to ensure that a possible clinical negligence claim is covered and whether there is a limit to the cover. It may be that the cover is not sufficient to see the matter to a conclusion.
- 3) Some solicitors will be able to act on a speculative basis (no win, no fee). This means that there is no financial risk to you at all, and you will only pay your solicitor (usually by way of a percentage of your compensation) if successful in recovering compensation.
- 4) If none of the options above are available, you might need to pay privately, at least for an investigation to be carried out. Some solicitors might be unwilling to act on a speculative basis from the get go, but will put an agreement in place once the initial investigation has been carried out, and support obtained from the appropriate experts.

Clinical negligence actions can be very complex, and it is important to instruct a solicitor with experience of these types of claim. Due to the complex nature of these types of court action, they can often take a number of years to reach a conclusion, so it is important that you prepare yourself for this at the beginning. It is not a process that can be rushed; however, the court plays an active role in the procedure and ensures neither party drags their heels, by fixing deadlines by which various procedural steps must be taken. Whilst this can be a stressful process to go through, your solicitor will keep you informed, and guide you at all times.

Balfour and Manson have experience in dealing with birth damage cases involving a variety of injuries. If you would like to speak with us about a potential claim, please do not hesitate to get in touch.

**Carolyn Jackson, Associate with Balfour and Manson**

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# Young Achiever 2022

The last few years have seen the Trustees consider the achievements of our members shown on social media and in the Blerb, with a view to selecting an annual Achiever for our prestigious award. Winners the last few years have included Garrett Eeles, Jamie Watson and Teigan Woollett.

This year has continued to be a challenge to everyone with Covid-19 and restrictions yet we are amazed at our younger members who continue to throw themselves in to their interests and hobbies, having fun along the way whilst showing their determination to succeed.

As a result, the Trustees have struggled to pick one achiever this year ... every one of our members featured on our social media and in the newsletter are worthy winners but there are 2 who have stood out to us and we have therefore decided to celebrate them both.

We are therefore delighted to announce that our Young Achiever Winners of 2022 are Bobby Richards and Elana Kotei.

## WELL DONE BOBBY AND ELANA!

### BOBBY

It isn't unusual for parents to post pictures on our social media of achievements and for those to feature in the newsletter but, over the last year, this young man has appeared again and again highlighting his determination at everything he sets his mind to.

Proud Mum Ceri has shared Bobby playing in goal for his local football team and achieving Man of the Match – making some great one handed saves.

He was also chosen by Liverpool FC disabled association to watch the Liverpool v Porto Champions league game in the hospitality lounge.

Bobby then received an award for his keyboard playing skills – his music teacher stated 'Bobby, you have made a fantastic start to learning the keyboard. You have worked through the keyboard book 1 remarkably quickly. You are very good at reading the music and seem to have understood everything that we have covered so far. You are obviously practising at home as you are improving every week and you also work really hard in your lessons every week. I am really pleased with your progress so far, so well done, keep up the good work and I look forward to seeing you continue to improve!'

**All of this at age 8, with right Erb's – well done!**



### ELANA

Back in November, Mum Sarah told of us 9-year-old Elana taking part in her first club swimming competition showing confidence, strength and courage being the only disability swimmer against all able bodied competitors. Even when a full length behind, she did not give up and kept going to complete the 100m individual medley, with the whole crowd cheering her on.

She achieved 2 silver medals over 3 races.

Swimming in the pool 5 times a week, Elana then went on to compete in her second set of 3 races – this time she achieved Gold in the 100m backstroke.

A disability certificate is in place to enable exceptions to the rules based on her abilities – for example, one arm fly instead of 2 arms.

Then came her first Gala, competing against 7 other clubs taking Bronze in 100m Medley, knocking 16 seconds off her previous and a further 8 seconds off her breaststroke time.

Having registered with British Para Swimming Association, and having attended her first para training camp and event (achieving 2 more silver medals!) Elana's dream is to be classified and become a British Paralympic Swimmer.

**Well done Elana – we wish you all the best!**



**CONGRATULATIONS TO YOU BOTH BOBBY AND ELANA  
– ENJOY YOUR AMAZON GIFT VOUCHERS!**



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## information

We have a wide range of fact sheets and leaflets available – please check the website for full details [www.erbspalsygroup.co.uk](http://www.erbspalsygroup.co.uk) all of our leaflets can now be e mailed to you for ease of sending. All requests should be sent to Karen Hillyer (details as above)

In addition to these fact sheets we have a wide range of Information booklets available to post to members or health care professionals. These include the following;

- **Erb's Palsy, A comprehensive guide for professionals and parents on the prognosis, treatment and support of Erb's Palsy**
- **Care of a baby with Erb's Palsy**
- **Rights in the workplace and education – a guide to your rights under the Equality Act 2010**
- **All About Me book – a booklet for you and your child to complete for use in school and other external settings**

These can all be obtained by contacting Karen Hillyer.

*Bye for now!*  
x

