



Neutral Citation Number: [2022] EWHC 1917 (QB)

Case No: QB -2018-001455

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14 July 2022

**Before:**

**DEXTER DIAS QC**  
**(Sitting as a Deputy High Court Judge)**

-----

**Between:**

<b>HMA</b>	<b><u>Claimant</u></b>
<b>(a child and protected party by his Father and Litigation Friend, ABE)</b>	
<b>- and -</b>	
<b>GREAT ORMOND STREET HOSPITAL FOR CHILDREN NHS FOUNDATION TRUST</b>	<b><u>Defendant</u></b>

-----  
-----

**William Latimer-Sayer QC** (instructed by **Kingsley Napley**) for the **Claimant**  
**Alexander Hutton QC** (instructed by **Hempsons**) for the **Defendant**

Hearing dates: 14 July 2022

-----

**Approved Judgment**

.....

DEXTER DIAS QC

**Dexter Dias QC:**

**(Sitting as a Deputy High Court Judge)**

1. This is the judgment of the court.
2. This is an approval hearing and I have granted an anonymity order in the case.
3. I recognise that such orders have a dehumanising effect and risk reducing the living, breathing human beings at the heart of this tragic case to ciphers. The order has been granted to protect the vital interests in the right to privacy of the child in question and his family.

**Introduction**

4. On 10 August 2011, a child sustained catastrophic injuries when he went into hospital to receive urgent medical treatment. The hospital in question is the world-renowned Great Ormond Street Hospital for Children.
5. The child is now a teenaged boy and I shall call him HMA. He is 13. But the injury he suffered occurred when he was three. His case is, as counsel have quite correctly stated, a maximum severity claim.
6. During the course of treatment, HMA sustained severe hypoxic brain injury. He has permanent and profound physical disability, his symptoms being analogous to spastic-dystonic quadriplegic cerebral palsy. As his father movingly put it, he is “unable to use his arms so he cannot hug us”.
7. He also has severe learning difficulties. He cannot eat solids and his food has to be pureed. He drinks his food through a straw.
8. The central issue today is whether a settlement agreement in respect of this child, who is a protected party, should be approved by the court.
9. Great Ormond Street, of course, holds a central position in the medical history of this nation. Established in 1852, it was the first hospital in England to have in-patient beds specifically for children. Over the years it has been associated with many eminent people, from Charles Dickens to Princess Diana, its president until her death, to J.M. Barrie who donated the copyright in *Peter Pan* to the hospital.
10. HMA is represented by Mr Latimer-Sayer QC, who is instructed by Kingsley Napley. The defendant is the Great Ormond Street Hospital for Children NHS Foundation Trust. The Trust is represented by Mr Hutton QC, who is instructed by Hempsons. I am grateful to both legal teams for the great care with which they have prepared this case and the unfailing sensitivity with which they have presented it.
11. At the outset the Trust expressed its gratitude to the claimant team for cooperating in reaching a fair and reasonable settlement. The Trust is very sorry that HMA suffered life-changing injuries when in its care at Great Ormond Street.

## Anonymity

12. An anonymity order has been granted by this court pursuant to rules 39.2(4), 5.4C and 5.4D of the Civil Procedure Rules and section 11 of the Contempt of Court Act 1981. I am mindful of the decision of the Court of Appeal in *JXMX v Dartford & Gravesham NHS Trust* [2015] EWCA Civ 96. In that case Moore-Bick LJ enunciated a number of critical propositions:
- (1) Approval hearings, as in other instances where the court exercises its overarching protective jurisdiction, lie squarely within the constitutional principle of open justice, itself fundamental to the rule of law. The evident tension between open justice and doing justice in the case mirrors the tension between the Article 8 rights of claimants and Article 10 rights of the press and the public. The constitutional importance of the principle of open justice, as recognised in the authorities, is such that any departure from it must be justified strictly on the grounds of necessity. The same may be said of the right to freedom of speech. In either case the test is one of necessity.
  - (2) However, the nature of the court's supervisory duty means that the public interest in seeing justice done can nonetheless be accomplished without disclosing a party's identity. Such hearings, although dealing with what is "essentially private business" (see [34]), should generally be in public, and anonymity will usually be sufficient to protect claimants. Such an order should be drawn in terms that prohibit publication of the name and address of the claimant and his or her immediate family and also (if not already covered) the name of his or her litigation friend.
  - (3) The requirement to have settlements approved is peculiar to children and protected parties. Naturally, it is open to other litigants to settle claims in private. But children seeking such settlement have no such choice as the court must exercise its supervisory jurisdiction. However, by virtue of Article 14 ECHR children and protected litigants are entitled to the same respect for their Article 8 rights as other litigants. Article 14 provides, as material:

"The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights shall be secured without discrimination on any ground"
- Thus, withholding the name of child claimants mitigates to some extent the inevitable discrimination between different classes of litigants.
- (4) The court must also recognise, however, that the public and the press have a legitimate interest both in observing the proceedings and making and receiving a report of them. Accordingly, the press should be given an opportunity to make submissions before any order is made restricting publication of a report of the proceedings.
13. In accordance with this Court of Appeal guidance at [35], I have given the press the opportunity to be heard in the application. There were no contrary submissions made. While it is clear that the court should normally make an anonymity order, I nevertheless carefully examined the facts of this case. I find that the necessity test is made out to protect HMA and his family.

14. Therefore, the claimant is to be referred to as HMA in any publication of these proceedings. His father, who acts as his litigation friend, is to be referred to as ABE.

### **Approval**

15. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages agreed between parties is in the best interests of the claimant.
16. The court is required to approve the terms of settlement in this particular case as HMA is a child and a protected party. It is an elementary proposition that court approval engages questions of judgment. It must act in the interests of justice and the best interests of the child and have regard to the overriding objective. As stated by Lady Hale in *Dunhill v Burgin* [2014] UKSC 18, the purpose of approval hearings in accordance with CPR 21.10(1) is

“to impose an external check on the propriety of the settlement.”

17. Part 21 of the CPR includes rule 21.10. Its subheading is “Compromise etc. by or on behalf of a child or protected party”. The rule provides insofar as it is material:

#### **21.10**

(1) Where a claim is made –

(a) by or on behalf of a child or protected party;

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

18. Mr Latimer-Sayer’s confidential advice dated 12 July of this year is an impressive and comprehensive document. It sets out with admirable clarity and precision why the settlement is considered by HMA’s legal team to be appropriate, by reference to an assessment of the quantum of recoverable loss as well as the risks and uncertainties of litigation and the strengths and weaknesses of the evidence.
19. I have also read the detailed and complex expert reports that speak to this troubling case. I am satisfied that the settlement figures and the way in which they are structured, including the carefully considered balance between lump-sum and periodical payments, is suitable, fair and appropriate.
20. The structure of the settlement is as follows: first, a lump sum of £6,995,229 gross of CRU and interim payments to date, but net of the 5% liability discount. Second, annual periodical payments of £296,000 to meet future care and case management until HMA reaches the age of 19. After that, the periodical payment will be £359,000 per year from age 19 for life.

21. I agree that this is a sensible settlement from HMA's point of view. I find that this settlement is in his best interests. On that basis I approve the settlement under CPR 21.10.
22. But what is HMA like? He is able to do mathematics to a certain level. He loves watching television, and like many teenagers gets a bit cross when he is told to stop watching. He loves cartoons. He likes the Harry Potter books and *The Worst Witch* by Jill Murphy. His particular passion is football and especially his favourite team Manchester City. He can follow games and gets excited when City score which, of course, is quite frequently in recent years.
23. However, he has no independent mobility. He cannot sit or hold himself upright or crawl. He is wheelchair-dependent and is likely to remain broadly at his current level of functional ability for the rest of his life. He will remain dependent for all his care and activities of daily living including grooming, washing and managing his bowel and bladder incontinence. He will lack capacity to manage his finances and will be incapable of undertaking paid employment.
24. HMA's impairments will present challenges for him and his family every day, throughout each day and at night. He has a close-knit family around him and is a much-loved member of it. He has three siblings aged 14, 11 and 10, and these four children live with their mother and father. HMA has been cared for to date by the tireless devotion of parents and siblings. For example, due to his discomfort, he wakes regularly during the night. His father has to get up and help him turn over. Thus, the sleep of both parents is constantly broken. Nevertheless, they have done their utmost to tend to his every need. It has unquestionably been a tremendous strain.
25. I have asked that counsel convey to HMA's family that I appreciate that no amount of money can turn back the clock and put their family in the position they would have been had the devastating injury to their child not occurred. Money cannot do that. It is simply the best we can do. A proxy for the quantification of the pain and suffering caused and what it will take for the rest of this child's life to address the consequences of the injuries he has sustained. But I do hope that the end of these proceedings will be a relief and this long-awaited financial settlement will make life a little easier for all of them and their son.
26. What this case unmistakably reminds us is how fragile and precious human life is and precarious a line we tread. But it also reminds the court how families rally round. How the love of a parent for a child survives even almost unimaginable adversity.
27. I wish them all and HMA especially the very best for the future.
28. That is my judgment.