

CADR Case Study

Expert Determination

The Claimant had been exposed to severe carbon monoxide poisoning which had caused an anoxic brain injury and cerebral atrophy. As a result he had suffered a significant loss of congenital function and life changing injuries requiring his legal representation by a Litigation Friend.

In order to fund his claim for compensation, the Litigation Friend instructed solicitors under a Conditional Fee Agreement with a success fee of 100% and an After-the-Event insurance premium. Following investigation, it appeared that the prospective defendants would have insurance cover for £2 million but above that figure, they had no resources to meet any award of damages.

Subsequently, terms were agreed with the insurers for the prospective defendants under which they would pay £1,975,000 in full and final settlement of the claim. That settlement was sanctioned by the court, but approval was also required for the Litigation Friend's solicitor's costs which were to be paid out of the damages. Those costs amounted to £500,000 including VAT and disbursements.

Rather than go to the expense of a detailed assessment which itself would have incurred a court fee of £6160, the Litigation Friend and the solicitors agreed to the appointment of a CADR Expert, chosen from the CADR panel, to carry out an Expert Determination for the use of the High Court Master at the approval hearing. The purpose of the determination was to draw upon the experience of the Expert as to whether costs of £500,000 were fair and just. The expert reviewed the papers and delivered a report which paid full regard to the relevant costs law and to the rules of court under Civil Procedure Rules 44 – 47.

The report made various recommendations about the level of the solicitor's hourly expense rate, the success fee and the number of hours claimed for the work undertaken. A revised figure was suggested which it would be reasonable for the Litigation Friend to pay to the solicitors out of the damages. The High Court Master accepted the recommendations at the approval hearing, thereby bringing the case to an end without the expense of the detailed assessment and at a significant saving to the claimant's estate, both in terms of the time and the money which otherwise would have been expended.

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