



### Clients comment on Waldrons

*"I would like to thank the clinical negligence team at Waldrons Solicitors for assisting me through a very difficult time and they were extremely helpful and supportive through the whole process of pursuing my claim. I am very satisfied with the outcome and they showed great sensitivity throughout. Thanks again for a top class service."*

### Case note summary

The Claimant, then aged 75, received a total of £300,000 following a negligently handled minimally-invasive total knee replacement. The Claimant was not properly counselled as to the experimental nature of the surgery and its potential risks.

The surgery resulted in a fractured lateral tibial plateau; the diagnosis was delayed due to the minimally invasive nature of the procedure.

A subsequent contraction of MRSA was negligently treated, which included non-sterilisation during a washout procedure.

The Claimant's wound did not recover, and eventually, the prosthesis became visible through the wound. The prosthesis was temporarily substituted for a cement spacer, after which time fusion of the knee was decided as the only viable option.

Date of Settlement: November 2009

General Damages for pain and suffering   £60,000;

Total Award   £300,000

Claimant's Solicitor : Adam Smith, Waldrons, Brierley Hill

Claimant's Counsel : Vanessa Marshall, 7 Bedford Row, London

## **Background**

The Claimant had a history of osteoarthritis in both knees, and had previously undergone successful surgery to the left knee.

### **October 2005**

The Claimant was admitted to Hospital, where the nature of total knee replacement surgery was explained to him. The replacement surgery took the form of an experimental, minimally-invasive operation, for which the operating surgeon did not obtain informed consent.

Subsequently, the wound site was red, swollen and painful and MRSA infection diagnosed.

An operation to washout the knee followed during which a fracture of the lateral tibial plateau was identified, and thought to be the cause of the swelling and pain. The knee implants were removed and replaced, but not sterilised. Despite this procedure, the wound continued to display signs of infection and non-recovery.

MRSA was continuously identified on and a second washout procedure took place to address the MRSA.

Problems continued in respect of the recovery process, and the wound did not heal as expected.

### **December 2005**

The Claimant underwent an operation in which the implants were taken out and replaced with a temporary cement spacer. Upon the wound clearing up, further revision of the knee was planned.

### **November 2006**

A reconstructive surgeon confirmed that the only viable options was complete fusion of the knee joint or amputation. The Claimant elected to undergo fusion of the knee joint.

### **Ongoing problems**

The Claimant is left with ongoing pain and is virtually housebound with severe mobility problems that are expected to decrease over time.

## The Claimant's case

Consultant Orthopaedic evidence was obtained on behalf of the Claimant. The expert thought:

- it was negligent not to have properly counselled the Claimant as to the experimental nature of the proposed surgery and of the risks inherent to it.
- delayed diagnosis of the fractured lateral tibial plateau amounted to negligence, as it should have been identified during the initial surgery.
- that the 'minimally invasive' nature of the surgery made it much more difficult for the operating surgeon to detect and treat fractures which may occur during the operation, as there is less surgical exposure to the bone and tissues.
- that it was negligent to have taken the knee implants out, without sterilising them before replacement, as the implant had been exposed to MRSA, and therefore required sterilisation prior to being returned to the knee.
- that the treatment of the MRSA prior to the operation was also potentially negligent.

A condition and prognosis report was obtained from a Consultant Orthopaedic Surgeon, which said:

- the Claimant's pain and mobility had reached a steady state, but the Claimant's mobility would decrease over time.
- there were sadly, no viable treatments available to the Claimant.
- but for the negligence, the Claimant would have recovered from knee replacement within three months, and would have been left with good mobility and no need for any further intervention.

A care assessment was completed, which identified the need for:

- care and support work, domestic assistance and respite care.
- case management was also described as being of possible help, as a case manager would liaise with relevant care institutions to find the best possible help for the Claimant.
- help with household duties, gardening and transport.
- housing adaptations and aids.

An accommodation report was also sought, which indicated that substantial renovation was required to the Claimant's property in order to make it safe and reasonable for the Claimant to live in. Alternatively, single storey properties were identified as being suitable for the Claimant.

## Settlement

Proceedings were issued and liability was admitted in the Defence. Protracted negotiations were carried out in respect of damages, whilst court proceedings were ongoing.

The claim was settled on a global value of £300,000, although the Claimant's advisors would value it as follows:

General Damages for pain and suffering	£60,000
Past Losses (Including Care, Gardening, DIY, Travel and Interest)	£30,000
Future Losses (Including Care, Gardening, DIY, Travel, Aids and Equipment)	£117,000
Accommodation Expenses (Including purchase of a new property, adaptations and additional running costs)	£98,000



**Adam Smith, Waldrons Solicitors**

Telephone 01384 811 811 [a.smith@waldrons.co.uk](mailto:a.smith@waldrons.co.uk)

Adam specialises in Medical Negligence dealing exclusively with cases against NHS Trusts, GP's, dentists and private surgeons.

He manages claims covering all aspects of medical care in England and Wales, with a special interest in Orthopaedic cases. Before moving to Waldrons he worked for a national firm dealing with clinical negligence matters.

He has over 6 years experience and has been successful in securing compensation for clients, a number of his cases featuring in local and national press. Adam is also a member of APIL (Association of Personal Injury Lawyers).