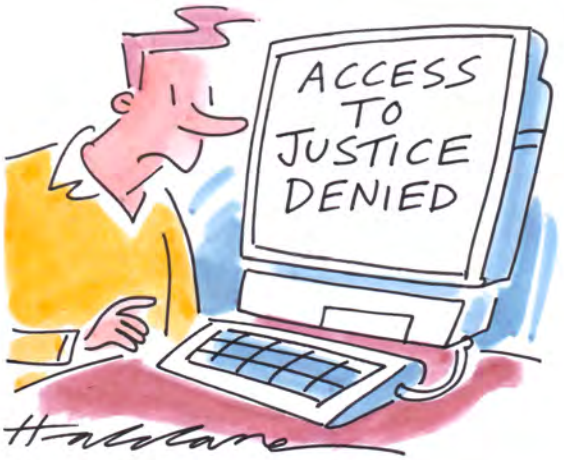
The case

When a client's future rides on your shoulders, it's difficult not to take the case to heart, writes **Richard Barr**



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One of my favourite quotations from *To Kill a Mockingbird*: 'Every lawyer gets at least one case in his lifetime that affects him personally'. I have probably had about five such cases in nearly 45 years as a solicitor. One of them was Peter's.

About five years ago Peter* was sitting in his wheelchair in a Norfolk seaside town, looking forlornly out to the sea, and wondering how on earth he was going to cope with the future. He was recovering from a disastrous operation that had reduced him from being able-bodied to someone who was incontinent and had no use of his two lower limbs. Before surgery the procedure was described to him as a 'simple plumbing job.'

Medical cases are never easy: doctors have to do something spectacularly bad before a court will make a finding of negligence. But what was our case here? A consent form specifically warned of paraplegia and the operation had been carried out by a surgeon eminent in his field.

Then there was the small matter of appointing an expert – normally not a difficult thing. I scoured numerous directories of experts and wrote to many. All turned me down. The months ticked round to April Fools' Day 2013. That was the date when the Legal Aid, Sentencing and Punishment of Offenders Act provisions came into effect and changed forever the way that injury cases are conducted.

The poorly drafted transitional provisions delivered the worst of all possible worlds to Peter. We had been struggling to get insurance to cover the risk of him having to pay defendants' costs, but no insurer would touch the case.

The new rules that relieved claimants of the risk of paying costs if they lost did not protect those who had already embarked on their claims, even if they had not issued proceedings. Without insurance, Peter would be at risk of the double insult of a catastrophic injury and a huge bill for costs against him if he did not win – and it looked as though victory was only a remote possibility. The defendants had already rejected our letter of claim.

Peter was philosophical: 'They have taken everything else from me, so they might as well have my house too.'

By now, the primary three-year limitation period was fast running out, but we still had no expert on board. If we issued now we would have to serve in four months, but there was no guarantee that we would be able to plead a case, and I did not relish being forever on the back foot.

I took a calculated risk: rely on the date of knowledge provisions of the Limitation Act. Instead of being able to proceed as of right we would have to prove that Peter did not have the requisite knowledge of essential ingredients of his case till sometime later.

Then the forces of good briefly intervened by delivering to us an expert – who had previously turned us down but agreed on my second attempt after we learned that he was investigating a similar case.

The expert advised that Peter was not properly warned of the risks of surgery and in any event the consent form described the wrong operation. To crown it, the procedure that caused Peter's paraplegia was not even necessary at that time.

A slam dunk, you might say? Not really. 'Get lost', said the defence, 'your case is statute barred.'

There then followed the interminable and depressing grind towards a hearing – cost budgeting, disclosure, statements, expert meetings, and a trial date.

Grudgingly the defendants offered 10 percent of the value of the claim, accompanied by a firm warning that we would lose, so we had better take it. We didn't.

In the countdown for trial, not only did the defendants maintain their denial, they also sent a message to our counsel asking if he had advised our client that he had a claim against me.

Belatedly the defendants started making offers, wholly inadequate but offers all the same, increasing little by little. The tension became almost unbearable: refuse and we might get nothing; accept and Peter would be under-compensated. Tempers frayed. At one stage our counsel sent a message to theirs: 'Your clients are now seriously p****** us all off. I told you what my bottom line is so your latest offer is just insulting to everybody'.

Then came the night before trial. Peter's future seemed to be riding on my shoulders. I sat miserably in my cut-price hotel room, squeezed between a suitcase full of lever arch files and all the technology (along with half a dozen brand new shirts) I expected I might need to last through the next six days of a High Court trial.

A text message from leading counsel pinged onto my mobile as I unloaded all my papers in the courtroom: at the eleventh hour the defendants had capitulated. One further nudge then got them up to our bottom line.

So we won, and we won enough money to make a real difference to Peter's life. **SJ**

Would the case be even more difficult to run now? See Richard's reflections online in his post script

***The name Peter has been used to protect the identity of the claimant**