Birth Trauma occurs and specialist medical negligence legal advice is sought

Initial meeting with solicitor about what happened and how child now is. Initial statement taken by solicitor. Solicitor decides whether there is potentially a case and whether worth investigating further.

Nb: this is nothing to do with being fair or moral. It is whether or not there is a legal case to pursue. Mistakes can and do happen in every sector. The initial legal question is ***"Was there a breach of Care and can that be proven to have caused subsequent damage to the child".***

Funding discussed and applied for i.e. Legal Aid, no win No fee or from private insurance of family i.e. sometimes household insurance will cover legal cost.

Medical records requested by solicitor and examined by expert midwife witness.

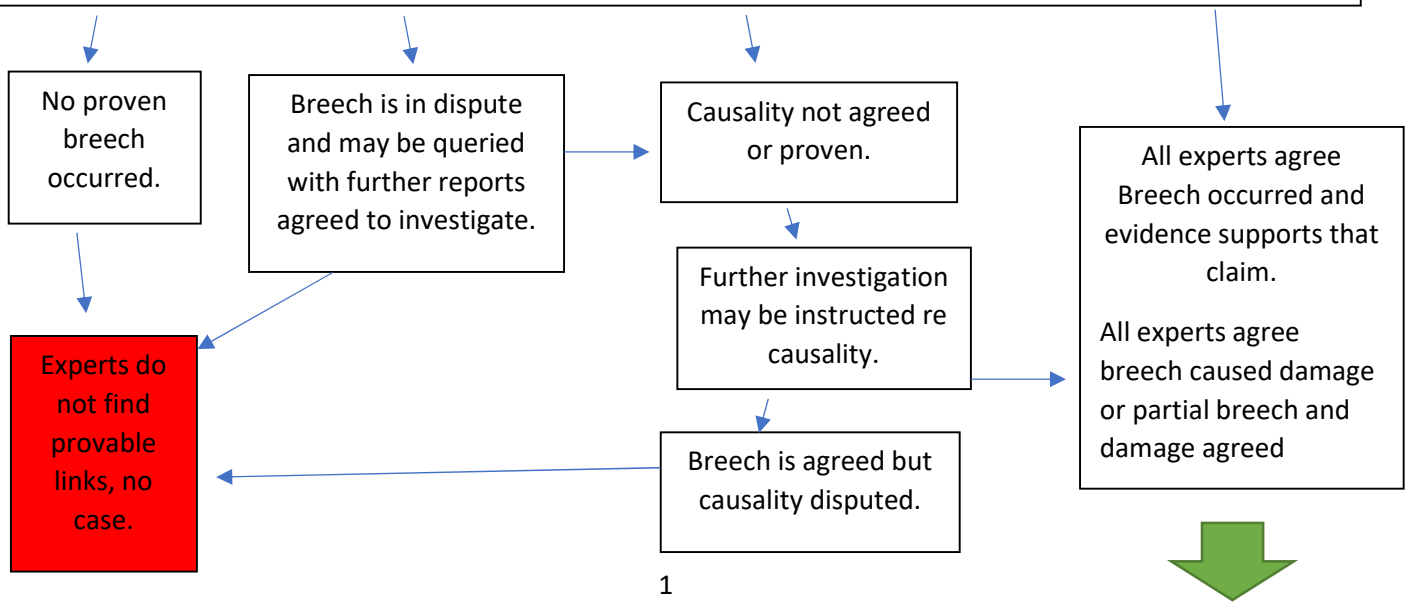
Number of expert witnesses are instructed to investigate the birth and if there was a proven breach of care. Experts are instructed to look for different aspects, some will be looking for breach of care, some will be looking at potential causality.

Experts can be varied but tend to follow the same pattern for all claims.

First expert conference. Experts, parent (known as the litigation friend) solicitor and barrister present.

Discuss reports and investigations. Discuss outcomes. Agree on whether proven breech and as a result causality.

Agree on next steps and draft and send letter of claim to Trust .



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Breech and causation by claimants' legal team is agreed. Letter of claim is sent to the trust.

Trust responds and starts own investigation. Deadline is set at three months for a detailed response from the Trust accepting Breech and Causation of variations of liability.

Trust usually requests an extension of up to 12 months to pursue internal investigations. Child can be examined and family interviewed by experts working on behalf of Trust.

Deadline arrives, Trust will often request further extensions. Solicitor may mention to litigation friend if another deadline is requested, they have the option of going to Judge to force response. Likelihood is Judge will give Trust more time to respond anyway, not really worth pursuing. Wait again for Trust to respond.

Trust response is finally provided to legal team.

Accepts both Breech and causality in full. Known as 'Full admissions.

Trust denies Breech and causality

Trust accepts breech but denies causality

Trust accepts partial breech and/ or partial causality

Further investigations by expert witnesses on behalf of claimant. Repeat above process. Trust may only accept partial known as a percentage of causality. Round Table Meetings arranged to discuss and agree on percentage of settlement. I.e. Trust accepts breech of care caused 80% of the damage but other 20% would have happened anyway.

Trust still denies

May lead to full court case, very rare as usually agreed prior to court. If not agreed prior to court, usually means there is not enough evidence to proceed any further. IF continues to court, no interim payments as Trust denying.

Enter Interim also known as Quantum or 'quantifying the cost of care needs for life for child. Court process started and directions given by a Judge.

No Case

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Quantum or quantifying care costs of child for life.

Interim payments are made for purpose of providing therapy and care for the child's needs.

Professional Deputy to manage finance and property is appointed to manage funds on behalf of child if child lacks capacity under Mental Capacity Act 2015. Deputy has to apply to Court of Protection and various documents/ reports submitted to C.O.P. Can take up to 6 months.

Deputy appoints case manager. Family can research and appoint own case manager. Case manager meets with family and assesses child's needs. Makes recommendations of therapy and equipment needed for Deputy to agree budget and costs. Case Manager although paid by Deputy work with and for the family in the first instance.

Team of therapists and carers brought in by case manager as costings are agreed with Deputy.

Case is logged at court by litigation team and directions are given by a judge. This includes time scales and what expert reports are required to quantify the case and timescales for them to be delivered. Sometimes a Judge will appoint joint experts, i.e. working on behalf of both claimant (child) and defendant (Trust).

Sometimes a stay in proceedings is ordered. This if often due to the child's age and can mean their care needs will change over time and therefore experts will be required to provide updated reports ln later years.

During this time the litigation team will be liaising with the Deputy and experts to put together a schedule of costs. This is the estimated figures for care costs for life for the child. This ultimately includes general damages which are in reality a small set amount for each injury. I.e. brain damage or loss of mobility etc

This also includes a relatively small amount for parents 'past care costs' i.e., time over and above given to a normal child prior to settlement.

Experts conference. Barrister, legal teams and experts all agree on reports and prognosis of care needs. Costs via deputy are examined and provided as evidence.

Disclosure of reports. Defence and claimant experts meet and discuss reports. Agreeing on care prognosis. If no agreement reached, may have to be discussed in court where a judge will rule.

Round table meeting settlement meeting

Defence legal team and claimants legal team meet with litigation friend present. Agreement on each head of claim figures are agreed with each barrister negotiating in private and then discussing with own client.

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Agreement reached at settlement and then goes to court to be agreed with Judge and 'rubber stamped' within 28 days.

Settlement not agreed.

Case goes to court and is discussed by Judge if any areas are disagreed with.

Experts will stand in court to discuss their recommendations and defend if need be.

Judge makes ultimate decision regarding costs for care, if any.

Case is over bar the break down of parents and the new post settlement challenges of working with a Deputy

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