Neutral Citation Number: [2024] EWHC 872 (KB)

Case No: KB-2024-000549

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 April 2024

Before:

DEXTER DIAS KC
(Sitting as a Deputy High Court Judge)

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Between:

MRS ELLEN LUDLOW AS EXECUTRIX OF THE ESTATE OF MR ADAM LUDLOW (d) AND ON BEHALF OF THE DEPENDENTS OF MR ADAM LUDLOW (d)	**Claimant**
- and –	
BERKSHIRE HEALTHCARE NHS FOUNDATION TRUST	**Defendant**

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Erica Power (instructed by **Enable Law**) for the **Claimant**
Laura Bennett, Solicitor for the **Defendant**

Hearing date: 9 April 2024

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Approved Judgment

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DEXTER DIAS KC

This judgment was handed down remotely at 10:30am on 22 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.

2. This is an application for the court to give its approval, pursuant to the court's inherent jurisdiction, of a settlement of a personal injury claim.

3. The deceased is Adam Ludlow. He died in tragic circumstances on 14 September 2017, when following a period of deepening mental health distress, something that had affected him periodically during his lifetime, he took his own life by asphyxiation. He left behind a distressed and grieving family, including his wife Mrs Ellen Ludlow ("Mrs Ludlow"), their two sons, and his mother Mrs Angela Ludlow ("Mrs Ludlow, senior"). The claimant, therefore, is Mr Ludlow's wife. She brings a claim as executrix of his estate pursuant to the Law Reform (Miscellaneous Provisions) Act 1934. She also brings a dependency claim for herself and the other dependents under the Fatal Accidents Act 1976. The claimant is represented by Ms Power of counsel.

4. The defendant is the Berkshire Healthcare NHS Foundation Trust. The defendant Trust is represented by Ms Bennett. The court is grateful to both advocates for their assistance in this sensitive matter.

5. The defendant has accepted that the care provided to Mr Ludlow in the period leading up to his death fell below an acceptable standard, and if he had received the care he was entitled to expect, on a balance of probabilities, his death on 14 September 2017 would have been avoided.

6. Two of Mr Ludlow's dependents are children. Therefore, the court must scrutinise the proposed compromise between the parties and determine whether the apportionment suggested on behalf of Mrs Ludlow is in the best interests of her two sons.

Approval

7. I am grateful to both legal teams for the great care with which they have prepared this case and the obvious sensitivity with which they have presented it.

8. Today, Ms Bennett explained how the defendant is very glad to reach a mutually satisfactory agreement in this case and responsibly repeated the apology that the defendant has previously made for falling short in the provision of care for Mr Ludlow.

9. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages agreed between parties and its apportionment should be approved. The court is required to approve the terms of settlement in this case as two of the deceased's dependents are children. 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 protected person and have regard to the overriding objective. As

stated by Lady Hale in *Dunhill v Burgin* [2014] UKSC 18 at [20], the purpose of approval hearings in accordance with CPR 21.10(1) is

> "to impose an external check on the propriety of the settlement."

10. 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.

11. A compromise or settlement is not binding on the parties until it has been approved by order of the court (*Drinkall v Whitwood* [2003] EWCA Civ 1547, applying *Dietz v Lennig Chemicals Ltd* [1969] 1 A.C. 170). In a case where the court's approval under the inherent jurisdiction is sought, the court should be provided with an opinion from the claimant's legal representatives on the merits of the settlement or compromise and any financial advice.

12. Ms Power's confidential advice is dated 4 April 2024 and is an invaluable and comprehensive document. It sets out with great clarity and precision why the settlement is considered by the claimant's legal team to be appropriate, by reference to an assessment of the quantum of recoverable loss, weighing the risks and uncertainties of litigation and the strengths and weaknesses of the evidence.

13. The structure of the settlement is as follows:

Gross lump sum		**£925,000**
	Less: Interim payments	£37,980 (as at Joint Settlement Meeting)
Total:		
Net lump sum:		**£887,020**

14. The defendant's liability under the Social Security (Recovery of Benefits) Act 1997 to the Compensation Recovery Unit is nil.

Apportionment

15. The lump sum must be apportioned between Mr Ludlow's dependents. They are his children, his wife and his mother. The approach of the courts to such apportionment was set out succinctly by Latham J (as he then was) in *R v Criminal Injuries Compensation Board, ex p Graham Frederick Barrett*, 19 November 1993:

> "[T]he courts have sought to provide as much money in free cash terms for the parent who is caring for the child as is sensible in all the circumstances, so that there can be ready access for that parent to the fund representing the lost dependency. The bulk has therefore been apportioned to the parent. That was and is a fiction, because in most cases, when analysed, it is plain that the children were in fact the parties, or the dependants, for whom the substantial proportion, where care was concerned, of the value of the claim was intended. It was for their benefit. And it is right to say that this has never been reduced to any coherent or sensible principle. It has essentially been an approach which has had the attraction which I have already indicated to the parent who needs the cash; and there is no doubt that it could be said to be founded on good common sense… In normal circumstances it would clearly not be wrong or unreasonable to follow the normal practice of apportioning damages in the way I have indicated the courts have pragmatically done in the past, even if a strict analysis suggests that this does not give proper effect to the child's separate right to claim the full value of his or her dependency."

16. The proposal made on behalf of Mrs Ludlow is as follows:

- The children: £5000 for each son, paid into the Courts Funds Office;
- Mrs Ludlow, senior: £62,100 (past care to her son, plus past and future dependency)
- Mrs Ludlow: the remainder, to meet family's present and ongoing needs.

17. I am satisfied that this apportionment is consistent with the approach of Latham J. Paying the children's sums into the Court Funds Office has the advantage of providing security and a reasonable rate of interest. Further, I am satisfied that I have been able to perform the required *Dunhill* propriety check. I agree that the both the settlement level and its structure are sensible from the point of view of the claimant's dependents, but most particularly the dependent children. On that basis I approve the settlement under CPR 21.10.

18. I have read the detailed and very affecting statement of the Mrs Ludlow. All this has unquestionably been a tremendous strain on the family. Mr Ludlow was a much-

loved son, husband and father. He worked as a police officer until his mental health condition made that impossible for him. Notwithstanding the obvious difficulties in his life, he showed great determination and continued to work in differing capacities, latterly working as a parking inspector for South Oxfordshire District Council, a role which he held for approximately ten years. He also cared for his mother and played a full and active part in caring for his sons and bringing them up. He remains sorely missed.

19. The court conveys to the claimant and her family that it appreciates that no amount of money can turn back the clock and put their family in the position they would have been in had the chain of events that led to Mr Ludlow's tragic death not occurred. Money cannot do that. It is simply the best we can do. A proxy for the quantification of the pain, suffering and loss that they all continue to experience in many different ways. 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.

20. I have emphasised to Mrs Ludlow that this judgment will be published to the National Archives so that a copy will always be available to Mr Ludlow's children in future years, should they wish to look back and reflect on what happened. I wish both the children, Mrs Ludlow and Mr Ludlow's mother the very best for the future.