

Our Ref: NHS001-1311220 - HELE - Helen McClelland
Your Ref:
9 April 2020

Ms Perloff

BY E-MAIL ONLY

Dear Ms Perloff

Our Client : **Barnsley Hospital NHS Foundation Trust**
Incident Date : **20 October 2011**

We respond to your letter, 1 April 2019. Our Response is based on a report from a Consultant Radiologist and a Consultant Orthopaedic (Foot and Ankle) Surgeon.

We understand you allege the following:

Breach of duty

There was a failure to diagnose the following on the x-rays performed in 2011:

- **Dislocation of the subtalar joint.**
- **Fracture to the anterior process of the calcaneum and calcaneal cuboid joint.**
- **An injury to the sustentaculum tali.**

An operation to realign the distal fibula, planned for October 2011, was not performed.

As you are aware, it has previously been admitted that there was a 4 day delay in diagnosis of the talonavicular joint dislocation between 20 and 24 October 2011, which resulted in a delay in surgery.

Our radiology expert evidence suggests that a lateral peri-talar dislocation (dislocation of talonavicular and subtalar joints) should have been diagnosed on the x-rays of 20 October 2011, in addition to a fracture of the anterior process of the calcaneum. Therefore, it is admitted that there was a failure to specifically diagnose the subtalar dislocation and the fracture of the anterior process on 20 October

DAC Beachcroft LLP
St Paul's House 23 Park Square South Leeds LS1 2ND UK
dir tel: +44 (0) 113 251 4982 tel: +44 (0) 113 251 4700 fax: +44 (0) 113 251 4900
email: hmccllland@dacbeachcroft.com DX 14099 LEEDS PARK SQUARE

DAC Beachcroft - an international law firm

DAC Beachcroft LLP is a limited liability partnership, registered in England and Wales (registered number OC317852) which is authorised and regulated by the Solicitors Regulation Authority. A list of the members, together with a list of those persons who are designated as partners, is available for inspection at our registered office: 25 Walbrook, London EC4N 8AF. We use the word 'partner' to refer to a member of the LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications. Please read our DAC Beachcroft group privacy policy at www.dacbeachcroft.com.



2011.

Our expert evidence confirms there was no breach of duty in failing to diagnose the injury to the sustentaculum tali and the calcaneocuboid joint.

In respect of the alleged failure to perform an open reduction and internal fixation of the fracture of the fibula in the surgery on 26 October 2011, our expert evidence suggests that with manipulation and reduction of the foot, the fibula fracture was largely reduced.

Due to the length of time that has elapsed, it has not been possible to obtain comments from the Orthopaedic Registrar who discussed the proposed surgery with you on 25 October 2011. However, the clinic note states *“Discussed at trauma meeting planned for relocation of talonavicular dislocation, k-wiring, +/- K wiring/ORIF of distal fibula dependant on swelling. I have explained the plan to the patient.”*

The notes therefore suggest that you were informed of the possibility that fixation of the fibula fracture may not be performed depending on the intra-operative findings. However, there is nothing in the records to suggest you were informed post-surgery that it had not been carried out and if that is the case, it is accepted that you should have been informed. Our expert evidence confirms it would have been a reasonable decision to accept the positioning of the fibula intraoperatively and not perform reduction and fixation, which would have increased the risk of complications.

Causation

If these injuries had been identified, on the x-ray, a CT scan or MRI would have been indicated and the subtalar joint dislocation would have required surgical fixation. The fracture to the anterior process of the calcaneum would also have required surgical fixation. The fracture of the fibula required surgical reduction and fixation.

We think it would be helpful to put your initial injury into context. In October 2011, you sustained a severe injury, causing compression injuries to the bones of your mid foot and the joints of the foot, dislocation of the talonavicular joint, in association with a partial dislocation of the subtalar joint. As the foot continued rotating, it caused a rotating fracture of the fibula. In addition, the injury tore many of the ligaments holding the bones together, and this allowed the joints to come out of place. In some parts the ligaments tore and in other places the ligaments pulled off fragments of bone. This happened at the anterior beak of the calcaneus (anterior process fracture) as well as on the medial side of the calcaneum at the sustentaculum tali.

The outcome of the surgery for the talonavicular dislocation was not impacted by the 4 day delay in diagnosis and surgery, however, it is admitted that this would have caused you 4 days of increased pain, in accordance with previous correspondence.

The subtalar dislocation was part of the talonavicular dislocation, as was the anterior process fracture. Reduction of the talonavicular joint on 26 October 2011 stabilised the foot and the subtalar dislocation and anterior process fracture went back into place. The fibula fracture was also reduced as a result of the surgery and has united in a good position. We note that you have undergone a SPECT CT scan, which are useful in identifying a source of pain and no ongoing pain was shown to emanate from the site of the fibula fracture. Our expert evidence confirms that your foot and ankle have united into a good radiological position for such a fracture and it is unlikely that any other means of treatment would

have improved on this. The foot was then kept in plaster and non-weight bearing, which acted as treatment for any of the other fractures or subluxation or cartilage damage within the foot.

The fracture fragments of the anterior calcaneum and sustentaculum tali went back to a satisfactory position and united. That position would not have been improved even if open reduction and internal fixation had been performed.

Our orthopaedic expert is of the opinion that your ongoing pain and symptoms are as a result of the severe nature of your initial injury and that you have actually functioned better than one might have expected from such an injury.

All other allegations relating to the conduct of NHS Resolution in the handling of your claim are denied. We have made reasonable attempts to co-operate with you to resolve this claim. The report of Mr Chell, Consultant Orthopaedic Surgeon, September 2015, which was obtained by your previous solicitors was unsupportive of your claim. We obtained an independent orthopaedic opinion from Mr Bircher, which again was unsupportive of your claim. Following the mediation, we agreed to obtain a report from a radiologist and a second report from an orthopaedic surgeon. Although it is further admitted that there was a failure to diagnose the subtalar dislocation and the fracture of the anterior process of the calcaneum, the expert evidence confirms that no further treatment was required for these injuries and they have healed satisfactorily.

Summary

The Trust is very sorry that there was a failure to diagnosis some of your injuries in October 2011, but our expert has advised that this error has made no material difference to your outcome, which is due to the severe nature of your initial injury.

Yours faithfully

DAC Beachcroft LLP

DAC Beachcroft LLP