

Our Ref: NHS001-1311220 - LAMR - Liam Riley
Your Ref:
3 November 2020

Ms Elizabeth 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, 12 May 2020. Our response is based on evidence from a Consultant Radiologist and a Consultant Orthopaedic (Foot and Ankle) Surgeon.

We understand you allege the following:

Breach of duty

- **Failures to appropriately report x-rays of 20 and 24 October 2011 and diagnose dislocation of the subtalar joint and a fracture to the anterior process;**
- **Failure to perform a fixation of the distal fibula on 26 October 2011;**
- **Failure to appropriately report a CT scan of March 2012, which demonstrates a failure of the distal fibula to heal, subtalar dislocation fracture of the anterior process and cuboid bone and damage to the joint ligaments of the heel/cuboid bone and the heel/talus bone;**
- **Failure to refer you to refer you to a podiatrist in 2012 for orthotic insoles.**

It is admitted in correspondence, 9 April 2020, that *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.*

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

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reduction of the foot, the fibula fracture was largely reduced (since the position of the fracture was maintained throughout treatment and has united in a satisfactory position there is no reason to believe the fibular fracture required fixation nor that it would have made any possible difference to the outcome). The notes 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'.

Given the above, we do not intend to respond further to the first 2 allegations.

With regard to the 22 March 2012 CT scan, that was reported as demonstrating an old ununited fracture of the anterior process of the calcaneum. OA changes of talonavicular, calcaneal cuboid and joint between the cuboid and lateral cuneiform noted. A loose bone fragment was noted adjacent to the sustentaculum tali and a healed fracture of the fibula was noted.

Our evidence is that it demonstrates a *"good return of hindfoot and midfoot articular congruity...it also shows the fibula fracture has healed in the most part (and to an extent which is acceptable) as has the anterior tuberosity calcaneal fracture"*. In the circumstances, it is averred that no further treatment was required at that stage.

In terms of the alleged failure to refer you for consideration of orthotics, we note a letter from Mr Khan, 13 March 2012, which says *"on examination today...She has a good medial arch support. She says she has been walking with her lesser toes flexed because of the pain. She has limitation of plantar flexion and supination. We are going to get a CT scan for her and see her with the results"*.

In the circumstances, we are satisfied that you did have orthotic provision at that stage and you are required to prove you did not.

Causation

Had your injuries been identified on the x-ray the subtalar joint dislocation would have required surgical fixation.

Had the CT scan of March 2012 been reported correctly, 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.

You received your first custom orthotics in November 2016. Had you been referred for orthotics in 2012, you would have avoided hip damage created by the equinus.

As above, your orthopaedic management in 2011 has previously been addressed.

In brief terms, the Response, 9 April 2020, asserts *"...The outcome of the surgery for the talonavicular dislocation was not impacted by the 4 day delay in diagnosis and surgery.*

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. 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 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”.

As above, it is denied that you required any further treatment following the March 2012 CT scan which demonstrated healing of the fibula and calcaneal fractures.

Further, it is also denied that you were not provided with orthotics until 2016. It is averred that orthotics were provided in a timely manner in 2012. Further, and in any event, it is not reasonable to relate degeneration of joints to an abnormal gait. It can cause restriction and pain but not degeneration. On balance, any hip injury is not as a result of the short delay in operating in October 2011, nor is it due to any failure to provide orthotics in a timely manner (which is not admitted in any event). Furthermore when you attended the Royal National Orthopaedic Hospital Hip Unit, they agreed that you do not require hip replacement.

Given the above, causation is denied aside from where previously expressly admitted (i.e a short delay in operating following the x-ray of 20 October 2011 causing a limited period of pain and suffering).

We note the complaints you have made regarding the conduct of NHS Resolution and ourselves but we have previously responded to your complaints, and those are denied.

In investigating your case we obtained an independent orthopaedic opinion from Mr Bircher, which was unsupportive of your claim. Further, following mediation (which we agreed to), we agreed to obtain a report from a radiologist and a second report from an orthopaedic surgeon. We have investigated your claims in good faith.

Damages

The heads of loss outlined in the Letters of Claim are noted but not admitted. If proceedings are served, you are required to serve a Schedule of Loss with those and supporting documentation to support the valuations you have provided for heads of loss such as hip replacements and loss of earnings.

For the avoidance of doubt, it is denied you require any hip replacements or you have lost earnings as a result of the care you have been provided by the Trust.

Summary

The Trust is very sorry that there was a failure to diagnosis some of your injuries in October 2011, but as previously advised, 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

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