

## Foetal alcohol syndrome case rejected by Court of Appeal

The Court of Appeal has today (4 December 2014) ruled that a child suffering from foetal alcohol syndrome is not entitled to compensation from the Criminal Injuries Compensation Authority (CICA).

This case involves a seven year old girl who suffers from foetal alcohol syndrome and was born with severe brain damage. She is now in care. Her mother is reported to have consumed eight cans of lager and half a bottle of vodka a day during her pregnancy and apparently ignored warnings about the extent of her drinking whilst pregnant.

A claim was lodged with the CICA by a Council in the North West of England who now have responsibility for the young girl. The CICA is a government funded body that pays out compensation to the blameless victims of violent crime. The process involves making an application to the CICA and if successful, the applicant will be awarded compensation for their injuries as well as for certain categories of financial loss as long as the losses can be attributed to the injury.

The Court of Appeal ruled that the young girl was not entitled to compensation under the CICA scheme and Lord Justice Treacy said that the “essential ingredient” for a crime to have been committed is the “infliction of grievous bodily harm on a person” and that “grievous bodily harm on a foetus will not suffice”.

John Foy QC, who was acting for the Council, submitted that the mother drank the equivalent of 40-57 units of alcohol per day. The National Institute for Clinical Excellence guidelines suggest 7.5 units of alcohol per day can harm the foetus. Mr Foy argued that the mother was fully aware of the foreseeable risk to the foetus and was reckless.

The CICA had instructed barrister Ben Collins who submitted that the implications of allowing this claim were much deeper and would raise questions as to what is and isn't dangerous, not only in terms of drinking but also in terms of smoking and food. He raised the question of whether a mother who ate unpasteurised cheese knowing it could give rise to a risk of harm to the foetus could be accused of a crime.

The full judgement is yet to be released but this case is hugely important not only for the parties involved but also because it explores more complex issues such as whether a foetus is an independent person during the course of pregnancy. This case will also assist personal injury lawyers in clarifying the law in relation to cases where there is harm to the foetus as a result of the mother's actions during her pregnancy.

### **Mala Parmar**

Solicitor

+44 (0)20 8394 6411

[Mala.Parmar@russell-cooke.co.uk](mailto:Mala.Parmar@russell-cooke.co.uk)

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP. © Russell-Cooke LLP. December 2014