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Our Ref: GMJ/JW/19093

Your Ref:

Please ask for: Mr Johnson

14 February 2002

Mr David Walker
26 Trinity Close
Newbold
Chesterfield
S41 7EJ

Dear Mr Walker,

I have received the written advice that we have been waiting for, from Richard Burns. I enclose a copy. I am afraid that it is not the news that you were hoping for. To quote from Richard Burns' penultimate paragraph, "I am driven to the conclusion that (David Walker) has no reasonable prospect of proving either that the preparation for the trial was substantially deficient or that the advice given to him, even if in my view mistaken, was wholly unreasonable".

As a result of this, Richard Burns is forced to advise that you have no reasonable prospect of succeeding with your claim against either Irwin Mitchell or Charles Chruszcz QC, alleging professional negligence. Richard Burns is unable to advise the Legal Services Commission to extend funding of your case any further. As a result of this, I must send a copy of Richard Burns' advice to the Legal Services Commission and request that your Legal Aid Certificate be discharged. Before it is discharged, you will be given the opportunity of arguing why it should remain in place but, frankly, faced with what has to be accepted to be a well-considered and long argued advice, any appeal is unlikely to be successful. Your claim against your previous legal advisors has, for practical purposes reached the end of the road.

I am aware that you have been making substantial contributions, for someone in your financial position, and I would not want these to continue as a drain on your resources any longer than is necessary. My advice to you is to make no further payments to the Legal Services Commission; the worst that they can do is to discharge your certificate, but this is going to happen anyway, you must make the most of what you have got, and that includes making the most of the benefits which you receive.



J. Barrie Thompson LL.B.,†* David Ripley LL.B., Philip G. Bloore, LL.B., Angela J. Turner B.A. (Law)
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† Denotes member of Personal Injury Panel * Denotes member of Childrens Panel



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I will leave you to read the advice for yourself, you will see that it comprises a long summary of the background to your claim, followed by a statement of the law, and Richard Burns' conclusions.

Richard Burns makes it clear that, in many respects of your claim, he disagrees with the advice that you received. It is clear, from the file notes on Irwin Mitchell's file, that they considered that you would make a poor witness, if required to give evidence at the trial. However Richard Burns, having seen you in conference and having made an assessment of your worth as a witness for himself, feels the opposite and that you would have made a good impression on the Judge.

He also feels that many of the fears expressed by the various barristers who have expressed opinions on your case have been unnecessarily pessimistic; he feels that contributory negligence in your case is unlikely to have exceeded 25%.

Nevertheless, as Richard Burns explained at the conference that we had with him, it is not enough that he simply disagrees with the advice that you were given. The test which you have to satisfy in order to be successful with a claim against a solicitor or a barrister is that they have given advice which no competent lawyer would have given. That is a difficult test to satisfy. Richard Burns has, as he promised to do, discussed your claim with other senior members of his chambers, and they are all of the same view to a greater or lesser extent.

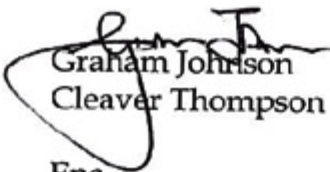
One of the problems that you face in addition is the medical advice which you received from Mr Douglas to the effect that, if the accident had not occurred, you would most probably have had serious arthritis in your left knee, due a previous accident. These would have prevented you from working, in any event, within ten - fifteen years. This had the result of substantially reducing the value of your claim, possibly to as low as £200,000.00. Against this, the settlement which was actually reached represented around 50% of your claim's true value. In order to succeed in a claim against Charles Chruszcz, you would have to show that there was no reasonable prospect of any Judge finding you 50% to blame for this accident. If a Judge had found you 50% to blame for the accident, it is unlikely, given that there was some risk of a finding of contributory negligence against you, that such a decision could be appealed. Accordingly, there was some possibility that, even if the trial had gone ahead and you had given evidence and impressed the Judge, the Judge would have found you 50% responsible for the accident in putting your foot in a position where it could have been crushed by the moving arm of the JCB.

As Richard Burns concludes, he recognises that you will not find his advice satisfactory in that it clearly does not support your claim against your former solicitors. As I have explained to you, Richard Burns is in the position of advising not only you but also the Legal Services Commission who are funding this claim.

He has to be satisfied that, if the Legal Services Commission were to allow your claim to continue, there is at least a 50% chance that you would succeed against Irwin Mitchell. For all the reasons set out in his advice and referred to in my letter, he has reached the conclusion that there is a less than 50% chance of this happening.

I have no doubt that you will have comments on this advice once you have had the opportunity to read and digest it. You can, by all means, discuss the advice with me and argue with the conclusions that the barrister has reached. However, in the end, it will be Richard Burns' views that will be listened to by the Legal Services Commission rather than your own, or mine for that matter.

Yours sincerely,


Graham Johnson
Cleaver Thompson

Enc.