

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**B E T W E E N:**

**(1) HARRY BOWEN**

**(A child by Mrs Tracy Bowen his mother and Litigation Friend)**

**(2) MAX FARLEY**

**(A child by Mr Geoff Farley his father and Litigation Friend)**

**(3) KATIE FARTHING**

**(A child by Mrs Joanne Farthing her mother and Litigation Friend)**

**(4) Mrs Wendy Mullinger**

**(Mother of DANIEL MULLINGER, Deceased)**

**Claimants**

**and**

**THE NATIONAL TRUST**

**Defendant**

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**PARTICULARS OF CLAIM**

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1. At all relevant times:
  - (i) The First, Second and Third Claimants together with the Fourth Claimant's son, Daniel Mullinger, were pupils at the Heathlands Church of England Primary School, West Bergholt, Essex, who were attending a residential course at the Aylmerton Field Study Centre, an educational activity centre.

(ii) The Defendant was the owner and occupier within the meaning of the Occupiers Liability Act 1957 of the Felbrigg Hall Estate, Cromer Road, Felbrigg, Norfolk ("the Estate").

2. On 26 June 2007 the First, Second and Third Claimants and Daniel Mullinger ("the children") were part of a group of 10 children supervised by a teacher and were lawful visitors to the Great Wood at the Estate undertaking an activity called "Monster Trail", which was run by the Aylmerton Field Study Centre. There were 4 groups of children in total. The Monster Trail involved the children following clues on a map to reach 12 points along the trail where 12 letters had been fixed which gave them an anagram to solve.
3. At approximately 3.15pm as they were approaching the 7<sup>th</sup> clue on the Monster Trail, the children were struck by a branch ("the branch") which had fallen from a *Fagus sylvatica* (a common beech tree: "the tree"). Daniel Mullinger died instantly. The First, Second and Third Claimants sustained serious personal injuries.
4. The tree was approximately 160 years old and was one of eight mature beech trees located in the part of the Great Wood where the accident occurred. Unlike the other seven trees which stood back from the main path, the tree was situated at the junction of three paths, which converged to form a natural glade, the only one of its kind in this part of the Great Wood. Eight metres to the east of the tree was a sweet chestnut tree, the

base of which had sprouted a number of shoots forming a rudimentary natural “den”, which had been added to over time by children piling sticks around it. The area around the tree was an obvious focal point for visitors to the Great Wood, particularly children.

5. The branch was 21.7 m long and fell from a height of around 9m at the south eastern side of the tree. The failed end of the branch measured approximately 1.4m x 0.76m. The branch fell due to the failure of the union between the branch and its parent stem. Evidence of this weakness of the union would have been visible from ground level, particularly the pronounced adaptive growth flares on either side of the fork (most notably to a length of 140mm to the south) and its significance would have been apparent on competent inspection for more than 5 years and probably for about 10 years before the accident.
6. The tree had been designated in a medium risk zone pursuant to the National Trust generic policy entitled The Inspection of Trees, Instruction 1, which was issued in 1997 and which required trees in a medium risk zone to be inspected at least every two years using a method described as “rapid but careful search for clear defects.”
7. The accident was caused by the negligence and/or the breach of the common duty of care under the Occupiers Liability Act of the Defendant, its agents or employees.

## PARTICULARS OF BREACHES

- a) Failed to inspect the tree adequately on 2 January and/or 18 January 2007 and/or at any other time in the period leading up to the accident.
  
- b) Failed to appreciate the significance of and risks posed by the defects apparent on a visual inspection of the tree, which should have led a competent inspector to undertake further detailed inspection and remedial action.

The Claimant will rely upon the following facts and matters in support of the allegations at (a) and (b) and as evidence of the inadequacy of the inspections undertaken and the system of inspection:

- The tree had a history of branch shedding going back over 25 years. The first failure occurred due to weak fork formation and left a massive wound on the tree trunk. This wound was prone to decay and represented a weakness in the stem and would have been readily apparent on competent inspection at any time after the branch was shed, and indicated that there was a clear potential for branch failure on the tree.
  
- A second branch fell from the tree about 2-3 years before the accident, also as a result of weak fork formation. The branch was cleared into adjacent undergrowth, so the Defendant's agents or employees knew or ought to have known about this branch failure and inspected the tree further.

- The weak attachment of the branch and in particular the pronounced adaptive growth flares to either side of the fork would have been readily apparent on competent inspection from ground level.
- There was a weak attachment to the stem of a further branch on the tree, which would also have been visible from ground level and which fell from the Tree in about July or August 2007.
- In October 2007 there remained a further branch with a weak attachment to the stem, which was also visible from ground level and which, if not reduced in length, was at risk of failure.

The Claimants' case is that a tree with the type of defects particularised above should be regularly inspected by a competent inspector if there is public access nearby and that, had such inspection been undertaken competently and the results properly recorded, the defects would have been identified and steps taken to make the tree safe. The Claimants will rely on the fact that the defects particularised above went unremedied, together with a failure to render safe a mature beech tree located on the main drive leading up to Felbrigg Hall, as evidence of negligent tree management.

- c) Failed to shorten the branch timeously and failed to pay adequate regard to the length of the branch (21.7m) and the fact that it extended well beyond the

mean profile of the tree's crown, resulting in its bearing a considerable weight of foliage directly over a footpath.

- d) Failed to subject the tree to an adequate programme of maintenance. In support of this allegation the Claimants will rely on the failure to prune out a secondary crossing branch near to the branch which fell.
- e) Implemented an inadequate and unsafe policy of risk assessment of tree safety by adopting a policy of assessing risk in relation to the location (i.e. the zone in which the tree was) as opposed to assessing risk in the light of the condition of the tree. The Claimants will contend that the Defendant's generic policy entitled the Inspection of Trees, Instruction 1 was fundamentally flawed in this regard, as evidenced by the fact that the updated 2007 edition of the Defendant's policy on the Inspection of Trees now acknowledges that the condition of trees must be taken into account in addition to the location of the tree for the risk assessment to be of any value.
- f) Without prejudice to particular (e), failed to ensure that the policy for tree management was implemented properly.
- g) Failed adequately to risk assess the tree. The Claimants will contend that the tree should have been designated in the high risk category, rather than the medium category. It was inadequate merely to designate the tree as part of a medium risk woodland and doing so failed to take proper account of the confluence of paths around the tree, the glade and the den in the vicinity of the

tree, which would encourage the congregation of groups, especially children. The Aylmerton Field Study Centre explicitly routed thousands of children along the confluence of paths adjacent to the tree each year, a fact which was well known to the Defendants.

- h) Failed to undertake thorough and frequent inspection of the tree given its age, condition, species and location. In particular failed to have any or any adequate regard to the fact that:
  - o mature beech trees are prone to limb shedding; and
  - o branch failure due to weak forking is common in mature beech trees.
  
- i) Failed to keep adequate records relating to inspections of the tree or adequate records of the condition of the tree. The Claimants will contend that, given the age, species, location and condition of the tree, proper records should have been kept in order adequately to monitor its condition over time.
  
- j) Failed to classify the tree as hazardous and to take appropriate measures to protect members of the public, including the children, from injury caused by failure of the tree.
  
- k) Failed to ensure that the tree inspectors were trained adequately in tree risk assessment and/or had a proper understanding of adaptive growth morphology.
  
- l) By implementing a system of inspection by in-house/resident tree inspection teams, allowed a culture of excessive risk tolerance to develop.

- m) Failed to divert the path for walkers in the Great Wood away from the tree.
  - n) Failed to warn members of the public, including the children, of the danger posed by the tree.
  - o) In the premises failed to take reasonable care to ensure that the children were safe when visiting the Estate.
8. By reason of the matters aforesaid, the First, Second and Third Claimants suffered pain, injury, loss and damage and Daniel Mullinger who was 11 years old (date of birth 24 November 1995) died instantly.

#### PARTICULARS OF INJURY

##### The First Claimant

The First Claimant was born on 8 September 1995 and was 11 years old at the date of the accident. He is now 13.

Pain, suffering and shock.

Severe, life threatening injuries including:

- (i) Bilateral hip fractures/dislocations.
- (ii) Disruption of the right sacroiliac joint.
- (iii) Multiple fractured left transverse processes of the lumbar vertebrae.



- (iv) Left rib fractures with haemopneumothoraces requiring bilateral chest drain insertion.
- (v) Splenic haematoma.
- (vi) Possible fracture to the base of the skull.
- (vii) Psychological reaction.

The First Claimant was taken by helicopter to the Norfolk and Norwich Hospital. He developed circulatory instability due to pelvic bleeding. The hips were reduced immediately by manipulation and an external clamp applied to stabilise the pelvis. The First Claimant's cardiovascular status remained unstable and bilateral selective embolisation of the anterior branches of the internal iliac arteries were performed. This stabilised his circulation but resulted in a deterioration in renal function. The First Claimant was transferred to Great Ormond Street Hospital for Children for management of renal failure.

Investigation at Great Ormond Street Hospital showed that the First Claimant had undergone cerebral changes compatible with posterior reversible encephalopathy syndrome PRES, which caused him to suffer a seizure and affected his vision.

On 4 July 2007 the First Claimant underwent surgery at St George's Hospital Tooting for his pelvic injuries. The right hip was unstable due to a detached posterior acetabular rim. This was reattached at surgery. The left acetabulum required open reduction and internal fixation with 2 plates. The unstable right sacroiliac joint was fixed with a screw. An external fixator and broomstick cast was applied.

It became apparent that the First Claimant had suffered sciatic nerve damage as a result of the extensive pelvic injury, which manifested itself as foot drop and sensory disturbance on the left side.

The First Claimant was transferred back to Colchester Hospital for rehabilitation. The external fixator was removed at St George's Hospital in August 2007. At the same time the right acetabulum was formally reconstructed.

The First Claimant has undergone long periods of intensive physiotherapy and occupational therapy. He suffered chronic neurogenic pain and was prescribed Gabapentin.

The First Claimant returned to school full-time in September 2008. At this stage he was mobilising using 2 sticks for short distance and a wheelchair at other times. The First Claimant suffers from stiffness and pain in both hips. The pain occurs when he moves suddenly or awkwardly or after prolonged standing or walking. He experiences pain when he tries to lie on his right side. He suffers from pain and sensory problems in the left foot and ankle as a result of the damage to the left sciatic nerve. He has a persistent foot drop on the left side which is unlikely to improve.

The First Claimant has hinge abduction at the deformed right hip which has been subject to avascular necrosis and marked heterotopic bone formation around the left hip, causing extreme stiffness. He is waiting to undergo a procedure to deal with the heterotopic bone. He will require major surgery on both hips in due course. Whatever

surgery is performed, there will be ongoing and permanent problems and some disability, the nature of which is impossible to estimate at this stage.

The First Claimant has been heavily reliant on his family for help with activities of daily living. He was unable to attend school for 1 year and his social activities have been severely curtailed. He remains significantly disabled, particularly as regards his walking ability. He cannot take part in any sport.

The First Claimant is bound to be severely handicapped in respect of the completion of his education and on the open labour market.

Details of the treatment, condition and prognosis in respect of the First Claimant's injuries are set out in the medical report of Mr J Mark H Paterson, Consultant Orthopaedic Surgeon, dated 14 June 2009.

Further medical evidence will be necessary in due course to assess the results of the further surgery.

#### The Second Claimant

The Second Claimant was born on 19 July 1996. He was 10 years old at the time of the accident.

Pain, suffering and shock.

Greenstick fracture to the left wrist.

Displaced fracture of the 2<sup>nd</sup> metacarpal head (index finger).

Undisplaced fracture to the 3<sup>rd</sup> metacarpal head (middle finger).

Epiphyseal fracture at the base of the middle phalanx of the little finger.

Psychological reaction; nightmares and flashbacks.

The Second Claimant was taken by ambulance to Norfolk and Norwich Hospital, where he was admitted. On 26 June 2007 the Second Claimant underwent surgery to suture the laceration to the palm. A K wire was introduced to reduce and support the fracture of the 2<sup>nd</sup> metacarpal head and another wire to support the fracture of the middle phalanx of the little finger, which was grossly unstable. A plaster backslab was applied.

The Second Claimant was discharged from hospital on 28 June 2007. He was referred for physiotherapy on 3 July 2007 where he was given a thermoplastic splint. Both K wires were removed on 10 July 2007 when further physiotherapy was arranged. The Second Claimant continued to use the splint until the end of August 2007. He completed his physiotherapy in March 2008.

The Second Claimant experiences occasional discomfort in the left hand. When he makes a fist the little finger will not go fully into the palm. The little finger is also slightly bent at the tip. He has residual scars on the left hand. There is some tenderness to firm palpation in the palm. There is tethering of the tendon in the left little finger.

There is a risk of growth disturbance as a result of the fractures to the index and little fingers, which can only be assessed 3 years after the injury. If there is growth disturbance, then there is a risk that the Second Claimant could develop arthritis in the

affected joints. This may have an effect on future employment prospects, which will be particularised, if necessary, in due course.

The Second Claimant returned to school for the last few days of the summer term in July 2007. The Second Claimant required additional care from his parents as a result of his injuries for several months.

Details of the treatment, condition and prognosis in respect of the Second Claimant's injuries are set out in the medical report of Mr Tudor L Thomas, Consultant Orthopaedic Surgeon, dated 9 March 2009.

#### The Third Claimant

The Third Claimant was born on 4 June 1996. She was 11 years old at the date of the accident. She is now 13 years old.

Fracture to the dominant right wrist.

Compound fracture to the left lower tibia and fibula with associated skin wound.

Scalp laceration which required stitching.

Psychological reaction: nightmares and flashbacks.

The Third Claimant was taken by ambulance to the Norfolk and Norwich Hospital. A plaster was applied to the right wrist fracture. The fractures to the left lower leg were secured with an external fixation appliance. She remained in hospital for 3 days. She was dependent on a wheelchair upon discharge because she could not weight bear on her left leg and she could not use crutches due to her wrist injury.

The plaster was removed from the right wrist on 23 July 2007 and replaced with a removable splint. On 30/31 July 2007 the Third Claimant was admitted to hospital for removal of the external fixation device to the left lower leg. A below knee plaster was applied, which was subsequently removed on 10 September 2007. The Third Claimant then used a moon boot to develop weight bearing.

There are significant residual scars on the left lower leg resulting from the compound wound and where the pins were inserted. The Third Claimant suffers from intermittent aching in the left lower leg if she walks considerable distances or runs. The left leg aches occasionally at night and in cold, damp weather conditions. Some degree of discomfort is likely to persist indefinitely. The left lower leg is slightly swollen when compared to the right. The Third Claimant is disturbed by the appearance of her left lower leg. The final prognosis will be ascertainable following a further review, which is due in December 2009.

The Third Claimant returned to school in September 2007. She was unable to wear normal shoes until the end of 2008. The Third Claimant is unable to participate in cross- country running or dancing to the same extent as before the accident.

The Third Claimant has suffered from nightmares and flashbacks since the accident.

Details of the treatment, condition and prognosis in respect of the Third Claimant's injuries are set out in the medical report of Mr Tudor L Thomas, Consultant Orthopaedic Surgeon, dated 9 March 2009.

### PARTICULARS OF SPECIAL DAMAGE AND LOSS

The First, Second and Third Claimants suffered special damage and loss. Provisional Schedules of Special Damages are attached.

The Fourth Claimant claims damages for bereavement and funeral expenses pursuant to the Fatal Accidents Act 1976, particularised in the Schedule of Loss attached.

Further the Claimants claim interest upon such damages as may be awarded to them pursuant to the provisions of section 35A of the Supreme Court Act 1981.

### DETAILS OF THE BASIS OF THE CLAIM FOR INTEREST ON SPECIAL DAMAGES

(1) General basis of the claim:

Interest is claimed upon each and every item of consequential loss incurred to date from the date such loss occurred to be assessed at the full special account rate prescribed under the provisions of the Court Fund Rules 1987 as amended (or under such other provisions as may after the date of these Particulars be made replacing or amending the rules in respect of interest upon damages) on the basis that the Claimants have incurred expenses which they will not recover from the Defendant until Judgment in this matter is satisfied. In the circumstances the Claimants have been denied the use of the sums since the date such loss occurred, whereas the Defendant has enjoyed the use of the same throughout the period.

- (2) Details required by the Civil Procedure Rules 16.4(2):
- (a) Interest is claimed under enactment only, namely Section 35A of the Supreme Court Act 1981.
  - (b) The percentage rate at which interest is claimed is 6% until 31 January 2009, 3% from 1 February 2009 until 31 May 2009 and 1.5% thereafter.
  - (c) The date from which it is claimed is, in each instance, the date upon which the particular item of loss was sustained or at half the relevant rate for ongoing losses spanning the period from the accident to date.
  - (d) The total amount of interest claimed to the date of the calculation is to be confirmed.
  - (e) Interest is continuing to accrue.

#### GENERAL DAMAGES

Further the Claimants claims interest on general damages at the rate of 2% per annum from the date of service of the Claim Form in this case until the date of Judgment or assessment of damages, whichever shall be the later.

#### AND THE CLAIMANTS CLAIMS AGAINST THE DEFENDANT:

##### First Claimant

- (1) Damages in excess of £50,000 including general damages for pain, suffering and loss of amenity exceeding £1,000.
- (2) Interest pursuant to section 35A of the Supreme Court Act 1981 as set out above.



Second and Third Claimants

- i) Damages exceeding £15,000 with general damages exceeding £1,000.
- ii) Interest pursuant to section 35A of the Supreme Court Act 1981 as set out above.

Fourth Claimant

- (1) Damages exceeding £15,000
- (2) Interest pursuant to section 35A of the Supreme Court Act 1981 as set out above.

**JONATHAN WATT-PRINGLE QC**

**RHIANNON JONES**

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claim are true.

Signed:-----.

Name:-----

Dated this 20th day of July 2010

To the Master and to the Defendant.

Claim No: -----

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION

B E T W E E N:

(1) HARRY BOWEN

(A child by -----his mother and Litigation  
Friend)

(2) MAX FARLEY

(A child by -----his mother and Litigation  
Friend)

(3) KATIE FARTHING

(A child by -----her mother and Litigation  
Friend)

(4) ----- (Mother of DANIEL  
MULLINGER, Deceased)

Claimants

and

THE NATIONAL TRUST

Defendant

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PARTICULARS OF CLAIM

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Ellisons Solicitors  
Headgate Court  
Head Street  
Colchester  
Essex  
CO1 1NP

Ref: EJP/MUL13-1  
Solicitors for the Claimant