

# Guidelines, not tramlines! The interplay between NICE Guidelines and clinical judgement

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In this briefing we analyse the recent case of *Sanderson v. Guy's and St Thomas' NHS Foundation Trust* [2020] EWHC 20 (QB), in which the High Court grappled with an important issue around the application of NICE Guidelines, and re-emphasised the importance of clinical judgment.

## What happened in Sanderson?

*Sanderson* was a birth injury case arising out of Ashley Sanderson's birth on 26 February 2002. Unfortunately Ashley experienced a period of hypoxia before her birth causing cerebral palsy and severe associated disabilities.

It was alleged that the obstetric staff acted negligently in the second stage of labour by: (1) performing a fetal blood sample (rather than proceeding to immediate and urgent instrumental delivery) in the face of what were alleged to have been prolonged decelerations evident on the CTG; and (2) once it was recognised that the Claimant did in fact need to be delivered as soon as possible, taking too long to commence the Claimant's delivery by ventouse.

It was claimed that but for the alleged breaches of duty, the damaging period of hypoxia would have been shortened or avoided altogether.

In finding for the Defendant Trust and dismissing the Claimant's claim, the Judge, The Honourable Mrs Justice Lambert DBE, found that there had been no breaches of duty. Specifically, she found that there was no unreasonable delay in delivering the Claimant. However, it was her findings in respect of the first issue above, i.e. whether it was negligent to have performed fetal blood sampling rather than proceeding immediately to an instrumental delivery, that are the most interesting aspect of the Judgment.

In finding that it was reasonable for the obstetricians to adopt an expectant approach to the CTG and wait to see how the trace developed, the Judge highlighted the apparently contradictory nature of the relevant NICE Guidelines in place at that time, and made suggestions as to how clinicians should proceed in similar such circumstances.

The Guidelines in question were the 2001 NICE Guidelines concerning the use of electronic fetal monitoring. In determining the fetal blood sampling issue, Mrs Justice Lambert pointed out the inherent difficulties with the Guidelines themselves:

*".....the Guidelines on their face appear to advocate two contradictory management options in response to a single prolonged deceleration lasting longer than three minutes: conservative measures where possible or feasible (expressly including fetal blood sampling) and a few short paragraphs later urgent delivery (fetal blood sampling being contraindicated). On the critical question for my determination, the Guidelines point in two, entirely different, management directions."*

The judge resolved this apparent difficulty by noting that it could not be said that the Guidelines were intended to provide practitioners with the complete description of appropriate management in the presence of a particular trace feature. Rather, she endorsed the conclusion of the Defendant's expert obstetrician that *"the Guidelines do not provide a complete compendium of either definitions or clinical management options. The Guidelines are useful so far as they go, but they are limited. The Guidelines do not provide a substitute for clinical judgement but must be interpreted by the clinician and then applied in light of that judgement."*

In concluding that there had been no breach of duty in respect of the fetal blood sampling issue, she concluded that: *"the Guidelines are a practical tool to be used in conjunction with clinical judgement."*

## The implications of Sanderson

That NICE guidance cannot simply be slavishly applied as if it was an instruction manual will be well known to practitioners, particularly those in primary care. *Sanderson* itself demonstrates that it is not always as simple as "following the guidelines."

The Judgment in *Sanderson* should be welcomed for re-emphasising that NICE Guidelines are exactly that - they are guidelines, not tramlines. *Sanderson* makes it clear that clinical judgement still has a critical role to play alongside any

relevant NICE Guidelines when determining pathways of care, as, of course, NICE Guidelines always state on their face. Our national teams of clinical risk lawyers have extensive experience of supporting and advising healthcare providers and we are on hand to provide advice and guidance upon the impact of this decision.

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