

**P**AULINE McKenzie is busying herself with preparations for a family holiday. Like any mother of a teenage son, she has plenty of clothes to sort and wash and bags to pack. But in this case such planning involves far more than folding a few T-shirts, as the holiday is a round-the-world cruise and her son Kyle is severely brain-damaged and confined to a wheelchair.

While some parents might find this a daunting prospect, Miss McKenzie is looking forward to the 'trip of a lifetime' with undiluted joy after winning a 16-year battle for justice against the medical authorities whose failings blighted her son's life from birth.

The mammoth legal struggle, which at times brought her to the brink of despair, ended recently in triumph as the 43-year-old single mother was awarded the biggest-ever damages claim in a case of medical negligence in Scotland.

In an out-of-court settlement, Fife Acute Hospitals NHS Trust has agreed to pay £5.75million in compensation for the disastrous birth that starved Kyle of oxygen and left him suffering from severe cerebral palsy.

Now Miss McKenzie has agreed to break her silence in her first interview so her inspirational story can offer hope to other affected families.

'At times, I felt as if we were living in a black hole,' she said. 'Before this, Kyle was just existing. Now he can start to live.'

As she cuddles up to her frail son in his freshly decorated, pirate-themed bedroom, she describes vividly the terrifying hours in a hospital ward as she watched her baby's chances of a normal life slip through the hands of an incompetent doctor.

Her nightmare began on February 25, 1994, when she was admitted to Forth Park Maternity Hospital in Kirkcaldy, Fife, to be induced as she was 11 days overdue.

The procedure continued uneventfully until her baby's heart rate sud-

denly fell dramatically and midwives alerted the obstetrician in charge. But Dr Edward Duff, who has since retired, failed to order an emergency Caesarean.

'I was saying, "I need my baby out",' Miss McKenzie recalls. 'My mum was panicking. We knew there was something wrong.'

More than four hours later, Kyle was finally born with the aid of forceps. By then, his head was black and he was not breathing. It was seven heart-stopping minutes before Kyle convulsed into life with a terrible fit which continued for hours.

Miss McKenzie said: 'They took Kyle away and I wasn't allowed to hold him for two weeks. He had a lot of seizures and it was touch and go.'

'There were some awful times. I didn't sleep. I sat in the special care baby unit, night and day, just praying that he would live. I used to speak to him all the time with my hand in the incubator.'

'I remember very clearly this one moment, when I had been away from the unit, and I came back and spoke to him and the monitors along the side of the cot started going crazy. That was the moment when I was certain that he knew me. I thought then, "I am going to fight for you".'

She had no idea how long and arduous that fight would prove to be for a single mother pitted against the might of a hospital trust but, as soon as she was able, she took Kyle home.

She also opted to breast-feed him, with startling results: 'He would go into a fit if you touched his hand but the breast-feeding got him used to touch and it helped him learn to sit.'

'Kyle never slept, so I never slept. The only respite was when he was breast-feeding because he was relaxed then, so he was basically

## by Gavin Madeley

latched on for the first couple of years.'

Even today, Kyle's brain cannot control his body's movements and his speech is badly impaired. He requires heavy medication and constant monitoring.

Coping with a severely disabled child was never how Miss McKenzie imagined her life would turn out. As a teenager growing up in Kirkcaldy, she had dreamed of being a teacher and studied English and psychology at Dundee University before getting a job in London working with adults with special needs.

It was while on holiday in Tunisia that she met Kyle's father, Anmar El-Fayedh, who ran a dive school: 'We fell in love. I didn't intend to get pregnant but I was philosophical about it and I was about the healthiest I have ever been.'

'I guess I expected to pursue my career afterwards and maybe show my child the world. I was ready to embrace motherhood.'

She kept Kyle's birth secret from Anmar for some time, fearing rejection. But when the truth came out, he accepted his new family and, in 1996, the pair were married in a Kirkcaldy registry office.

Problems soon surfaced. Anmar struggled to find work in Scotland and, when Kyle was 18 months old, the family tried unsuccessfully to settle in Tunisia.

Miss McKenzie now reflects: 'A lot of marriages break down where there are special needs children. The mother is usually the main carer and it is so draining, you don't have anything left to give. The men can't usually handle it and don't often stick around.'

'I was a mother and that was it. Kyle needed me all the time, 24/7. Kyle's dad loved him but it just didn't work out and we divorced in 1999.'

'That was also the year my mother, Maureen, died. She was only 50. She was there for us when Kyle was little but she never got over what happened to him.'

Miss McKenzie now found herself alone: 'I was a single mother, looking after my child, unable to work, very isolated. I managed to get a ground-floor flat in Kirkcaldy but the buzzer for the block was next to Kyle's room and sometimes, when it went off, it would trigger a seizure.'

'So we were in and out of accident and emergency. I wasn't angry at first. The anger came later. Like anyone, I just assumed the doctors knew best. It was devastating to live with the consequences.'

For six years, Kyle attended a centre for children with brain injuries until it was closed by funding cuts. He then attended a mainstream primary but there were many problems integrating with able-bodied children.

'It was a difficult time,' says Miss McKenzie, who by this point had embarked on the other major struggle of her life. Six weeks after Kyle's birth, she wheeled his pram into the offices of Kirkcaldy lawyer Ken Lauder and announced she intended to sue her health authority.

It was a bold move for Miss McKenzie, a small, pensive woman whose petite frame belies an indomitable will. She explains: 'I felt I had to do it for my child. I wanted some security for Kyle. In the back of my mind, I was thinking, "What happens when I am not here?". But I knew nothing

# My 16-year fight with the NHS... and why my brave little boy deserves his millions

about the law – my ideas were all based on watching LA Law, and I was walking around saying, “We have to subpoena everybody”. All I knew for certain was that I had been told I had to act soon after the birth.

“A paediatrician had told me early on that he thought Kyle had cerebral palsy – that is not usually diagnosed for a year after birth, so I knew something was wrong.”

The legal battle was far from straightforward and she almost cracked under frequent delays and mountains of legal documents, often containing distressing information about her son.

She says: ‘But, in a strange way, the case kept me going. This was pretty much all there was in my life that wasn’t about being a mother and looking after Kyle.’

Certainly Fife NHS seemed in no mood to admit defeat: ‘When a crucial chart which showed what had happened to Kyle went missing early on, I knew we had a tough battle on our hands.’

‘There was only one moment when her blind faith in justice faltered: ‘We were fighting the action on legal aid and it seemed like, whatever experts we managed to get, the other side was getting that expert’s boss or a more senior one. I suddenly thought, “We might



**Long road: Kyle and his mother Pauline are still coping with the injuries he suffered at birth, above**

lose”. That was a dreadful feeling. I cannot thank Ken enough. He always calmed me down and made me realise things weren’t so bleak.’

Miss McKenzie also had to cope with personal attacks against her. After initially admitting that there had been negligence and delays in Kyle’s treatment, Fife NHS then tried to blame her son’s disability on her smoking five cig-

arettes a day while pregnant. She says: ‘As a mother you have a tendency to blame yourself and, although I didn’t drink when I was pregnant, I did smoke a small amount, and I was very upset when that was raised as a possible cause of Kyle’s condition by the hospital trust.’

Mr Lauder, who now works for Morisons in Edinburgh as one of the country’s leading medical

negligence litigators, was convinced the case was strong.

To prove medical negligence, it is necessary to show not just that the doctor made a mistake, but that he did something no competent doctor would do. Furthermore, it must be possible to say that this was what caused the patient’s problems.

Such a complicated process can easily become messy and protracted as both sides carefully build a case involving dozens of legal and medical experts. It took 12 years for Miss McKenzie’s case to reach court, as she was forced to scrape along caring for her son and making do in cramped accommodation.

At the Court of Session in 2006, judge Lord Hodge dismissed smoking as a factor and ruled that Kyle’s cerebral palsy was caused solely by the doctor’s negligence, his failure to respond to the drop in Kyle’s heart rate and the warnings of the midwives.

The hearing caused Miss McKenzie more anguish: ‘I got a big shock in court because I thought I had dealt with all the grief but I hadn’t. I had gone straight from the birth into caring for my child 24/7 and fighting this legal battle.’

‘It was so upsetting hearing about what Kyle went through. All I could do was dig my nails into my

palms until they bled. At the end of the case, I ran to the toilets and started crying. I think the whole court must have heard me but my pain is nothing to what Kyle suffered and continues to suffer.’

Although the health trust had lost the case, it took a further three years before reaching an out-of-court settlement over the level of compensation. Miss McKenzie received an interim pay-out of £50,000 which allowed her and Kyle to move into a specially adapted, two-storey modern house on the edge of Kirkcaldy with wheelchair access and a special suite for Kyle with washing facilities.

‘I surprised Kyle with the new house on his birthday,’ she says. ‘He slept through the night for the first time after we moved here. It is peaceful. There are no neighbours upstairs.’

Last year, Miss McKenzie heard the news she had been waiting for – that a record compensation deal had been finalised. Now, as Kyle relaxes in his pyjamas in front of his favourite TV show, Deal or No Deal, she says: ‘Winning isn’t how we talk of the case but Kyle understands it, as we now have money because the doctor did wrong.’

‘The money is a weight off my mind. Now we have choices. All his life, Kyle has been used to people not understanding him, so he doesn’t try. With me, he will chat.’

‘That is what is hardest for Kyle, much more than walking. He is bright and I have always tried to keep him stimulated and interested in the world.’

‘One of the first things we bought

● My pain is nothing compared to what he must suffer ●

was a computer which Kyle can control with his eye movements. He managed to write ‘Happy Birthday’ on it on my last birthday. It might not sound like much but to me it was huge.’

Miss McKenzie’s life has changed in other ways since the court win. For years, she spent all her evenings caring for her son and had no time for herself. Her only outlet was the Crossroads charity which would send a volunteer to sit with Kyle one evening a week and allow her to learn Reiki healing at a local centre. There she met her new partner, Colin Fortune.

She says: ‘After my marriage broke down, I didn’t really “do” relationships. I didn’t believe another man would want to be in our situation. With Colin, it feels like being a family. He is the first father figure Kyle has really had in his life.’

The money will remain in trust, to be used only for Kyle’s benefit. A purpose-built home is one possibility. But for now the family is focusing on their holiday.

Miss McKenzie says: ‘We are taking Kyle to all the places he wants to see – the pyramids in Egypt, the Australia Zoo. He was a fan of Steve Irwin, and his daughter runs it now, so we are going to see her.’

‘I love my child and I would have gone to the ends of the Earth for him. Now we can go together.’

An NHS Fife spokesman said yesterday: ‘We are unable to discuss the details of any claim or any settlement but can confirm that this case was managed in the standard way and followed due court process.’

‘Any clinical negligence case is of serious concern to the NHS. This case, like any incident of its kind, was investigated thoroughly at the time and the lessons learned were implemented.’