



The Association
of Personal Injury
Lawyers

REALITY CHECK

The real stories of injured people

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INTRODUCTION

The UK has one of the most progressive and developed democracies in the modern world. It is built on humanity and fairness. The society of these islands, in spite of divisions, works ultimately for the people in it. This is why we have an established justice system with lawyers and courts so injured people who suffer because of the negligence of others can pursue justice for the wrongs done to them. The law of personal injury is not perfect, but the principles must be upheld.

Unless someone has experience of a needless injury, all they are likely to hear about personal injury law is that claims cause rising insurance premiums or put added pressure on the NHS budget. But behind the hyperbole the fact remains that people claiming damages should not have been injured in the first place and must be able to put their lives back on track. They are entitled to the fair compensation they require to put them in the position they would have been, had the accident not happened, and to provide for their ongoing needs.

APIL has produced this booklet to demonstrate how personal injury law matters to the people who need to use it. Access to justice and upholding the Rule of Law have never been more important.

GORDON DALYELL

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(APIL)



PATIENTS MUST NOT BE BLAMED FOR BEING INJURED

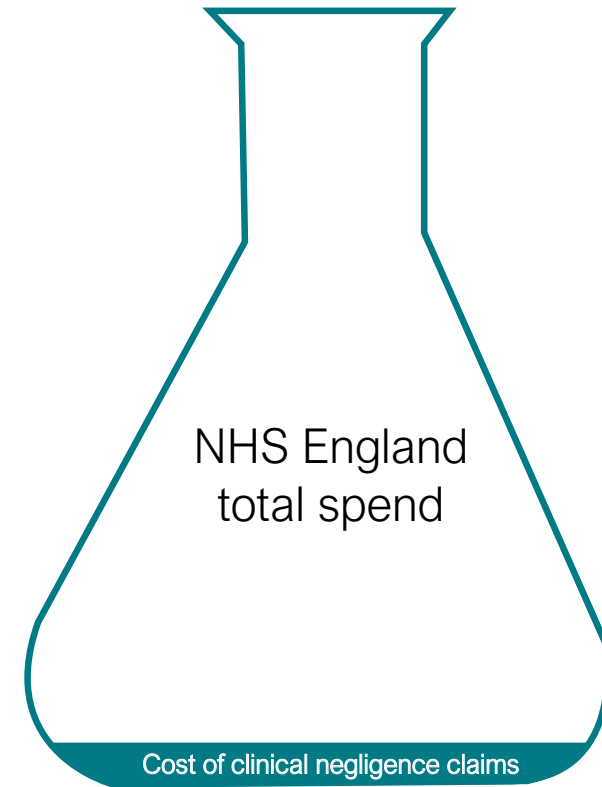
Any discussion about the NHS is emotive. Most of us were born in an NHS hospital and have witnessed the health service save lives and change them for the better. But on occasion the NHS gets things wrong and has a devastating impact on the lives of patients and their families.

The NHS is much loved and, almost as importantly, it is publicly funded. It might feel difficult to support a system in which the NHS has to pay compensation when it has caused injury or death. But the issue needs to be seen in perspective. When a patient, who is already injured or ill and vulnerable turns to the NHS and is then harmed further, proper care, proper redress and proper accountability are critical. Ultimately, the NHS exists to care for people and it must be answerable when it fails.



NHS SPEND

The money spent on compensation by the health service is a drop in the ocean of the NHS budget, and when people are injured and incapacitated and in need of redress, it is a necessary expense. The cost of clinical negligence compensation claims in 2017/18 were just two per cent of the NHS England annual spend on healthcare.



Source: NHS England 2017/18 annual report and NHS Resolution annual report and accounts 2017/18



THERE ARE NO WINNERS

In 2018, it was reported widely in the media that 12-year-old Holly Greenhow had 'won' more than £15 million in compensation from the NHS. She is disabled and has profound communication problems after her brain was starved of oxygen because of errors during her birth. The money will be paid in annual instalments over the rest of Holly's life to ensure her care needs are met.

Holly did not 'win' anything. Whether the amount is £5,000 or £15 million, compensation is not a prize. It is right that injured people are looked after when they are left injured and disabled by negligence which could and should have been avoided.



SAME INJURY, DIFFERENT COMPLICATIONS

A child suffers a catastrophic brain injury in a car crash. The insurance company of the driver who was in the wrong pays the compensation required for the child's injuries. This money is used to provide adapted accommodation, cover the fact that the child will never be able to work to support himself, and fund the necessary therapies, care costs and equipment.

If the same child were to suffer a severe brain injury because of negligent care during his birth in an NHS hospital, he would still need the same accommodation, money to live, and the necessary therapies and care costs. How the child came by his life-changing injuries makes little difference to the child's needs. The NHS must still put things right.

The only difference is the amount of work involved to determine the correct level of compensation and for how much the wrongdoer is responsible. With a car crash it is usually easy to work out who was driving negligently and that the collision caused the injuries. Medical negligence claims are less clear and more complicated. One reason is that it can take a lot of investigation to establish the exact extent of the damage caused by the failure in care, because the person was already ill or injured at the outset.



The NHS compensation bill is not the fault of injured patients who bring legal claims, or those who represent them. The key to reducing the NHS compensation bill is for patients to stop being injured by negligence, and there are many contributing factors to why failures might happen. There is evidence that the NHS could help itself when it gets things wrong by learning from mistakes, being open about what happened, and facilitating resolutions for injured patients and their families.

A former nurse who worked for the NHS for 45 years was widowed as a result of the negligent care of her husband. He died because staff did not follow procedures during his treatment. Despite this, she was very reluctant to make a claim. But staff failed to be candid with her about what had happened and following an inquest, when it became apparent that there were inconsistencies in the evidence, she decided that the only way to get answers to her questions was by pursuing a legal claim for compensation.

She maintains that if the NHS trust responsible for her husband's death had demonstrated candour, and been willing to speak to her, they could have avoided the whole process.



WHY INJURED PATIENTS SUE

NHS Resolution commissioned research on the motivation of injured patients who make claims for compensation. Here is what some of the participants, whose claims all settled at £100,000 or less, said:

“We went down the legal route because we just felt like **we weren't listened to** and just felt that this could happen to someone else”.

“It wasn't to sue them and line my pockets, it was just to try and get the money **so that I could afford corrective surgery** following this incident.”

“You have done something to me, you're **not giving me enough information** to how and why or even a sorry”.

“I thought, right, I need to try to do something here because **I need some money to be able to manage** for what is going to be the rest of my life”.

“Sometimes, **bringing it to somebody's attention** in a way like this [making a claim] it's the only way to change”.

Source: NHS Resolution - Behavioural insights into patient motivation to make a claim for clinical negligence Final Report August 2018

AN INJURY IS NOT A FINANCIAL OPPORTUNITY

This is very important: compensation is not paid for an accident or mishap.

Injuries which occur as a result of accidents which could not have been foreseen happen every day. No-one is responsible for the harm caused. But avoidable injuries caused by negligence happen every day too. Those who injure others because they did not take, or could not be bothered to take, proper care should be held accountable and people injured by that negligence should have fair recompense.

The law allows for victims of negligence to claim damages for their financial losses and also for their pain and suffering. Injured people often need to go down this legal route for various reasons. They might have lost out financially because of being unable to work, or they have incurred extra bills such as for medicines, therapies, additional childcare, or transport. They may be unable to do the activities they enjoy, or in some cases they want answers and find a claim is the only way to get them. Even if they recover from their injuries, they have still been affected by the negligence.

“No two cases of personal injury are exactly similar, nor are the individuals who have the misfortune to suffer them”
- Rt Hon Lord Justice Higgins.

Each successful claim for compensation represents an injury which would not have happened were it not for negligence. As drivers, for example, we all have a duty to each other not to drive carelessly or recklessly, and to take proper care. Employers should ensure that workers who go out to work, go home afterwards uninjured. Parents should expect to send their children to school and for them to return unscathed at the end of the day. We should all keep the impact of our actions, or inactions, on others in mind – that way no-one will get hurt. Most situations only need common sense to prevent people from being injured needlessly.

NEGLIGENCE

is when you do something which you can reasonably expect will injure someone else. Or if you are supposed to be doing something and don't. For example, tailgating the car in front is obviously dangerous.

“Damages are given for injuries that cause harm, not for injuries that are harmless”
- Lord Hope of Craighead.

IT IS CHEAPER TO KILL THAN TO MAIM

Despite being one of the world's safer countries in which to live, work, and travel, many people still die unnecessarily in Britain. When that happens, the legal system often falls short for the people left behind.

Losing a loved one is one of the most traumatic experiences anyone can go through. Sometimes families claim compensation for a death to help reduce the financial impact on those left behind. A surviving partner suddenly left to run a household on his or her own, for example, or parents who take time off work to deal with their grief. The amount claimed is usually relatively low because there are no ongoing care needs for the deceased. It is often far cheaper for a wrongdoer to have killed someone negligently than to have injured them.

A statutory sum of £12,980 can be claimed in England and Wales by specific relatives to help them find some atonement for their loss. Spouses, fiancés, and parents of children under the age of 18 can do this. Partners who lived with the deceased are not eligible, despite cohabitation being the fastest growing family type in the UK. The law is out of touch and there is no flexibility. The law in Scotland has no difficulty in recognising the closeness between parents, children of all ages, grandparents, siblings and other people living with the deceased as part of the family.

The statutory £12,980 sum is an insult to many people. Dawn Shestopal's husband Neil died in a private hospital when he suffered an air embolism - a blood vessel blockage caused by bubbles of air or other gas in the circulatory system. The embolism was the result of the improper removal of a catheter. "Loss is a life-changing, life-shattering experience. And anyone who experiences it lives with knowing that they will never be happy again. You can still enjoy things of course and find some pleasure in life but you'll never be happy, because of this loss which should not have happened. Money can't compensate for that but at least you feel like someone has paid for this terrible thing," she said.



THE MIND CAN BREAK TOO

A mental disorder which occurs, or is made worse, in response to an event is recognised as a psychiatric injury.

Most people with mental disorders have not been through a harmful event, such as an accident or disaster. Their mental disorders have arisen from other causes.

Some psychiatric injuries follow a physical injury. People whose lives have been altered permanently by catastrophic physical injuries, for example, often suffer depression as they struggle to come to terms with their new situation and what happened to them.

Other people have psychiatric injuries without so much as a scratch on them. They can be injured mentally because they witnessed the physical injury or death of someone else, or experienced childhood abuse.

Either way, these injuries can have a profound and long-term impact on work and social life. Psychological injuries can, in some cases, be more debilitating than a physical injuries. The case studies which follow demonstrate this. They are real stories, but names have been changed to protect identities.

Examples of specific psychiatric disorders are: post-traumatic stress disorder (PTSD), depression, adjustment disorder, agoraphobia, and obsessive compulsive disorder (OCD). It is usual for people with psychiatric injuries to suffer from more than one.

PTSD

Post-traumatic stress disorder (PTSD) is an unusual mental disorder in that it can only be caused by a traumatic event. Unlike other mental disorders such as depression, it cannot occur because of a genetic pre-disposition or unresolved issues from childhood, for example. Therefore, PTSD is always classed as a psychiatric injury.

PTSD is often associated with people who have served in the armed forces and it is understandable why there would be a greater prevalence of the condition among military personnel. But it is not a given that PTSD will arise from combat, and the disorder is not exclusive to those who have witnessed the horrors of war. The overall rate of probable PTSD among current and ex-serving military personnel was six per cent in 2014-16 and four per cent among the civilian population.*

Symptoms include irritable behaviour and angry outbursts; recurrent distressing dreams, memories, or flashbacks; constant and all-consuming feelings of fear, anger, guilt, or shame; reckless and self-destructive behaviour; hypervigilance; lack of concentration; and feeling detached or emotionally estranged from other people, even those you love.

*Source: Study by King's College London/MoD 2003-2018



PTSD CASE STUDY

Steve joined the army at just 16 years old and was entrusted with commanding hostile operations in Helmand Province by the time he was 21.

“I loved my job and I would have happily died for the people of my country and nearly did on numerous occasions,” he said. “I have lost many friends and have many memories I would rather forget.”

At the time he was diagnosed with PTSD, Steve disagreed with the diagnosis as he felt only “weak” people had PTSD. His anger and self-destructive behaviour spiralled and eventually he went to prison after he assaulted a security guard. After his release, Steve was homeless, unemployed, and suffered flashbacks, nightmares, and suicidal thoughts.

LOSING A CHILD

Priya left home one morning to walk her nine-year-old daughter to school. An explosion demolished the side of a neighbouring house as they passed by, killing the little girl instantly. The blast was caused by escaped underground mains gas, which ignited as the neighbour’s central heating boiler switched on that morning.

Priya was walking a few paces behind her child and survived. But she suffers severe post-traumatic stress disorder and is unable to work full time. The girl’s father, Rahul, was at work 50 miles away when the tragedy unfolded. He rushed back and saw his daughter’s lifeless body when he arrived at the hospital. Rahul’s resulting mental injuries mean that he cannot travel anywhere which requires him to stay away from the family overnight. This has severely restricted his work life, as he used to travel across the UK. The little girl’s older sister witnessed the harrowing aftermath of the explosion from an upstairs bedroom window and called her father to tell him about her sister’s death. She downgraded her plans to go to university because her psychiatric condition prevented her from ‘abandoning’ her family as she saw it, in particular her surviving younger sister. The family has been unable to consider moving away from the family home, despite the painful memories, as they cling on to the child they lost. To leave would be to ‘desert’ her.



COULDN'T SAVE A WORKMATE

Mark worked as a scaffolder and was part of a team which was dismantling a roof. He was on the ground when his workmate fell and was trapped between two platforms. Mark could not move the platforms using the control panel on the ground because he was not trained how to operate it, so he and another colleague quickly scaled the scaffolding. Their workmate was unconscious and deteriorating before their eyes. They were able eventually to force a gap to release their colleague's body, but he had already died.

Mark was constantly disturbed by upsetting visions of people being crushed which replayed in his head. The terrifying nightmares led him actively to avoid sleep. Noises and smells Mark associated with the workplace triggered flashbacks and caused anxiety and distress, so he shut out the outside world and has been unable to work since. He withdrew from friends, family and his relationship, which was stable and loving before the incident. He locked himself away in a bedroom and drank heavily. His relationship broke down irretrievably and he has regressed to becoming dependent upon his retired parents.

THE ROLE OF THE LAWYER

Measure what is due

Working out how much compensation to claim is not straightforward. Most people would not know where to start.

Two people with the same knee injury sustained in the same way could receive very different levels of compensation. This is because compensation is calculated on losses and needs, as well as pain and suffering. Everyone's job, living, and family situations are different and these affect the losses and needs of an injured individual.

One man could be off work for five months on statutory sick pay and struggle to pay his rent. The other could be paid in full for the time off by his employer, but have additional childcare costs because of his injury. One might be fit and healthy before the injury, while the other may be older or frail so they will each need different therapies to get them back on their feet.

Make a claim against the right people

Recognising who to make the claim against can be the first hurdle. For example, claims involving collisions on roundabouts are notoriously complicated as it is likely that there will be multiple vehicles involved. Also, the highways agency might be responsible if the road layout caused the collision, or someone else might be responsible if the road is unadopted. Working all this out is not straightforward, and requires thorough assessment of the evidence.



Deal with the evidence

A lawyer will seek and examine medical reports, witness statements, and reports from experts. This is to find out, and then prove, exactly what happened, what injuries have been sustained, and who is responsible.

This evidence can be extensive and very detailed. There can be a lot to wade through in some cases.

Take on the other side

You cannot expect simply to be given compensation just because you ask for it. Those who are accused of negligence, or their insurers who have to pay, are likely to defend the claim. Insurance companies and the NHS have teams of legal specialists who defend cases for them. These people defend claims day in, day out and have the necessary skills and experience. The injured person probably has never had to make a claim for an injury before and does not have the skills and knowledge to fight an experienced defendant on his own. Imagine if those who harmed you accuse you of being dishonest about your injuries. How would you deal with that? If you are inexperienced in pursuing a case it could be the end of the road for your claim.



Look out for complications

Sometimes an injury can turn out to be more complicated or debilitating than originally thought, which can affect the type of claim. For example, what is diagnosed as a mild concussion, does not necessarily have 'mild' results on a person in the long term. Also, an injured hand may seem like a fairly minor injury but could easily become worse over time.

They take it off your hands

Suffering an injury can be traumatic, particularly in cases of life-changing injuries, abuse or bereavement. The last thing an injured person needs is to relive it constantly, over the phone, in writing, and in court. A lawyer is an injured person's representative in the literal sense. He or she will speak for the injured person and take on the worry and burden of achieving a fair outcome.

There is a shift in this modern era towards systems which do not involve human assistance. In the supermarket we can scan our own shopping and make the payment ourselves, and we can plan and book holidays online without going anywhere near a travel agent. But there is no automated equivalent for the intricacies and labour involved in providing legal advice.

TYPES OF LAWYER

Solicitors meet and liaise with injured people direct, establish their needs and provide advice and representation. They also act on behalf of injured people in court. In personal injury this is usually the county court but specialist solicitors can also represent people in the, High Court, and Court of Appeal, in England and Wales, the Sheriff Court and Court of Session in Scotland, County Court and High Court in Northern Ireland, and the Supreme Court.

Barristers in England and Wales, and **Advocates** in Scotland are specialists, often instructed by solicitors for complex advice on specific points of law. They also represent injured people in court and negotiate settlements. Those considered to have outstanding ability might be made a Queen's Counsel (QC) also known as 'taking silk'.

Legal executives have similar roles day-to-day as solicitors, but they have more 'on the job' training. They also often specialise in a particular area of the law early on in their training and so study fewer areas of law overall.

Paralegals assist other lawyers in their work. They undertake some of the same work as lawyers but do not give legal advice or represent people in court.

Source: The Law Society of England and Wales

COMPENSATION BREAKDOWN

Compensation comprises **three** elements:

To compensate claimants for the effect the injury has on them. For example, physical pain and suffering or mental anguish.

GENERAL DAMAGES

To compensate claimants for any upfront costs related to their injury. For example, transportation or adaptations to their home.

SPECIAL DAMAGES (PAST LOSS)

To compensate claimants for their loss of earnings in the future, or the loss of earning potential, and future care.

SPECIAL DAMAGES (FUTURE LOSS)





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