

Sewing Together the 'Patchwork Quilt'-

Practical Guidance in Psychiatric Damage Claims

Introduction

1. A full decade ago Lord Steyn said:

“My Lords, the law on the recovery of compensation for pure psychiatric harm is a patchwork quilt of distinctions which are difficult to justify. There are two theoretical solutions. The first is to wipe out recovery in tort for pure psychiatric injury... But that would be contrary to precedent and, in any event, highly controversial. Only Parliament could take such a step. The second solution is to abolish all the special limiting rules applicable to psychiatric harm... Precedent rules out this course and, in any event, there are cogent policy considerations against such a bold innovation. In my view the only sensible general strategy for the courts is to say thus far and no further... In reality there are no refined analytical tools which will enable the courts to draw lines by way of compromise solution in a way which is coherent and morally defensible. It must be left to Parliament to undertake the task of radical law reform.”

2. Ten years on the law relating to claims for psychiatric injury remains inconsistent, and appears to develop more in accordance with public policy on a case by case basis than by a coherent analysis of the law. Despite a comprehensive review by the Law Commission in 1998, no legislative reform has taken place. The boundaries set by the courts appear to be slowly unravelling at the edges. This seminar attempts to bring together the strands of principle applied to enable a pragmatic approach to bringing and defending claims involving psychiatric damage.

Overview of the current law in psychiatric damage claims

1. The law recognises two distinct categories of persons when considering claims for psychiatric injury; “primary victims” and “secondary victims”. The essential difference is that a “primary victim” is personally subjected to the danger of physical harm, whereas a secondary victim suffers psychiatric injury as a result of witnessing

physical harm to others without in fact being at risk himself. In addition to this, there may be recovery in cases where neither of these categories applies but where there is an assumption of responsibility by the defendant for the claimant giving rise to a special relationship.

2. A primary victim has by far the easier task of recovering damages. It is uncontroversial that where a claimant suffers physical injury as a result of the defendant's breach of duty, he may also recover damages for any psychiatric damage caused.
3. Where a person is subjected to the risk of physical injury but is not in fact physically harmed, they may nevertheless recover as a primary victim for psychiatric damage sustained, provided that the risk of physical injury was foreseeable.
4. In Page v Smith [1996] AC 155, the House of Lords considered this situation for the first time. The claimant was involved in a road traffic accident. He escaped without physical injury, but a few hours after the accident began to feel exhausted. This exhaustion continued, and he was eventually diagnosed with chronic fatigue syndrome. It was found by a majority that the psychiatric injury was reasonably foreseeable and therefore recoverable.
5. Lord Lloyd giving the leading judgment went further than this however. He considered (at pp188-9):
"Liability for physical injury depends on what was reasonably foreseeable by the defendant before the event. It could not be right that a negligent defendant should escape liability for psychiatric damage just because, though serious physical injury was foreseeable, it did not in fact transpire. Such a result in the case of a primary victim is neither necessary, logical, nor just."
6. The approach to take, therefore was whether it was reasonable foreseeable that the claimant would be exposed to personal injury, whether physical or psychiatric, as a result of the defendant's breach. If the answer was yes, a duty of care was

established even where physical injury did not in fact occur. This allows recovery where a physical injury is foreseeable but a psychiatric injury is not.

7. This has been applied in a number of later cases:

- *Donachie v Chief Constable of the Greater Manchester Police* [2004] EWCA Civ 405: A claimant suffered hypertension and extreme stress which led to a stroke, after being required to attach tagging devices to the underside of a suspect's car. This had to be done nine times before the device worked due to faulty batteries, and the claimant feared he would be discovered by the suspect and subjected to physical injury. It was held that there was a foreseeable risk of physical injury, and it was immaterial that the injury in fact caused was psychiatric injury which was not reasonably foreseeable.
- *Simmons v British Steel* [2004] UKHL 20: The claimant suffered an exacerbation of psoriasis and a severe depressive illness as a result of a prolonged absence at work and anger following an accident at work. The House of Lords held that having breached their duty of care to the claimant the defendant was liable for both physical and psychiatric injuries resulting from the accident, even if the developments in injury which followed were not reasonably foreseeable.

8. A secondary victim must overcome several hurdles in order to recover damages for psychiatric injury after witnessing a perilous event. The following criteria must be proven:

- It was reasonably foreseeable that a person of ordinary fortitude would suffer psychiatric injury in the prevailing circumstances
- The claimant must have close ties of love and affection with the victim
- The claimant must have been present at the accident or its immediate aftermath
- The psychiatric injury must have been caused by direct perception of the accident or its immediate aftermath and not upon hearing about it from someone else

- The claimant's injury has been sustained as the result of a "shock"
9. The first hurdle to overcome is to prove that it was reasonably foreseeable that a psychiatric injury would occur (McLoughlin v O'Brien [1983] 1 AC 410). Unless the defendant can be shown to have special knowledge, the test to be applied is whether a person of normal fortitude would have suffered such an injury. This may be determined in hindsight taking into account all the circumstances and the facts that were known to the defendant at the relevant time.
 10. The further control mechanisms were examined closely in the case of Alcock v Chief Constable of South Yorkshire Police [1992] 1 AC 310, a claim brought by friends and family of spectators in the stadium in the Hillsborough disaster.
 11. A close tie of love and affection can be presumed in some cases, but must be proved in others. The tie will be presumed, but may be rebutted, where the claimant is the spouse, parent or child and possibly fiancé. Relations who are more distant than this and friends must show that their relationship with the victim is comparable to that of a spouse, parent or child. It is the closeness of the care not the nature of the relationship which is important (McLoughlin v O'Brien, at 422). In Alcock a half-brother was found sufficiently close on the evidence available. This will be a question of fact to be determined in each case.
 12. Proximity to the accident or its immediate aftermath must be shown in both time and space. In Alcock, several victims attended the Hillsborough grounds some eight or nine hours after the disaster to identify bodies. This was found not to be part of the immediate aftermath. Lord Jauncey also considered that the purpose for which a person comes upon the immediate aftermath is also relevant. Attending to identify bodies was very different from attending a short time after the accident to provide comfort and care. (See also).
 13. A corollary of proximity is direct perception of the accident or its immediate aftermath. In Alcock it was held that witnessing the disaster on television did not

produce the required proximity, as none of the scenes showed recognisable individuals, and there was insufficient immediacy. The different views shown on television could not equate to actual sight and hearing. In addition, the trauma arose from confirmation of the death of a loved one and linking that to the scenes viewed, not from the earlier viewing itself. However, simultaneous broadcasts were not ruled out in every situation, for example the televising of an event during which a hot air balloon in which children were travelling burst into flames could be sufficient.

14. The requirement of a “shock” is the final control mechanism. In Alcock it was considered that ““Shock”... involves the sudden appreciation by sight or sound of a horrifying event, which violently agitates the mind. It has yet to include psychiatric illness caused by the accumulation over a period of time of more gradual assaults on the nervous system.” This again appears to relate to proximity to a particular event. It rules out, for example, a claim in relation to psychiatric illness caused by caring for the victim of an accident over a prolonged period.
15. The application of these principles in subsequent cases appears to be relaxing with time. Contrast:
 - Taylor v Somerset Health Authority [1993] 4 Med 34: Psychiatric injury caused by confirming a death by seeing a body in a mortuary shortly after death was insufficient. The fact of the death had been communicated by a third party for which there could be no compensation.
 - Walters v North Glamorgan NHS Trust [2002] EWCA Civ 1792: A negligent diagnosis led to a child suffering a fit, and dying 36 hours later. His mother successfully recovered on the basis that the “event” in question spanned the full 36 hours, beginning with the negligent infliction of damage and extending to a “dreadful climax”.
 - Galli-Atkinson v Seghal [2003] EWCA Civ 697: A claimant was told by police that her daughter had died. She saw her daughter’s disfigured body at the mortuary that evening and suffered psychiatric damage as a result. The Court of Appeal allowed the claim, applying Walters and finding that an event

might be made up of a number of components. The immediate aftermath extended from the moment of the accident to the time the claimant left the mortuary. Visiting the mortuary was not merely to identify the body, but completed the story from the claimant's point of view.

16. The question of who is a primary victim and who is a secondary victim will be a question of mixed law and fact in each case. This is not therefore an issue which is amenable to an application to strike out.
17. Neither is this a straight forward issue. In W v Essex County Council [2001] 2 AC 592, the House of Lords ruled that the categorisation of those claiming to be primary victims or secondary victims was not finally closed and could still be developed in different factual situations. Strike out was refused on the basis that the parents of children abused by a foster child placed in the home, and who had developed psychiatric injury as a result of feeling responsible having let the abuser into their home, might conceivably be secondary victims even though they discovered the abuse several weeks after its occurrence.
18. The application of the law has been considered in a variety of situations:
 - **Rescuers:** The position of rescuers was considered in White v Chief Constable of South Yorkshire [1999] 2 AC 455, a further set of claims brought in relation to the Hillsborough disaster. Lord Steyn found that there are limitations to rescuers recovering as primary victims:

“In order to recover compensation for pure psychiatric harm as rescuer it is not necessary to establish that his psychiatric condition was *caused* by the perception of personal danger... But in order to contain the concept of rescuer in reasonable bounds for the purposes of the recovery of compensation for pure psychiatric harm the plaintiff must at least satisfy the threshold requirement that he objectively exposed himself to danger or reasonably believed that he was doing so. Without such limitation one would have the unedifying spectacle that, while bereaved relatives are not allowed to recover as in the Alcock case, ghoulishly curious spectators, who assisted in

some peripheral way in the aftermath of a disaster, might recover. For my part the limitation of actual or apprehended dangers is what proximity in this special situation means.”

- **Employees and volunteers:** In White it was held that employees are not a special category of primary victim, and must prove a risk of physical injury in order to recover as a primary victim. However, liability may be established relying on the duty on employers to provide employees with a safe system of work. This gives rise to a special relationship such that an employee may recover for psychiatric harm caused in his employment where the employer knew or ought to have known that the employee has a special vulnerability to psychiatric harm. The requirements in these “occupational stress” cases were considered in Barber v Somerset County Council [2004] UKHL 13, where the House of Lords held that there was an onus on employers to give positive thought for the welfare of its workers, to determine whether an employee had such a vulnerability. Liability may also arise where there is no knowledge of an employee’s vulnerability, but where an employee is exposed to a traumatic event at work which gave rise to a foreseeable risk of psychiatric harm and the employer fails to provide suitable counselling (Melville v Home Office [2005] EWCA Civ 6). In Leach v Chief Constable of Gloucestershire Constabulary [1999] 1 WLR 1421 it was found that there was a duty of care owed to a volunteer working with the police who had not been given counselling following traumatic events (involvement in interviews with Fred West), on the basis of an assumption of responsibility.
- **Involuntary participants:** In Alcock a special category of primary victim was considered to exist where the negligent act of the defendant has put the claimant in the position of thinking that he is about to be or has been the involuntary cause of another’s death or injury and psychiatric damage is caused as a result of the shock of this supposed fact. This established a sufficiently proximate relationship and the question was whether or not psychiatric injury to the claimant was reasonably foreseeable. Following White it may be necessary to show that the claimant himself was in the range of foreseeable physical injury to recover as a primary victim. In Hunter v

British Coal Corporation [1999] QB 140 a claim by a driver at a coal mine who had hit a fire hydrant which subsequently exploded and killed his colleague, and who heard did not see the accident, was found not to have been sufficiently proximate to the accident to come within the class of primary victim, and his irrational feeling of responsibility was not a foreseeable consequence of the defendant's breach of duty in failing to maintain the road. Further, there were no grounds for recovery as a secondary victim.

- **Damage to property:** The Court of Appeal held in Attia v British Gas [1988] QB 304 that a claim for psychiatric illness could be founded on witnessing damage to property, in that case the burning down of the claimant's home. Foreseeability of injury was proven. A further example was given of a scholar's life's work of research being destroyed before his eyes. The basis for this is that it would not be fair to exclude such liability on policy grounds. This follows the earlier decision of Owens v Liverpool Corporation [1939] 1 KB 394, a successful claim by relatives in a funeral procession who had witnessed the deceased's coffin overturned when the hearse it was in was negligently struck by a tramcar. Some commentators seek to explain such cases as being analogous with cases in which there is an assumption of responsibility, however this cannot be correct. For example, in Owen it is suggested the undertakers assumed a responsibility for avoiding upset to those attending the funeral, however the undertakers were not the defendants and it is difficult to see how any special relationship could be found between the relatives and the tramcar driver.
- **Negligent communications:** In Farrell v Avon Health Authority [2001] Lloyd's Rep Med 458 a claimant suffered psychiatric injury as a result of being told, incorrectly, that his son had died and being given the corpse of a baby to hold, then being told that a mistake had been made. He was able to recover damages as a primary victim as he was physically involved in the incident. He could not be a secondary victim as there was no other person physically involved as a victim. This reasoning makes little sense when the test for recovery as a primary victim is considered, as there is no suggestion of any risk of physical injury to the claimant. However, a similar result might have

been reached by considering whether there was an assumption of responsibility giving rise to a special relationship, together with a foreseeable risk of psychiatric injury.

- **Fear of future injury:** In *Creutzfeldt-Jakob Disease Litigation: Group B Plaintiffs v Secretary of State for Health* (2001) 41 BMLR 161, claimants who had been negligently injected with a human hormone which exposed them to a risk of contracting CJD were able to recover damages for psychiatric injury suffered as a result of fear of death. They could not be considered to be primary victims, as the injury was not triggered by a physical event. However there was a close and proximate relationship akin to that of a doctor and patient, and it was reasonably foreseeable that psychiatric injury would result from the claimants being told that there was a risk they may contract CJD. This decision has been recently approved in *Grieves v FT Everard & Sons Ltd* [2007] UKHL 39. In that case the claimants had suffered pleural plaques as a result of negligent exposure to asbestos. Pleural plaques were symptomless and did not in themselves cause any risk of future disease. They indicated however a significant exposure to asbestos and that exposure carried a risk of the future contraction of asbestosis. Learning of the exposure and the risk of future disease caused the claimants psychiatric illness. It was held that their claims could not succeed. Applying *Group B* the claimants could not recover as primary victims as the plaques were not a physical injury, being symptomless. They could not recover in the same way as the claimants in *Group B*, as there was no foreseeable risk of psychiatric injury to a person of reasonable fortitude.

19. It should also be remembered that damage for psychiatric injury can exceptionally be recovered in an action in contract, where the contract is not purely commercial but has as its object non-pecuniary personal benefits (*Farley v Skinner (No.2)* [2001] UKHL 49, *Johnson v Unisys Ltd* [2001] UKHL 13).

The requirement for a recognised psychiatric injury

20. No recognised psychiatric injury is required in cases where a primary victim suffers physical damage. In such a case, a claimant may recover additional general damages for distress and anxiety caused by an accident falling short of a recognised psychiatric illness.
21. There are also statutory situations in which damages may be recovered for distress and psychological suffering short of a recognised psychiatric illness. The statutory bereavement award under the Fatal Accidents Act 1976 is awarded to certain categories of claimant without the need for medical evidence. Damages for reduced life expectancy under the Administration of Justice Act 1982 may be awarded in respect of “suffering caused or likely to be caused to [the claimant] by awareness that his expectation of life has been reduced”.
22. In all other cases, where a duty of care is established recovery of damages depends on causation of a recognised psychiatric illness. In McLoughlin Lord Bridge stated:
“The common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured. Anxiety and depression are normal human emotions. Yet an anxiety neurosis or a reactive depression may be recognisable psychiatric illnesses, with or without psychosomatic symptoms. So, the first hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress, or any other normal emotion, but a positive psychiatric illness.”
23. Similarly in Page it was considered by Lord Jauncey:
“My Lords, the primary issue in this appeal is whether in a case of injury resulting solely from nervous shock a plaintiff must show that injury of such a type was foreseeable or whether it is sufficient to show that any personal injury was foreseeable. By nervous shock, I mean such an impact upon the mind or nervous system as is recognised by modern medical science as capable of causing physical or

psychiatric illness. The ordinary emotions of anxiety, fear, grief or transient shock are not conditions for which the law gives compensation.”

24. The phrase “nervous shock” is often used to categorise the type of injury involved in these claims. However, Bingham LJ in *Attia* stated that this was a “misleading and inaccurate expression”, and that a preferable term was “psychiatric damage”, intending to comprehend within it all relevant forms of mental illness, neurosis and personality change.” A “shock” may be a requirement for recovery as a secondary victim, but it is no longer an appropriate way to describe the resulting psychiatric injury.
25. The next question is, what is a recognised psychiatric injury? The Court of Appeal recently considered this question in *Hussain v Chief Constable of West Mercia* [2008] EWCA Civ 1205:

“A recognised psychiatric illness is one which has been recognised by the psychiatric profession. In general, they are illnesses that are within the ICD (International Statistical Classification of Diseases and Related Health Problems) classification published by the World Health Organisation.”
26. There are two systems of classification generally used by the psychiatric profession:
 - **ICD-10** Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines, 1992 published by the World Health Organisation
 - **DSM-IV-TR**, the Diagnostic Statistical Manual of Mental Disorders 2000, published by the American Psychiatric Association
27. The JSB Guidelines in relation to psychiatric damage are based on the DSM-IV-TR.
28. There are a number of well recognised and frequently relied on psychiatric illnesses:
 - **Anxiety disorders** including Post Traumatic Stress Disorder (PTSD), specific phobias, acute stress disorder and generalized anxiety disorder
 - **Depressive disorders** or mood disorders, including major depressive episodes

- **Adjustment disorders** which shorter phases of the other categories, for example adjustment disorder with mixed and anxiety and depressed mood

Choosing and challenging expert evidence

29. Expert evidence will invariably be required in order to prove, or disprove, the existence of a psychiatric illness. There is a difference between psychiatric reports and those obtained from a psychologist, although in many cases either would be equally appropriate. A psychiatrist is medically qualified, and can prescribe medication along with other therapies, making psychiatrists perhaps a better choice in cases involving drug therapies in the treatment of injury. A psychologist is not medically qualified however may carry out psychotherapy. The choice of expert will depend on the circumstances of the case. Specialisms such as neuropsychology may be required.
30. There are however limits to expert evidence. In McLoughlin, it was found that the question of whether psychiatric injury was reasonably foreseeable to a person of ordinary fortitude may be assisted by expert evidence, but that the test was for the judge to apply “relying on his own opinion of cause and effect in psychiatric medicine”.
31. Generally a court will be satisfied that there is a recognisable psychiatric injury if the symptoms displayed constitute a diagnosis as set out in the ICD-10 or DSM-IV-TR. A careful examination of the diagnosis made in an expert report may however assist in persuading a court to find that such a classification should not be relied on in a particular case, either to support or to rebut a particular diagnosis.
32. There are several areas where a diagnosis made using the ICD-10 and DSM-IV-TR may be open to challenge (see Personal Injury Law Journal May 2009, “Checks and Balances” by Dr David Gill):
 - The two systems were designed for research and clinical use, not for medico-legal purposes. The introduction to the DSM-IV states:

“When the DSM-IV categories, criteria, and textual descriptions are employed for forensic purposes, there are significant risks that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern to law and the information contained in a clinical diagnosis. In most situations, the clinical diagnosis of a DSM-IV mental disorder is not sufficient to establish the existence for legal purposes of a “mental disorder”, “mental disability”, “mental disease”, or “mental defect”.”

- Both systems contain checklists against which symptoms may be compared. Many experts rely on these checklists to provide a diagnosis, rather than considering the discursive text provided or wider clinical judgment. The introduction to the DSM-IV-TR makes it clear that this is insufficient:
“The diagnostic categories, criteria and textual descriptions are meant to be employed by individuals with appropriate clinical training and experience in diagnosis. It is important that DSM-IV not be applied mechanically by untrained individuals. The specific diagnostic criteria included in DSM-IV are meant to serve as guidelines to be informed by clinical judgment and are not meant to be used in a cookbook fashion. For example, the exercise of clinical judgment may justify giving a certain diagnosis to an individual even though the clinical presentation falls just short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe.”
- The statement of truth to be included in expert reports under CPR PD35 includes confirmation that, “the opinions I have expressed represent my true and complete professional opinion”. A “tick-box” approach to the diagnostic criteria may be challenged as incomplete. It may tend to emphasise the claimant’s account of symptoms and under-emphasise relevant background factors.
- Further areas raised in the practice direction which are often missed in the body of reports (even though they might have been considered and specified in a summary of the expert’s duties of which they are aware) are the duty to consider all relevant facts including those which detract from the expert’s

opinion, and the duty where there is a range of opinion on the matters dealt with within the report, to summarise that range of opinion. Where two experts are not in agreement on an issue, lack of specificity as to the reasons for preferring one diagnosis over another may leave a report open to challenge.

- The DSM-IV requires malingering to be “ruled out”. A definition of malingering is provided, which states that malingering should be “strongly suspected” where two or more of the following factors apply:
 - (i) A medico-legal context
 - (ii) Anti-social personality disorder
 - (iii) Discrepancy between complaints and objective findings
 - (iv) A lack of co-operation with the assessment.
- The DSM-IV-TR provides five axes under which a diagnosis may be made. Frequently reports using this system only refer to Axis I, for clinical disorders. Where there are background factors which may affect a global diagnosis, these may be found under other axes, for example Axis IV deals with psychosocial and environmental problems, such as “threat of job loss” or “victim of child neglect”. Similarly, the ICD-10 has a list of “Z Codes” which are descriptors for patients who have come into contact with health services where their underlying problem is in fact related to work rather than health, for example Z56.4, “discord with boss and workmates”. This may be of assistance to offer an alternative to a diagnosis of a recognised clinical disorder where there is a challenging background employment situation, for example, where a depressive disorder has been diagnosed in circumstances where symptoms relate not only to an accident at work but also to the manner in which the aftermath has been dealt with by an employer.

Recent case law update

33. *Gray v Thames Trains* [2009] UKHL 33

The claimant was a passenger on a train involved in the Ladbroke Grove rail crash, an accident caused by the defendant’s negligence. The claimant sustained minor physical injuries and PTSD, and while receiving treatment for PTSD he stabbed to

death a pedestrian who had stepped in front of his car. He pleaded guilty to manslaughter on the grounds of diminished responsibility caused by PTSD and was sentenced to be detained in hospital. In an action for negligence against T he claimed general damages for his conviction, detention and feelings of guilt and remorse, and for damage to his reputation. He claimed special damages in respect of his loss of earnings until the date of trial and continuing, and sought an indemnity against any claims which might be brought by dependants of his victim. The Court of Appeal held that it was bound by the decision in Clunis v Camden and Islington HA [1998] QB 978 CA (Civ Div) to find that recovery of general damages was precluded, while recovery of loss of earnings was not. The House of Lords held that the Court of Appeal was correct in applying Clunis to reject the claim for general damages. However, the claim for loss of earnings should also have been precluded. While it was true that even if he had not committed manslaughter, his earning capacity would still have been impaired by the PTSD, liability was precluded by the decision in Jobling v Associated Dairies [1982] AC 794 HL applied. The claim for loss of earnings after the claimant's arrest and his claim for general damages were claims for damage caused by the lawful sentence imposed upon him for manslaughter.

34. Yearworth v North Bristol NHS Trust [2009] EWCA Civ 37:

Cancer patients being treated by the NHS Trust brought for psychiatric damage resulting from the loss of sperm samples brought about by the failure of equipment storing the samples. At first instance it was held that the samples did not amount to the claimants' property, and that applying Grieves "any psychiatric injury was not as the result of any past event but as a consequence of apprehension about a future event, namely apprehension that he might not regain his fertility post treatment". The Court of Appeal found that the samples were the property of the claimants. Grieves was not applicable. The test in tort was whether the damage was a reasonably foreseeable consequence of the breach. In any event, the claimants could recover in bailment. The situation was closely akin to recovery for breach of contract where the object of the contract was to provide pleasure, relaxation, peace of mind or freedom from molestation, Farley v Skinner applied.

35. Hussain v Chief Constable of West Mercia [2008] EWCA Civ 1205:

A taxi driver brought a claim for misfeasance in a public office against a police authority, alleging that the police had not responded to his complaints in relation to numerous incidents involving the public. A report (by Dr D Gill) noted a complaint of numbness of the left arm and leg under stress. The claimant was diagnosed as having stress related symptoms, but did not consider that these amounted to a diagnosable condition. The Court of Appeal dismissed his appeal on the basis that the symptoms experienced did not amount to “material damage” required for a claim to succeed.

36. Dickins v O2 [2008] EWCA Civ 1144

An employee was promoted to a position in which she was not given promised support, and became stressed as a result, sustaining a stress-related illness. She twice asked for a six month break from work, and it was promised that she would be referred to occupational health but this was not done. The Court of Appeal held that the indication of a stress related illness had to be clear before an employer had to do anything about it. However, it should have been plain to her managers when she first requested time off work that she was under “extreme pressure”, which was sufficient indication of her impending illness. There had been a breach of duty by the failure to refer the claimant to occupational health or allow her the requested time off work. This had made a material contribution to the claimant’s severe psychiatric illness. (See also a similar decision in Connor v Surrey 19th March 2009 QBD)

37. Corr v IBC Vehicles Ltd [2008] UKHL 13:

A widow was able to recover damages under the Fatal Accidents Act 1976 in respect of her late husband’s suicide. Her husband had been involved in an accident at work some six years before the suicide and had suffered from PTSD which worsened over time. It was argued by the employer that suicide was not reasonably foreseeable, that it broke the chain of causation, and that it was a voluntary act for which the employer could not be responsible. The House of Lords dismissed the employer’s appeal, finding that the employer owed a duty of care not to cause physical or

psychiatric damage, and both had been sustained. Depression, possibly very severe, was a possible consequence of the breach, and it was not necessary to show precisely what form the damage might take. Suicide was not so unusual a consequence that it was outside reasonable foreseeability. The suicide was not voluntary as the employee's capacity to make informed judgments about his future was affected by the severe depressive illness. The court below had made no findings as to contributory negligence. A deduction for contributory negligence could be appropriate in cases of deliberate suicide.

38. Monk v PC Harrington Ltd [2008] EWHC 1879 (QB):

The claimant was a self-employed foreman on the Wembley construction site. He attended the scene of an accident where a temporary platform had fallen 60 feet onto two workers. He believed he had caused the accident. It was held that the claimant's assistance in comforting the injured men until the ambulance arrived was neither trivial nor peripheral, therefore he was a rescuer. However he could not recover as a primary victim as he did not hold a reasonable belief that he was putting his own physical safety at risk. Neither could he recover as an involuntary participant. Any belief that he held that he had caused the accident was not a reasonable belief, therefore it was not reasonably foreseeable that someone in his position would suffer psychiatric injury as a result of such a belief.