

# Compensation explained



**A guide to personal injury  
compensation, its purpose, and its  
value to society**

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# Introduction

This booklet explains compensation for personal injuries: why it is important that injured people are compensated; what it takes for them to receive compensation; and how we can ensure the legal system is fit for purpose.

Many people may not give a second thought to the realities of needing help after an injury. No-one plans to be injured. Hopefully most of us will never experience needless pain and have to seek support from the law as a consequence. But in a modern, caring society, those who are injured because of someone else's failure to take proper care should not have to suffer any further and should not lose out financially as a consequence. As members of that society, we all need to appreciate the realities for injured people who have their lives thrown into disarray, on any scale, through no fault of their own.

**Mike Benner**

**Chief Executive**

**Association of Personal Injury Lawyers (APIL)**

# The composition of compensation

Compensation is split into three parts – or ‘heads of damage’. Each part considers either what the injured person has already lost, what he might lose or need in the future, or how much he has suffered.

<b>General damages</b>	Compensation for pain, suffering and the detrimental effect on quality of life.	The courts often calculate using previous cases with a similar injury. The length of time the claimant is in pain and the effect it will have on the claimant’s personal life are also assessed.	<b>Things to consider:</b> <ul style="list-style-type: none"><li>• the unnecessary suffering, for days, weeks, months, or permanently;</li><li>• the residual impact on an individual’s life. An injury could mean a keen cricketer is unable to play; a mother cannot pick up her child; a teenager cannot go out with his friends; or a father is unable to walk his daughter down the aisle on her wedding day.</li></ul>
<b>Special damages for past losses</b>	Compensation for upfront expenses related to the injury.	Calculated using a record of expenses incurred from the moment of the injury until the case has been settled.	<b>Things to consider:</b> <ul style="list-style-type: none"><li>• travel expenses;</li><li>• prescriptions and medical treatment;</li><li>• adaptation to property;</li><li>• additional care and assistance while injured, such as extra childcare.</li></ul>
<b>Special damages for future loss</b>	Compensation for the loss of earnings in the future, or the loss of earning potential, and future care.	Calculated depending on the claimant’s ability to work or continue studying. This becomes more complicated for claimants who are in education or self-employed as there is not a fixed income.	<b>Things to consider:</b> <ul style="list-style-type: none"><li>• nursing care or therapies.;</li><li>• special equipment such as prosthetic limbs which need to be replaced every few years;</li><li>• injured people may no longer be able to perform the same jobs they did before, if they can work at all;</li><li>• missed career or educational opportunities - promotions, new projects or other delayed/lost advancement.</li></ul>

# A breakdown of damages

A 60-year-old woman, Mrs Smith<sup>1</sup>, was hit by a bus when it mounted the curb.

As a result Mrs Smith suffered:

- A fractured skull
- Bruising of the temporal lobe
- Facial paralysis
- Loss of smell and some loss of taste
- Some hearing loss in the left ear
- Dizziness
- Minor wrist injury
- Post-traumatic stress disorder of moderate severity

Because of these injuries Mrs Smith had to undergo surgery to repair some facial paralysis. Because of this it was also necessary for Mrs Smith to have laser eye surgery as wearing glasses was uncomfortable.

Mrs Smith has been left with ongoing dizziness, a tender ear following the facial paralysis surgery and loss of taste, smell and hearing in her left ear.

Before she was injured, Mrs Smith planned to continue working as an accounts assistant until retirement at the age of 65. Due to her ongoing injuries, she was forced to take early retirement and now requires assistance at home with cleaning and running errands.

<sup>1</sup>Name changed to protect identity

<sup>2</sup>loss of earnings for Mrs Smith's husband, who cared for his wife

	<b>General damages</b>
<b>£39,000</b>	pain, suffering and loss of amenity
	<b>Special damages for past losses</b>
<b>£1,500</b>	Care
<b>£300</b>	Travel
<b>£500</b>	Lost earnings (spouse <sup>2</sup> )
<b>£2,000</b>	Laser eye surgery
<b>£3,500</b>	Hearing aids
	<b>Special damages for future losses</b>
<b>£5,000</b>	Future hearing aids
<b>£5,000</b>	Potential future earnings
<b>£10,000</b>	Future care



# Q&A

## Why don't injured people just 'get on with it'?

The effect of an injury on an individual should never be underestimated.

Even a minor injury can be very painful and can disrupt someone's life if only on a temporary basis. Someone with a fractured wrist, for example, might not be able to drive while the bone heals, which has an impact on work and social life and can incur expenses. He or she may not be able to play sport, or play with children or grandchildren. Basic tasks, such as washing hair, can suddenly be challenging. Imagine simply putting up with this, when someone else's negligence has caused it, and when you have a right to help and redress. Also, it is not fair that the State should pay when people are out of work or need physiotherapy when the person who caused the injury has an insurance policy in place to cover the cost of personal injuries.

The impact of a catastrophic injury, such as losing a limb, probably seems obvious to most people. But as well as funding care, rehabilitation, and covering financial losses, an injured person is compensated for the unquantifiable losses of pain and suffering. For some, life as they know it is changed forever because of their injuries.

Jane McBennett, a clinical negligence specialist, had a client whose knee replacement surgery was performed negligently. The only way to resolve the damage was to amputate his leg above the knee: "This was a person who enjoyed working and had a nice lifestyle. You can just imagine how they felt to suddenly find themselves in this position where the world is an uncertain place. They were faced with losing their job, their hobbies and their stability."

## I'm injured. Can I be compensated?

Not necessarily. There is a significant difference between an injury caused by an accident which could not have been avoided, and an injury which could have been avoided had it not been for someone failing to take proper care. Injured people only have a right to compensation when they have been injured by negligence.

By the way, you never 'win' compensation. No-one who is suffering because of someone else's negligence would think of themselves as 'a winner'.

## What is needed for a claim to be successful?

It must be determined who can be held responsible for causing your injury and that they were negligent. This is establishing 'liability'.

In some cases, liability can be difficult to prove. Part of your lawyer's job is to prove that the person or people who caused your injury were negligent and also that they are legally answerable for your injuries.

It must also be proven that the negligence caused the injury. This is called 'causation'. Causation is usually obvious. For example, if you fall from height and have a broken back afterwards there is little room for doubt that the event and the injury are connected. But sometimes the extent to which the negligent act caused the harm can be called into question, such as if the injured person has a pre-existing medical condition. In workplace disease cases it can sometimes be difficult to prove that the illness was not contracted elsewhere.

Once liability and causation have been established the amount of compensation, or (damages) is addressed.

## How is compensation calculated?

It is a very detailed process. Two people with the same injuries, even if caused in the same incident, will almost certainly receive different levels of compensation because they will have separate individual needs. An injury can affect different people in different ways. This could be down to age, ability to earn and pay the mortgage and other factors including family life. An injured person may have responsibilities for children, or other family members, which cannot be fulfilled as a result of the injury and for which he or she needs to be compensated. This is why judges oversee compensation payments in most types of personal injury case, to ensure the damages are fair and reasonable.

## Why are injured people compensated with money?

“Money in itself is not something which can replace adequately what has been lost, in terms of the ability to do some of the things you could do before,” says APIL executive committee member Suzanne Trask. “But it does make some things easier”.

Personal injury law exists to help put an injured person’s life back to where it was before a needless injury happened.

“Often, we are limited to achieving that through money,” Suzanne explains. “But also rehabilitation is available to help them to get better at the same time”.

## What should I do if I am injured and want to claim?

“Make sure your lawyer is a specialist in personal injury. Finding a decent lawyer is the first challenge,” says APIL executive committee member Colin Ettinger.

He explains: “Lawyers can operate in all areas; the job isn’t always distinctive like it is for doctors. You wouldn’t have a neurosurgeon repairing a broken leg, whereas I have never done a conveyancing job in my life, but there’s nothing to stop me from doing it.

“It really comes down to making sure your personal injury lawyer has the relevant accreditation and is experienced. Injured people need sophisticated legal advice”.

# Cosmetic injuries

Joanne<sup>1</sup> arrived at the airport and was going to the animal cargo hold to pick up her pet kitten after her holiday. She tripped and fell over a sunken manhole cover which needed repair. There were no warning signs.

Joanne's face, chest and legs were severely bruised. She also fractured three teeth and suffered a large cut on her lip.

These injuries were painful. The damage to her face and teeth was also very noticeable and made Joanne, a young woman, feel very insecure. She had to endure extensive, painful dental treatment, which compounded her suffering.

<sup>1</sup>Name changed to maintain confidentiality

## Breakdown of damages



General damages for pain, suffering and loss of amenity	£12,381.58
Special damages for past and future losses (dental work)	£1,950
<hr/>	
Total compensation	£14,331.58

# Slip 'n' trip

Emily<sup>1</sup> went to use a portaloos at a local carnival. There were no lights so Emily could not see that the floor was wet. She slipped and fractured her wrist.

The fracture has caused ongoing pain along the side of Emily's arm and wrist. She tries to avoid doing tasks with that arm. It is particularly frustrating for Emily, as even menial day-to-day tasks such as cooking, cleaning, and shopping are a struggle as her movement is limited. She has to make allowances for her injury in every single thing she does. She cannot drive long distances, she cannot pick up children, she is limited in the sports she can enjoy.

The injury has led to her having to rely on her husband to do many things. It is unlikely that her wrist will ever heal completely.

<sup>1</sup>Name changed to maintain confidentiality

## Breakdown of damages

£15,000

General damages for pain, suffering and loss of amenity

£7,500

Special damages for past and future losses

£22,500

Total compensation



# Invisible harm

## Psychiatric damage

Anna's\* son Samuel died when he was just eight days old. Samuel and his twin brother, Thomas, were born three weeks premature and were incubated in the hospital's intensive care unit. Samuel was in a good condition at birth.

Both boys were fitted with a total parenteral nutrition line (TPN) - a long line into the heart through which the brothers were 'fed' the nutrients they needed. If a baby with a long line suddenly deteriorates it is standard and expected procedure, outlined in the Department of Health's guidelines, for the possibility of a condition called cardiac tamponade (compression of the heart by an accumulation of fluid) to be considered and investigated.

But medics failed to diagnose and treat cardiac tamponade in Samuel quickly enough to save him. A simple procedure to relieve the pressure around his heart would have saved him. It was later discovered that the cardiac tamponade had been caused by the TPN line being positioned incorrectly.

As Samuel deteriorated, his parents were contacted and told that he had taken a turn for the worse and they rushed to his bedside. On arrival, they were greeted by the sight of their son undergoing the resuscitation procedure, a doctor shaking his head, and flatlines on a heart monitor. Anna says a nurse told them that "these things happen". Another doctor produced three syringes of 'milky and bloody' fluid, taken from Samuel's body, while Anna and Samuel's father looked on. Following Samuel's death, his parents continued to visit his twin Thomas in the same intensive care ward, next to Samuel's now-empty cot. Anna suffered significant psychiatric damage from the trauma.

Anna had a top-level management job with an international corporation, which she lost as a result of her psychiatric injuries. She re-experiences the trauma of Samuel's death both mentally and physically. Psychiatric harm manifests itself in victims in various forms, including flashbacks, nightmares, anxiety, insomnia, emotional detachment, and dissociative amnesia.

Experts involved in the case agreed that while Anna still has the potential to work, but positions which demand high levels of pressure, stress, decision making and/or confrontation are grossly inadvisable because of her psychiatric damage.

\*Name changed to maintain confidentiality

### Breakdown of damages

General damages for pain, suffering and loss of amenity	£41,075
Special damages:	
Past losses (up until the trial)	£118,682
Future losses	£366,139
<hr/> Total compensation	£525,896

# General damages for pain and suffering

The part of compensation called 'general damages' compensates an injured person for his pain and suffering. It also compensates for the impact the injury has had on someone's quality of life, called 'loss of amenity'. This compensation is not about paying for care, or financial loss, but is an acknowledgment that what happened should not have happened.

"We cannot put people back where they were, we cannot magic the injury away, so how else could the wrong be acknowledged if not with a monetary payment?" says APIL senior litigator Jane McBennett.

The level of general damages for pain and suffering for each type of injury is set by judges (see examples). The guidelines are a judge's first port of call when assessing how much an injured person should receive in general damages.

The money is not a windfall. Consider how much money you would accept in return for being in pain every day. Would it be worth it to not be able to do all the things you used to do before you were injured? What would losing a limb, or your sight, be worth to you?

"The biggest misconception about personal injury is that people make a claim simply because they want cash," said APIL president Brett Dixon. "In my experience, they would much rather it had never happened. I've lost count of the number of times an injured person has said to me 'I'd rather just be the way I was.'"

# What is the price for being injured?

According to Judicial College *Guidelines for the assessment of general damages in personal injury cases*, Oxford University Press, 14<sup>th</sup> edition.

## **Shoulder injuries.**

With considerable pain but where a full recovery is made in less than two years.

**£3,810 - 6,920**

## **Mental anguish.**

The fear suffered by a parent for the impending death/reduced life expectancy of their young child for up to three months.

**£4,100**

## **Multiple fractures.**

To facial bones involving some facial deformity.

**£13,080 - 21,000**

## **Complete loss of sight in one eye.**

**£43,200 - 48,080**

## **Lung disease.**

For a young person with a serious disability where there is a possibility of progressive worsening leading to premature death.

**£84,150 - 113,580**

## **Loss of one leg above the knee.**

**£88,270 - 119,210**

## **Total blindness AND deafness.**

**£354,260**

## **Very severe brain damage.**

There may be some ability to follow basic commands. There will be little, if any, evidence of meaningful response to their surroundings, little or no language function, double incontinence and the need for full-time nursing care.

**£247,280 - 354,260**



## Catastrophic workplace injury

Stephen Rizzotti was buried under half a ton of rubble when the contents of a hoist basket were released onto him at work. Before his injuries the father-of-three was independent, fit and active. He took pride in never having had a sick note. He is now paraplegic and severely disabled. He is confined to a wheelchair, and cannot control his bowels. He is in permanent pain and is often confined to his bed as a result.

His life, and the lives of his wife and children, has changed dramatically. Nothing now is spontaneous. Things most of us take for granted, such as going out for a meal, are major operations. Stephen says the general damages to compensate him for his pain and suffering should, in his eyes, also be for the four people closest to him. It should be to try to compensate his two daughters in some way for the fact that he will never be able to walk them down the aisle; to compensate his daughter Emily for the fact that he cannot always go and support her when she plays in a football match, which he describes as “heartbreaking”; to compensate his son for not being able to learn to play golf from his father, but having someone else to help him instead; and for his wife, Jayne, who gave up her career to spend time with him. “If Jayne didn’t spend time with me,” he said, “I couldn’t stand it. How much of a price can you put on all that?”

## Whiplash injury

Richard taught ju-jitsu for 10 years before a van ran into the back of his car two years ago. He still teaches, but needed six weeks away from the sport, and still has to be careful as some movements can be very painful.

Much of Richard's compensation was for his pain and suffering. "If someone asked me if I would like the £4,000 or my old neck back I'd have my neck," he said.

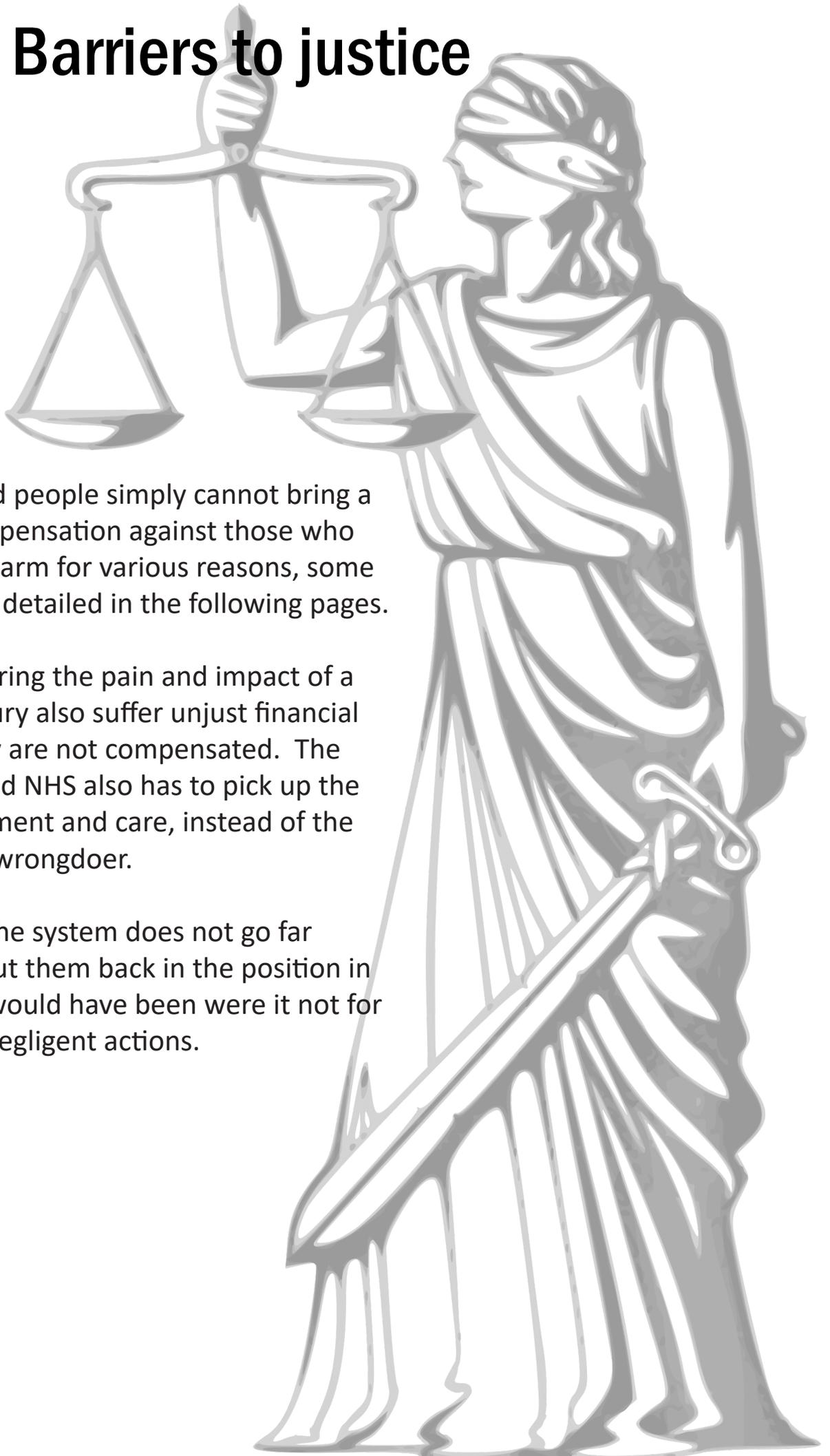
The 53-year-old still cannot move his head fully to the left or the right, which is particularly debilitating when he is practising ju-jitsu and when he is driving. He often finds he has to use his whole body to move side-to-side, which has an obvious impact on his much-loved sporting pastimes.

"I can still teach, but I have to be more careful and also when I am driving. I was so used to just moving around how I wanted before, but now the injury is always there.

"Physiotherapy helped but it is now just one of those things and you have to get on with it. But I don't expect it will ever go away, it will stay with me".



# Barriers to justice

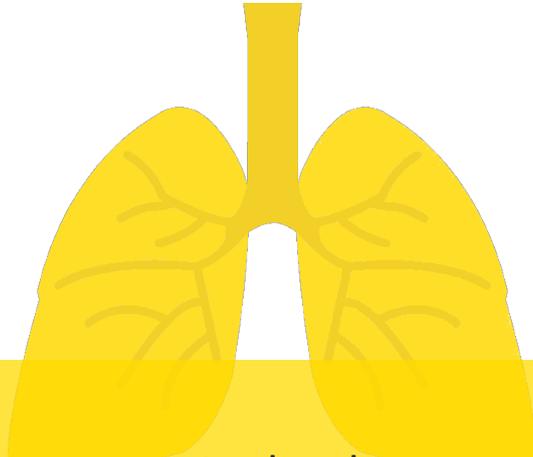


Some injured people simply cannot bring a case for compensation against those who caused the harm for various reasons, some of which are detailed in the following pages.

People enduring the pain and impact of a needless injury also suffer unjust financial losses if they are not compensated. The cash-strapped NHS also has to pick up the bill for treatment and care, instead of the responsible wrongdoer.

For others, the system does not go far enough to put them back in the position in which they would have been were it not for someone's negligent actions.

## Workplace diseases



Some workers exposed to asbestos go on to develop mesothelioma, an aggressive and fatal lung cancer which is caused exclusively by asbestos. Because it can take many years for the mesothelioma to emerge, it can often be difficult to track down the responsible employer and the employer's insurer for compensation. This is because, over time, records have been lost or destroyed. In 2013, the Diffuse Mesothelioma Payment Scheme was established by the Government to pay compensation to these people who cannot trace their former employers' insurers. While this is a good start in terms of finding justice and support for victims and their families, mesothelioma is not the only asbestos-related killer. Victims of other asbestos-related cancers and workplace injuries have no such scheme to which they can turn.

## Bereavement damages

Only a very restricted group of people can claim bereavement damages in England and Wales when a person is killed due to the negligence of someone else, such as another driver or an employer. Those who can claim receive a statutory fixed sum of £12,980. Those eligible are the deceased's wife, husband, or civil partner; the parents of an unmarried legitimate child under the age of 18; and the mother of an unmarried illegitimate child aged under 18. The law does not account for modern relationships. In some families, for example, a grandparent takes the effective role of a parent, but the law does not account for the impact of the needless death of a grandparent.

But in Scotland, a judge or jury decides how much compensation should be awarded for grief and trauma and which relatives should receive it.

“The situation in Scotland is far fairer,” says APIL executive committee member Suzanne Trask. “It has a tailored approach to a family member and what they have lost individually. It really does far better reflect the relationship those people have. In England and Wales the list of people eligible is very limited. It just does not reflect modern society”.

# Psychiatric harm

Psychiatric harm can prove to be every bit as debilitating, if not more so, than physical harm.

‘Secondary victims’ who suffer psychiatric harm as a result of the deaths or injuries of loved ones are not entitled to make claims for compensation unless they meet very strict and outdated criteria.

Unless you are a parent, child, spouse, or fiancé of the deceased or injured person, you must fight to prove that you had a ‘close tie of love and affection’ with the person who has been physically injured or killed. This means that unmarried couples who live together and same-sex partners must go through the intrusive ordeal of proving their relationship.

The psychiatric harm must also have been caused by one ‘shocking event’ such as a car crash. So parents who watch their child die slowly as a result of repeated failures in medical care are not able to claim.

The person with psychiatric harm must also have witnessed the event in real time, and within close proximity. This means that anyone witnessing or hearing the death of their loved one through television, or over the telephone, or on the internet, cannot make a claim.

The law was set in the legal case that arose from the Hillsborough stadium disaster. Much has changed in the years which have passed since the tragedy, including advancement in communication technology, the understanding of psychiatric injury, and the recognition of the diversity of personal relationships.

# Discount rate

When someone suffers a catastrophic, life-long injury and receives a large compensation payment, a portion is deducted to offset any interest the money will accumulate over his or her lifetime. This is to ensure injured people only receive what they need, and the amount to which they are entitled.

But for many years, the rate at which this discount was set was far too high and did not reflect the economic climate. Too much was deducted from people's damages.

Injured people whose cases settled when the rate was too high face an uncertain future, as the money could run out before the injured person's needs are met. To have a hope of making up the shortfall, injured people are often forced to put their compensation into risky investments.

A catastrophically injured person is averse to risk because he cannot afford to lose any money, and cannot simply work to earn the money back. Some people are too frightened of losing money to invest and are cautious about spending money on the things they need out of fear of becoming destitute. This can have an impact on entire families as they struggle with a severely injured person in a house which is not properly adapted, or children take on the role of carers. It is therefore imperative that the rate is kept up-to-date and reflective of current financial markets.

An eight-year old girl was brain damaged in a bus crash. The injuries have changed her life. It is expected that her compensation will run out when she is 40 years old. She is expected to invest a lump sum now and live off the interest after the age of 40. When the case settled when the girl was 17, interest rates were below one per cent and the discount rate at the time assumed a 2.5 per cent return on her lump sum investment. The girl's parents are desperately worried about how their daughter is going to survive past the age of 40, especially after they have passed away.

# Criminal injuries cap

The Criminal Injuries Compensation Scheme (CICS) helps injured victims of crime to pick up their lives. A limit on the amount of compensation available to a single claimant was capped at £500,000 in 1996 and has remained the same ever since.

£500,000 may seem like a lot of money to most people, but it does not stretch very far for someone with the most serious of injuries.

Reggie\* was just two months old when he suffered a fractured skull and subdural haemorrhage, with catastrophic consequences. The Criminal Injuries Compensation Authority agreed that Reggie was the victim of a violent crime. His vision is severely impaired; he needs a wheelchair and hoists; he only communicates by moving his head and arms; he is fed with a tube. He requires a great deal of special equipment just to get through day-to-day tasks such as showering. The family is only just getting by with partial adaptations to their home, as they must be mindful that the money must last for the rest of Reggie's life.

Had Reggie received the same injuries in a car crash, for example, he could bring a claim in the civil justice system and his compensation would be calculated to ensure his needs would be met. In that instance, Reggie's case would settle for a lump sum of between £750,000 and £1million with lifetime annual payments of roughly £100,000.



The Association of Personal Injury Lawyers (APIL) is a national not-for-profit membership group founded in 1990 by a group of barristers and solicitors who wished to improve the services provided for victims of negligence.

Today, APIL has more than 3,000 members who are dedicated to changing the law, protecting and enhancing access to justice, and improving the services provided for injured people.

For more information:

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