

Brain Injury FAQ's

Answers to questions regarding Brain Injuries and the law from Michael Berrett, a Personal Injury Solicitor, with a focus on brain injury cases.

What is brain injury?

Injury to the brain can be caused by an external physical impact such as might arise out of an accident at work or road traffic accident. It can also be caused by medical conditions – illnesses which restrict or prevent the flow of oxygen to the brain, e.g haemorrhages and haematomas. It usually involves a loss of consciousness which may last from just a few moments to weeks, sometimes months and even longer. A more minor brain injury that does not initially result in loss of consciousness or require hospitalisation is capable of leading to temporary or permanent damage to the brain. Injury to the brain can be inferred from a loss of consciousness but also identified from CT and MRI scanning.

Why are some brain injuries overlooked?

In the case of multiple physical injuries, unless there is a fractured skull, the treating clinician's attention is usually upon the physical injuries themselves. Sometimes after a road traffic accident there may be record or recollection of momentary loss of consciousness but again all the attention is usually upon the physical injuries and fractures. Hence there is a significant proportion of brain injuries that are not identified prior to discharge from the initial treating hospital or doctor.

What are the effects of brain injury?

Brain injuries affect people in many different ways. Sometimes symptoms are first noticed by relatives or friends long after the injured person has discharged from medical care. Symptoms usually fall into some or a combination of the following categories:

- Seizures, headaches, weakness of one or both sides, fatigue
- Impaired balance, speech, hearing and visual problems
- Impaired reasoning, memory, difficulty reading and writing
- Emotional instability and behavioural problems

What should I do if I think I might have sustained a brain injury?

The above symptoms warrant a consultation with the injured person's GP. This might result in referral to a Consultant Neurologist. Tests undertaken by the Neurologist may include x-ray, CT scanning or MRI scanning. In addition a history will be taken from the injured person and possibly their spouse, partner or a relative.

What treatment is likely to follow?

There are surgical procedures that will remove pressure on the brain and remove damaged blood vessels in the more accessible parts. Usually the clinical response to brain injury is of a medical or cognitive nature.

Fitting, epilepsy, severe personality disorder and psychiatric conditions caused by brain injury are normally treated by drugs. These might include anti-convulsant drugs or anti-depressants.

Impairment of concentration and attention can be tackled by a whole range of mental strategies and aids to memory. These techniques sometimes have to be "re-learned" at a rehabilitation centre. Rehabilitation centres specialising in brain injury are few and far between. Cognitive therapy may be offered through a Consultant Neuro-Psychologist. A Neuro-Psychologist is a Psychologist who is experienced in dealing with brain injury. Family and friends are then invaluable in assisting the injured person to persevere in learning the strategies offered.

What support is available post-discharge?

Brain injury units may have specialist social workers attached to provide post-discharge support. Otherwise the experience of social workers is likely to be limited.

There are support workers in the community and there are day centres for brain injured people. These are most likely to be provided by the voluntary sector. In particular the national charity Headway has a network of branches some of which have outreach workers that provide contact information advocacy and some rehabilitation services for brain injured people in the community.

Will I be able to go back to work?

Even a brain injury of minor severity is likely to cause a period of absence from work. If this is prolonged it may result in the loss of a job or loss of place in the market (if self employed). Sometimes the brain injured person will never be able to regain their pre-accident earning capacity. Cognitive impairment may mean that they will have to re-train and take on less demanding employment or sometimes therapeutic employment. The effect is of course to deprive the injured person of the income they require to support their family or meet their financial responsibilities.

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Is there any help with vocational rehabilitation?

Of course there will be a huge sense of frustration and loss of self esteem. Sometimes the brain injured person is so severely impaired that they are unable to plan activities of daily living themselves and also become in danger of getting lost. It is not easy to obtain an adequate package of support and care from the PCT in these circumstances. There are specialist professionals known as brain injury case managers but they are little used by the NHS. Such care comes at a high price.

Can I make a claim for compensation?

If there is evidence that the injury was caused through the fault of another, then it may be possible to obtain financial compensation for the brain injured person. A specialist brain injury solicitor is able to advise whether the evidence of negligence is sufficient to establish a viable claim.

What about medical/clinical accidents?

Medical accidents or mishaps or more difficult to analyse. A specialist clinical negligence solicitor is able to call upon specialist medical experts in order to determine whether the Courts might make an award in these circumstances.

What is a specialist brain injury lawyer?

It is not always clear at the outset that legal action is appropriate. It is however always in the best interests of the injured person and their family to consult with a lawyer who specialises in brain injury at the earliest opportunity. Brain injury claims require “bespoke” handling. Large firms that advertise for injury work generally are less likely to be equipped to deal with the time and attention to detail that is required in these specialist cases. Often the future condition will not be apparent early on. It is sometimes necessary to wait for some time before there can be a certain enough prognosis upon which a lawyer can begin to calculate appropriate award damages. The services of independent medical and independent non-medical experts will be drawn upon to identify the individual client’s needs and cost these accurately into the future. Past expenses and losses and future expenses and losses will be included. Most claims are eventually settled by negotiation. A small percentage are determined in the Civil Courts. Owing to the length of the process the best outcome is to ensure that a client has a good working relationship of trust with their lawyer.

How are compensation awards calculated?

Planning for care for the rest of the client’s life, predicting the financial costs etc is a complex matter. Each case must be examined individually. Thought must also be given on

how to best to structure the financial management of any award. The factors that will determine the award will include the amount of past and expected future income loss, the amount of past and anticipated future care; the degree of impairment of physical, mental and emotional enjoyment of life.

How can my claim be funded?

When dealing with a claim to replace earnings, income or provide funding for future care, it is important that no corners are cut. Cases such as these are very labour intensive. Legal costs are normally awarded in addition to any sum of compensation. However the claim has to be funded from the outset and in the meantime may involve substantial payments to third parties for expert reports, Court fees and Barrister fees etc. The specialist solicitor will discuss with the Client whether the Client might have any legal expense insurance to cover the investigation and pursuit of the claim. Alternatively, depending upon the strength of the claim and the chances of success, this firm offers “conditional fee agreements”. These are sometime known as “no win no fee” agreements. The effect is to defer payment of legal costs until the conclusion of the case. If the case is unsuccessful then normally legal costs are waived. If it is successful, then costs are settled at that stage. Normally the majority of legal costs are recovered from the party at fault in addition to the compensation. Public funding, (legal aid), is no longer available for any personal injury claim but it is available for clinical negligence claims.

Why should I have confidence to instruct Charles Lucas & Marshall?

These are some examples of our past cases:-

We acted for the claimant in a case which involved an employee of a roofing company. He fell through an unmarked skylight in the roof of an industrial building. He suffered multiple injuries including a brain injury. He has been able to return to employment as a horticultural worker. He is however left with permanent mild cognitive impairment. A six figure sum in damages was obtained.

We acted for an entire family involved in a road traffic accident. Their car was in collision with a vehicle which had suffered a tyre “blow out”. The blow out was caused due to a manufacturing defect in the tyre. The whole family recovered compensation. The mother who was the front seat passenger sustained the most serious injuries including facial disfigurement and a brain injury. She continues to suffer from permanent cognitive impairment. A six figure sum was awarded by way of compensation.

We acted for a young lady who suffered a brain injury at her birth. This was due to the hospital trust’s negligent management of her labour and delivery. An interim payment was obtained which funded the purchase and adaptation of a suitable house and the commencement of a privately funded care regime. The ultimate award exceeded £6,000,000.

Contact: michael.berrett@clmlaw.co.uk

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