

PI Update

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Head Injuries and Balance Disorders

When someone suffers a head injury they may also suffer damage to their sense of balance, but all too often this is overlooked by both doctors and lawyers. This was recently highlighted in a talk given by Consultant Neuro-otologist Dr S S Surenthiran at our recent brain injury seminar. (Dr Surenthiran runs the Balance Centre in the Neurosciences Unit at Medway Maritime Hospital).

All those involved in the care and treatment of a head injury patient should be alert to the possibility of an underlying balance disorder. The symptoms of a balance disorder are often confused with the neurological symptoms primarily associated with a head injury. Often the symptoms following a head injury and in a patient with a balance disorder will be the same. Examples of those symptoms might be

- Dizziness / balance problems
- Difficulty concentrating and forgetfulness
- Headaches, nausea and blurred vision
- Anxiety, irritability, depression and mood swings
- Sleep disturbance

In someone with a normal balance function, control of balance is automatic; normally we do not have to think about our balance. However, if there has been damage to the inner ear balance organs or the parts of the brain which deal with balance function, the brain has to work overtime to minimise the patient's balance problems.

Balance problems (dizziness, giddiness, vertigo, unsteadiness, vestibular problems) are treatable, but the treatment can be

lengthy. The symptoms of the balance disorder have to be distinguished from head injury related symptoms. The underlying condition causing the balance problem has to be diagnosed and appropriately treated. The brain has to be "re-trained" to compensate for the chronic background unsteadiness, dizziness and giddiness these patients have been suffering from. However, following treatment, the improvement can be striking and life-changing.

Lawyers and medico legal experts in personal injury cases should be acutely aware of the possibility that a brain injury patient may well be suffering from a balance disorder as a result of the brain injury. The risk is that the signs and symptoms of a balance disorder are missed in the 'noise' of the patient's other symptoms and injuries and cases can be settled without balance dysfunction being picked up. If that happens, the patient's overall recovery and rehabilitation are impaired. In the worst case scenario that could lead to the patient failing to receive proper treatment and going on indefinitely with disabling symptoms. In terms of their claim they could miss out on obtaining funding for private treatment as part of the claim and also lose out on compensation for the balance disorder.



Asbestos Related Lung Cancer - You may still be entitled to compensation even if you were a smoker

Lung cancer is most commonly associated with smoking. However it can also be caused by breathing in asbestos dust and is a common complication of asbestosis.

Because a high percentage of lung cancers are attributed to smoking and the clinician is obviously more concerned with treatment of the condition rather than the cause, the possibility that exposure to asbestos has contributed is often not explored. This also means that many miss out on claiming Industrial Injuries Disablement Benefit or claiming compensation for lung cancer caused by asbestos exposure.

Medical opinion is divided on whether lung cancer can be caused by exposure to asbestos in the absence of asbestosis, although the majority view is that it can be. In any event, changes to the benefit system now recognise that you no longer have to have asbestosis to claim benefits for lung cancer caused by asbestos exposure. In those instances you have to provide evidence of substantial occupational asbestos exposure which is set out in the terms of prescription in the Appendix of Prescribed Diseases (for eligibility to Industrial Injuries Disablement Benefit). You may also be able to obtain compensation from any employers (or their insurers) who caused the asbestos exposure.

Whilst exposure to either asbestos or smoking can cause lung

cancer, the combination of both of them together massively increases the chances of developing lung cancer.

A study in America found that a heavy smoker, smoking one pack a day for 20 years has a 10 fold increased risk of developing lung cancer over a non-smoker. A non-smoker exposed to asbestos has a 5 fold increased risk over a non-smoker not exposed to asbestos. Notably, a heavy smoker who has also been exposed to asbestos has a 50 to 90 fold increased risk of developing lung cancer over a non-smoker who is not exposed to asbestos. As this data shows, exposure to asbestos can be a major contributing factor in the development of lung cancer even for those who smoked.

Evidence of fibrosis of the lungs, very heavy exposure to asbestos for a year or 5 – 10 years moderate exposure should be sufficient to establish that the exposure has materially contributed to the risk of developing lung cancer. A further requirement is that at least 10 years must have passed between such exposure and the development of the condition.

Therefore if you have been exposed to asbestos and developed lung cancer you may be entitled to claim compensation for lung cancer caused by your asbestos exposure even if you have smoked. (You may also be entitled to state benefits). Current case law indicates however that there may be a reduction in your compensation to reflect the extent to which smoking on its own may have contributed to the risk.

Injury through Cosmetic Laser Treatment

Cosmetic laser treatment is becoming increasingly popular with both men and women. It is one of the largest and fastest growing sectors in the cosmetic market. Despite this, in October 2010 in England it was decided that non surgical laser treatment would no longer be regulated by The Care Quality Commission (CQC).

In Wales, it is still the case that anyone providing non-surgical cosmetic treatments using a Class 3B or 4 Laser or IPL system must be registered by Healthcare Inspectorate Wales (HIW), meet certain National Minimum Standards and comply with

regulations under the Care Standards Act 2000. APIL (the Association of Personal Injury Lawyers) has already launched a campaign following the increase in the number of claims arising from the negligence of beauticians and salons carrying out cosmetic treatments.

If you have suffered from blistering, burns and resulting scarring following cosmetic laser treatment which you consider was the fault of the beautician or salon carrying out the treatment, please contact us for free advice on whether you have a potential claim.

It's snow joke-liability for injuries caused by ice and snow

In the film "The Man who sued God" Billy Connolly plays a man who tries to sue God over the destruction of his fishing boat caused by "an act of God". In reality under English law there is no cause of action against God for injuries caused by ice and snow or other natural phenomenon. However, once snow or ice is there (or anticipated) various people may owe a legal duty to treat or clear it and you or I might be one of them.

Highway authorities

Highway authorities do now owe a duty to "ensure so far as is reasonably practicable that safe passage along a highway is not endangered by snow or ice." The duty applies to both roads and pavements. However, the highway authority only have to do what is reasonably practicable, taking into account limited public resources. In practice the authorities have winter maintenance policies which identify the priority routes to be gritted. This would include major carriageways and a few priority footways, but not include more minor roads and footpaths. If you are injured due to ice on a priority route that according to the plan should have been but was not gritted, the authority are likely to be liable. Simply running out of grit is most unlikely to be a good defence.

Employers

Employers owe quite strict statutory duties to their employees to prevent them suffering injury due to ice or snow at their place of work.

The approved code of practice to the Workplace Regulations advises that:

"Arrangements should be made to minimise risks from snow and ice. This may involve gritting, snow clearing and closure of some routes, particularly outside stairs, ladders and walkways on roofs."

Guidance issued by the Health and Safety Executive (HSE) recommends:

1. "Identify the outdoor areas used by pedestrians most likely to be affected by ice, for example: - building entrances, car parks, pedestrian walkways, shortcuts, sloped areas and areas constantly in the shade or wet.
2. Monitor the temperature, as prevention is key
3. Put a procedure in place to prevent an icy surface forming and/or keep pedestrians off the slippery surface
4. If warning cones are used, remember to remove them once the hazard has passed or they will eventually be ignored".

Ordinary householders

I am afraid we cannot leave it all to the council or employers to deal with ice and snow hazards. Owners and occupiers of



property can have a liability if they fail to take reasonable care to deal with ice or snow on their own premises.

Under the Occupiers Liability Act 1957 householders like any other occupier of property have a duty to their visitors to "take such care as is reasonable in all the circumstances to see that the visitor will be reasonably safe in using the premises for the purposes he was invited or permitted to be there."

We could find only one previous reported case of a householder being sued for failure to deal with ice or snow and that case failed. (*Marsh v Kerwin* 1995). It succeeded at trial, but this was overturned by the Court of Appeal. Nonetheless, the Court of Appeal there did accept that potentially the householder could have been liable for failure to deal with ice forming on household steps if they could reasonably have done something about it. In that case since the ice probably only formed in the last half hour before the visitor slipped the Court of Appeal found it would be unreasonable to expect a householder to have done anything about it. It was also felt it would be imposing too high a burden to expect the householder to have gritted to prevent the formation of black ice from freezing rain. In particular they took into account that the householder was a busy mother and housewife who was going about her normal household duties after her return home half an hour earlier. They felt it was just expecting too much for her to have gritted the steps to prevent black ice forming from freezing rain.

This case suggests that if a householder were sued for failing to deal with ice/snow a court would look very closely at not just the particular situation on the ground but also the particular situation of the householder. An elderly/infirm couple perhaps might not reasonably be expected to take any action, when a younger/fitter householder might be (or maybe not if they were busy mother/housewife?) Equally, a householder would probably not be expected to put down grit to prevent ice on the off chance just because it was very cold and raining. On the other hand if significant snowfall/ice was seen or predicted action might well be expected. If a householder does take action he needs to make sure he does not do something silly which actually increases the hazard. For example, pouring hot water on ice/snow to melt could well later lead to the formation of black ice unless salt is put down at the same time. A householder who did this could be liable to compensate a visitor who then slipped on the black ice.

The government has now issued a "Snow Code" to allay the fears of householders over exaggerated risks of claims and give guidance on what action they should/should not take. (See www.direct.gov.uk). In the unlikely event a claim is brought any liability should be covered by most normal household insurance policies.

Brain Injury and increased risk of Post Traumatic Epilepsy

Post Traumatic Epilepsy (PTE) is a recognised problem following a brain injury and can develop years after the original injury occurred.

Approximately 80% of PTE occur within 2 years of the injury and the risk decreases with time. It has traditionally been thought that this reaches the normal value for population at 5 years after the head injury. However, research carried out by a team in Denmark found that people who suffer a head injury are at risk of developing epilepsy for over ten years following the incident. They also found the chance of epilepsy more than doubled for a person after mild brain injury or skull fracture and were seven times more likely in patients with serious brain injury.

Other indicators of susceptibility for PTE are intracranial haemorrhage, depressed skull fracture, brain contusions and whether there was a penetrating injury. Children under the age of five or adults over the age of 65 who sustain a brain injury are also at an increased risk of developing PTE.

In order to diagnose this condition clinicians will perform Brain magnetic resonance imaging (MRI), as Electroencephalography (EEG) is not helpful in predicting the likelihood of post traumatic seizure. Treatment will vary depending upon the severity of the injury and the condition. Medication called anticonvulsants can be prescribed to control the seizures. The onset of Post Traumatic Epilepsy can have a profound effect on their social and working life. The development of this condition means potentially they will have to stop driving and give back their licence to a the DVLA. If the injured person drives for a living this could mean a loss of livelihood. An order for Provisional Damages can be obtained in cases where there is a recognised increased risk of epilepsy. In these cases the head injured claimant would be awarded damages on a 'provisional' basis on the assumption they do not develop the condition. However, the door would be left open to come back to Court and claim additional compensation if they do later develop epilepsy due to the head injury.

If you have suffered a head injury and are concerned about Post Traumatic Epilepsy you should contact an experienced clinician. A number of Neurologists will have expertise in PTE. There are also a number of Epilepsy Clinics in the UK that can offer help and guidance.

If you have suffered a head injury as a result of an accident as brain injury specialists recognised by Headway we can help you get the compensation and treatment that you need and deserve, including any compensation for the risk of post traumatic epilepsy.

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