

Damages (compensation) for mental harm

Please also see our leaflet *Clinical negligence – what compensation can I claim?*, available at www.avma.org.uk/wp-content/uploads/Compensation.pdf

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AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

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Can damages be recovered for mental harm?

The short answer is yes, some forms of mental harm are recognised in law and damages (compensation) may be awarded to cover you for your loss.

Damages will not be awarded where the mental harm is considered to be the ordinary emotions of anxiety, grief or fear which are considered normal and natural reactions to say the death of a loved one. There has to be an actual mental disorder, such as clinical depression and/or a recognised psychiatric illness such as post-traumatic stress disorder (PTSD) before a claim can be considered.

It can be difficult to succeed in a claim for mental harm, certain criteria need to be met before a claim can be considered. You will have to show that the psychiatric injuries have occurred because of negligence. The amount of compensation you could receive depends on factors such as the diagnosis, how severe your condition is, how long it is likely to last and how it affects you at work, socially and domestically.

Primary victim claim

The law approaches people who have suffered mental harm two ways. First, primary victims, these are people who were involved in the incident. An example of this might be someone who had negligent plastic surgery who then develops a recognised psychiatric disorder because of their resulting unsatisfactory cosmetic appearance. The second type of mental harm is caused by something someone witnessed happen to someone else – these claims are much harder to prove and are referred to as secondary victim claims.

Secondary victim claim

These are a very specific type of psychiatric harm claim, they are very complex not least because the case law is not clear on what amounts to a relevant event. Claims have succeeded where the shocking event occurred some time after the negligent treatment but further guidance from the courts is needed.

Secondary victim claims are unique because the mental harm arises because of something someone has seen being done to someone else, such as a loved one. These claims are difficult to bring and for lawyers to assess, each case will have to be looked at on its own facts but there are certain criteria which will have to be considered, broadly these are:

- i. Is there a close tie of love and affection between the person witnessing the event (usually a close relative) and the person experiencing it?
- ii. The person witnessing the event generally has to be personally present at the event, or in the immediate vicinity or witnessed the aftermath very soon after it happened.
- iii. The event generally needs to have been witnessed directly by the person bringing the claim.
- iv. The event must be shocking and sudden.
- v. The person witnessing the medical accident, will have to show they have suffered a medically identifiable psychiatric injury because of what they have witnessed. The injury must be more than a severe and prolonged bereavement reaction.

Compensation

Independent psychiatric evidence in the form of a medical report will usually be required to identify the nature, extent, and duration of the psychiatric injury. The amount of compensation payable would depend on the severity and longevity of the psychiatric illness and how this affects activities of daily life.

An indication of the amount of compensation awarded for mental harm can be found in the most recent (15th) edition of the Judicial Studies Board (JSB) Guidelines which suggest that damages awarded for severe psychiatric injuries tend to be between £46,780 - £98,750; moderately severe conditions will attract an award of about £16,270 - £46,780; moderate injury £5,000 - £16,270 and less severe £1,310 - £5,000. There is a separate tariff for PTSD which is in the range of £3,370 for less severe injury to £85,880 for the most severe injury.

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This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

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