


**Overview of Psychological Injury**

Euan Ambrose



---

---

---

---

---

---


---

---

**Overview of Psychological Injury**

Definitions

- Recognized psychological illness as defined in DSM IV or ICD 10
- Not grief, fear, sorrow, distress, anxiety or other normal human emotions



---

---

---

---

---

---

---


---

**Overview of Psychological Injury**

Who can sue?

(1) Primary Victims

- Claimants who suffer both physical and psychological injury
- Claimants who do not suffer physical injury, but who are within the area of physical risk created by the Defendant's negligence and who suffer psychological injury (*Page v Smith* [1996] 1 AC 155)



---

---

---

---

---


---

---

---

• Claimants who are not within the area of physical risk but:-

- genuinely and reasonably believe that they are at physical risk, and
- it is reasonably foreseeable to some one in D's position, that a person of ordinary fortitude in C's position would reasonably be in such fear of immediate personal injury as to suffer shock-induced psychiatric injury
- *McFarlane v EE Caledonia Ltd* [1994] 2 All ER 1; *Hegarty v EE Caledonia Ltd* [1997] 2 Lloyd's Rep 259




---

---

---

---

---

---


---

---

**Overview of Psychological Injury**

**Who can sue?**  
**(2) Secondary Victims**

- Claimants who suffer psychological injury as a result of injury to some one else
- Control mechanisms:-
  - Shock
  - Means of perception
  - Physical and temporal proximity
  - Close ties of love and affection




---

---

---

---

---

---


---

---

**Overview of Psychological Injury**

**Who can sue?**  
**(2) Secondary Victims: Control Mechanisms**

- Shock
  - The sudden appreciation by sight or sound of a horrifying event that violently agitates the mind
- Not a gradual realisation




---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (2) Secondary Victims: Control Mechanisms

- Means of perception
  - By seeing the accident or its immediate aftermath
  - By hearing the accident or its immediate aftermath
  - Not as a result of communication by a third party



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (2) Secondary Victims: Control Mechanisms

- Physical and temporal proximity
  - Presence at the scene of the accident
  - Coming upon the immediate aftermath of the accident
  - Meaning of "immediate aftermath"



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (2) Secondary Victims: Control Mechanisms

- Close tie of love and affection with the injured person
  - Rebuttable presumption in the case of parent/child and husband/wife
  - Otherwise must be proved by evidence



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (2) Secondary Victims

- Secondary victims are claimants who suffer psychological injury as a result of injury to someone else
- And who satisfy the control mechanisms:-
  - Injury induced by shock
  - Direct perception of the accident or its aftermath
  - Presence at the scene of the accident or its aftermath
  - A close tie of love and affection with the injured person



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (3) Other Categories?

- Rescuers
- Involuntary participants
- Prisoners/detainees (*Reeves v Commissioner of Police for the Metropolis* [2000] AC 360)
- Owners of damaged property (*Attia v British Gas* [1988] QB 304)
- Parties to certain types of contract (*McLoughlin v Jones* [2002] 2 WLR 1279; *Farley v Skinner* [2002] 2 AC 732)



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Who can sue?

#### (3) Other Categories?

- Recipients of distressing news (*AB v Glossop & Thameside HA* [1997] 8 Med LR 91; *Allin v City and Hackney HA* [1996] 7 Med LR 167)
- Victims of extreme or outrageous practical jokes (*Wilkinson v Downton* [1897] 2 QB 57)
- Victims of workplace stress (*Hatton v Sutherland* [2002] EWCA Civ 76; *Barber v Somerset County Council* [2004] UKHL 13; and *Hartman v South Essex Mental Health and Community Care NHS Trust* [2005] EWCA 06)
- Victims of harassment (*Protection from Harassment Act 1997*)



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

“...a patchwork quilt of distinctions which are difficult to justify”

(Lord Steyn in *White v Chief Constable of South Yorkshire Police* [1999] 2 AC 455)

“...in this area of the law, the search for principle was called off in *Alcock*...” (Lord Hoffman in *White*)



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim Liability Issues

- Proof that C is a primary or secondary victim, or that C falls into a special category of claimants entitled to bring a claim for psychological injury alone
- Source material:-
  - Claimant's own account
  - Other witness evidence
  - Records from emergency services
  - Medical/Occupational Health/Personnel records



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim Proof of Psychological Injury

- Expert issue
- Source material:-
  - Claimant's own account
  - Other witness evidence (spouse/partner, family, work colleagues, etc)
  - Medical/Occupational Health/Personnel records



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim Causation of Psychological Injury

- Expert issue
- Where there are several possible causes of a Claimant's psychological illness, the Claimant can establish causation by showing that the Defendant's breach of duty made a material contribution to his psychological injury



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim Treatment of Psychological Injury

- NHS
- Rehabilitation Code
- Private treatment as recommended by medico-legal experts



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim Apportionment of Liability for Psychological Injury

- Expert issue
- In principle, a Defendant is only liable for that proportion of the injury that his negligence has caused
- However if the injury is indivisible, a Defendant who has made a material contribution is liable for the whole of the injury



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim

#### Quantifying Losses due to Psychological Injury

- Where a pre-existing disorder has been exacerbated, or the onset of a condition has been accelerated, damages will be limited by the period of exacerbation/acceleration
- Quantification of financial losses will also take account of contingencies, including psychological illness that the Claimant may have suffered in any event



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Proving/Quantifying the Claim

#### Quantifying Losses: Potential Heads of Claim

- Past and future treatment costs
- Effect on employment
- Care and assistance/emotional support
- Travelling expenses
- General Damages for PSLA



---

---

---

---

---

---

---

---

## Overview of Psychological Injury

### Practical considerations

- When/how to raise the issue with a client
- Choice of medico-legal expert
- Provision of information to the medico-legal expert
- Up-dating reports
- Treatment: Decisions as to treatment & mitigation of loss; cost of treatment & interim payments; stay of proceedings pending treatment
- Attendance of experts at trial: perspective and costs



---

---

---

---

---

---

---

---