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Personal injury compensation: no claim without pain?

AIMS AND METHOD
To identify the experiences of patients pursuing a personal injury claim, we carried out a retrospective questionnaire survey.

RESULTS
Sixty-one patients from a regional traumatic stress clinic took part. Most were satisfied with the conduct of legal, medical and psychiatric personnel. Thirty-two (53%) reported that the legal proceedings had had an adverse effect on their health/well-being, and about a third reported an adverse effect on domestic relationships. Twenty-four patients (40%) were dissatisfied with the provision of information. More information about the whole legal process would have been welcomed by means of an information leaflet (*n*=57, 93%), a helpline (*n*=48, 79%), or a videotape (*n*=42, 68%).

CLINICAL IMPLICATIONS
Although seeking redress may contribute to the patient's adjustment, this survey demonstrates that it is not a step to be taken without consideration. As part of their therapeutic management, mental health professionals should consider the implications of such a step with their patients.

The legal principle of compensating for personal injury was first enshrined in the Workmen's Compensation Acts of the nineteenth century. This humanitarian approach has been progressively strengthened by other developments in the UK, including the Criminal Injuries Compensation Scheme which was established in 1964 and publication of the comprehensive report *Liability for Psychiatric Illness* (Law Commission, 1998).

Initially, 'nervous shock' was not compensable unless there was also physical injury. The study by Miller (1961) encouraged the suspicion that the prospect of a financial settlement might initiate or at least maintain post-traumatic symptoms. However, subsequent research has not generally supported this sceptical view or the oxymoron 'compensation neurosis' (Tarsh & Royston, 1985; Blanchard *et al*, 1998).

One of the growth areas in the legal field is that of personal injury services, although solicitor networks are developing to counter the growth of national claims helplines. In 2003 the total value of claims for personal injury almost reached £6.6 billion. We do not challenge the right of patients to lodge such actions, but it is pertinent to consider what impact such an action might have on them.

Method

Of 233 people consecutively referred to a regional traumatic stress clinic, 213 were invited to participate in the study. Twenty people were not approached either because the lead clinician (D.A.A.) considered them too emotionally vulnerable to contribute or because they were already involved in criminal proceedings.

Each patient was sent a consent form, an information sheet and a questionnaire. All were asked to reply but only those who had initiated a compensation claim were required to complete the questionnaire. Sixty-one completed questionnaires were returned.

The questionnaire was designed and piloted at the clinic in consultation with a number of patients. It comprised 28 items (mainly forced choice and Likert style) covering such issues as features of the claim, level of satisfaction with legal, medical and psychiatric personnel, and the personal impact of the legal process.

Results

Because of the sample size no formal statistical analyses were conducted. Forty-two (69%) of the respondents were male (median age 37 years (range 18–60)); 50 (82%) had been physically injured (defined as requiring at least 24 h hospital admission). They had experienced a miscellany of civilian trauma (e.g. road, industrial and domestic accidents, and assaults).

Features of the claim

Decision to lodge a claim
Twenty patients (33%) decided to lodge the claim themselves; 16 (26%) followed the advice of family/friends; 4 (7%) were advised by trade unions, and the remainder were influenced by 'others' (only 1 person was influenced by media advertising).

Financial support
Claims were financed as follows: self-funded, *n*=11 (18%); legal aid, *n*=8 (13%); insurance company, *n*=11 (18%); trade union, *n*=10 (16%); 'no win/no fee', *n*=18 30%), and 'other', *n*=3 (5%).

Duration of claim
One patient did not reply to this question. Of the other 60 patients, 25 (42%) had achieved a settlement. For 2 (4%) this had taken a year or less; for 18 (30%) it had taken 1–4 years and for the remaining 5 (20%) it had taken more than 4 years. Only 30 (49%) of the whole sample had been forewarned by their legal advisers about the likely duration of the claim.

Level of quantum
Of the 25 patients achieving a settlement, 8 (32%) were 'satisfied' with the level of settlement and only 4 (16%) reported a 'sense of justice'.

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Pursue another action

Based on their most recent experience, respondents' replies to the question as to whether or not they would lodge another claim were: 'definitely yes' (*n*=24, 40%); 'probably yes' (*n*=23, 38%); 'probably no' (*n*=17, 20%); and 'definitely no' (*n*=1, 2%).

Satisfaction with legal, medical and psychiatric personnel

Table 1 shows how patients assessed the contribution of their legal advisers. Of the 50 physically injured respondents, 39 (78%) had a physical examination as part of the claim process. Multiple examinations were quite common: 12 respondents (31%) had undergone 3–4 examinations and 2 (10%) had been examined 6 times.

Of 60 patients replying to this question, 36 (52%) had undergone a psychiatric assessment. Nine (25%) had been examined 2–3 times and 1 patient had undergone 6 examinations.

Generally, satisfaction with the conduct of the medical and psychiatric examinations was high: in each case only 7 patients offered criticisms. Their criticisms were: discourtesy (*n*=4), inconvenient venue (*n*=3), inconvenient time (*n*=3), insensitivity to feelings (*n*=7), a lack of interest in care (*n*=6) and explicit doubts about the validity of symptoms (*n*=4).

Table 1. Claimants' satisfaction with legal advisers

	Satisfied	
	n	%
Level of courtesy (*n*=55)	51	93
Sensitivity to claimaints' feelings (*n*=48)	40	83
Quality of advice (*n*=50)	40	80
Kept informed of progress (*n*=53)	32	60
Speed at which case was progressed (*n*=50)	21	43

Table 2. Impact of the compensation claim on patients' health/well-being and relationships

	Not applicable		Im-proved		No effect		Worsened	
	n	%	*n*	%	*n*	%	*n*	%
Health/well-being	–	–	–	–	29	48	32	53
Relationships at home[1]	7	12	1	2	32	53	20	33
Relationships at work[1]	17	28	–	–	29	48	14	23
Social relationships[1]	6	10	–	–	36	60	18	30

1. One patient did not reply.

Impact on health/well-being and relationships

Table 2 shows the effect of the claim process on the patients' health/well-being and relationships (in different settings).

Provision of information

Patients would have liked more information in the form of a leaflet (*n*=57, 93%), a helpline (*n*=48, 79%) or a videotape (*n*=42, 68%).

Discussion

Although this innovative survey involves a relatively small sample, which may not be representative of those who pursue personal injury claims, and relies exclusively on self-report, it makes an important contribution to our overall management of trauma victims by identifying what patients who lodge claims for compensation will require to face. These data confirm that such a step should not be taken without careful consideration of its implications.

It is reassuring that the majority of the 61 patients were generally satisfied with the conduct of the legal, medical and psychiatric personnel whom they encountered. However, legal proceedings can be very lengthy, which may trap the individual in the 'sick role' and prevent closure on this unhappy event in their lives. Multiple medical and psychiatric assessments were required for many patients. The disadvantages of serial assessments have already been discussed by Fowlie & Alexander (1992). These include the risk of 'retraumatisation' because patients are required recurrently to revisit some harrowing experience. Repeated assessments (particularly in conjunction with suspicions that the patient is under surveillance) may also imply scepticism about the symptoms. Symonds (1980) referred to the 'secondary injury' inflicted when the suffering of victims is not acknowledged. Paradoxically, the climate of suspicion may itself encourage patients to exaggerate their symptoms. This survey also reveals the frequency with which the legal process has a negative effect on claimants' health/well-being and relationships (particularly their domestic ones).

Different motives will underlie the pursuit of compensation by patients (Herman, 2003). Although this survey cannot identify these, it is of note that only 8 of the 25 claimants achieving a settlement (32%) were satisfied with the financial level of settlement and even fewer (*n*=4, 16%) reported a 'sense of justice'. As Mayou (1996) has emphasised, some individuals may embark on such proceedings with unrealistic expectations. Such expectations should be addressed by legal and mental health professionals.

Insufficient information is a key observation by these respondents. A leading personal injury specialist insightfully commented that '. . . victims frequently feel that in the legal process their interests come well down the list of considerations' (Napier, 1991). Since the hallmark of a trauma is the sense of helplessness it creates, it is crucial that the legal process itself does not recreate that very circumstance. Accurate information empowers the

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individual and allows them to develop a sense of control over their own destiny. These participants would have liked more information in the form of a leaflet (*n*=57, 93%), a helpline (*n*=48, 79%) or a videotape (*n*=42, 68%). Mental health professionals should consider the above issues when planning their overall management strategy for patients who consider lodging a claim for personal injury.

Declaration of interest

D.A.A. has served as a professional and expert witness in civil and criminal cases and at tribunals following major catastrophe.

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