

Psychiatric Harm

Psychiatric injury – also known as nervous shock. A severe long term mental injury (medically recognised) that is more than just shock or grief

Establish charge of negligence	It must be proved that the D owed C a duty of care, there was a breach of duty and the breach caused the damage.	
Mental Injury	C must prove that they have a mental injury supported by medical evidence. It must be a long term injury (i.e. one that prevents C from working). Examples of injuries include PTSD, reactive depression and acute anxiety. The mental injury must come from a sudden event – so caring for a loved one over a long period of time cannot form the basis of a claim.	
Early development of the rules	Judges were initially suspicious of Cs in psychiatric harm cases. Initially a claim could only be made if C was a risk of harm. The rule was then extended to members of C's close family. The law then developed to include people who witnessed the immediate aftermath.	Dulieu v White (1901) Hambrook v Stokes (1925) Bourhill v Young (1943) McLoughlin v O'Brien (1982)
Primary Victims	Those involved in the accident or sudden event that causes the injury. No restrictions have been placed on the claims of primary victims. You should apply the normal rules of negligence.	Page v Smith (1995)
Secondary victims	Secondary victims are those who witness (or is at the immediate aftermath) of the accident or sudden event and suffer psychiatric injury as a result. A secondary victim must prove. <ul style="list-style-type: none"> • <i>There was an accident or sudden event where someone (the D) was negligent which caused injury.</i> • <i>Some form of mental injury</i> • <i>The C passes the Alcock criteria in order to allow them to claim</i> • <i>That a person of reasonable fortitude would have suffered the same injury in the same circumstances.</i> 	Alcock v Chief Constable of South Yorkshire (1992)
The Alcock Criteria	In Alcock the HL laid down the precedent that had to be followed by secondary victims in future cases C had to have close ties of love and affection with V. This means that <ul style="list-style-type: none"> • The relationship is a close type of relationship, and • The relationship is close in fact C suffered mental injuries at the scene of the accident or its immediate aftermath C suffered shock through his own unaided senses	McLoughlin v O'Brien (1982)
Other categories of claimants	Rescuers – Generally only professional rescuers can claim. Rescuers who put themselves in danger are primary victims. Those who do not put themselves in danger are secondary victims and must satisfy the Alcock test.	Chadwick v British Rail (1967) Hale v London Underground (1992) White v Chief Constable of South Yorkshire (1998) French v Chief Constable of Sussex Police (2006)
	Bystanders – a bystander can only claim if they satisfy the Alcock criteria. So people who witness horrific events cannot claim if they have no close ties of love and affection with V. Whether a person is a rescuer or a bystander is to be decided by the courts based on the facts.	McFarlane v EE Caledonia (1994)
	Property owners – a D was able to claim for psychiatric injury when she witnessed her house burning down due to D's negligence.	Attia v British Gas (1987)
	Near misses – People who are close at the scene and suffered physical or mental injuries. They are thought of as primary victims and only have to prove that D's negligence caused the harm.	
	Gradual rather than sudden shock – where D suffers injury as a result of witnessing a series of events. Where the series of events is a long period of time the court will deny the claim (Sion). If the period of decline is shorter there may be a claim (Walters). If the events are over a short period of time the court may see them as a chain of events rather than separate incidents.	Sion v Hampstead Health Authority (1994) North Glamorgan NHS Trust v Walters (2002) Galli-Atkinson v Seghal (2003)