

## Medical Negligence Claims Against the NHS

According to official government figures, payouts to NHS patients more than doubled last year from £9m to £23m. The figures were released by Nicola Sturgeon, Scottish National Party Health Secretary, She said the increase was "caused by a larger than normal number of high-value settlements – mostly

birth-related cases which often take several years to settle." These cases are notoriously difficult to pursue. Pursuers need to produce the right medical evidence to prove not only that the doctor was negligent but also the effects of the negligent treatment.

## Jury Trials

It is possible to ask the Court for permission to have a case heard by a Judge and Jury instead of a Judge alone. Juries can make much more generous awards than Judges. The issue has been raised in 2 recent cases. In *O'Neill v Dowding Mills plc* Mr O'Neill fell through a gap in a walkway at work, hurt his leg and made a claim for compensation. He said that he had suffered - and would continue to suffer - as a result of his injury. He argued that it was likely that he would have to leave his current employment and his pension scheme. He asked for a Jury Trial. The court refused his request saying that some personal injury actions involve such a degree of

complexity that only an experienced judge could decide on the appropriate amount of damages to be paid.

*MacDonald v Mallan* is a similar case. Again, the court refused a request for a Jury Trial saying the claim for loss of earnings in the future would cause a Jury severe difficulty so the case was not suitable for a Jury.

Defenders will almost invariably resist requests to have cases heard by Juries. Pursuers hoping to have their case heard by a Jury must ensure the case is presented in such a way as to satisfy the Court it is suitable for a Jury.

## Safety First for Offshore Workers

Concerns have recently been raised about the safety of offshore workers following statistics from the Scottish Health and Safety Executive (HSE) which indicate that in the last two years there have been two fatal accidents and 39 cases where serious injury was sustained. The HSE found that the state of plant on

more than 50% of installations inspected was found to be poor. The HSE is liaising with oil companies in an attempt to improve safety. In addition, the UK is proceeding with creating an offshore workforce involvement group to increase worker participation in decisions made about safety.

WE DEAL WITH ALL TYPES OF PERSONAL INJURY CLAIMS INCLUDING

- Road traffic accidents
- Accidents at work
- Spinal injuries
- Head injuries
- Industrial diseases
- Fatal accidents
- Children's injuries
- Accidents in public places

We offer legal advice and support throughout the claims process and, wherever possible, we will try to reach agreement with the other party before the case comes to court.

## Low Value Cases

Until recently, all cases where the sum sued for was below £750 were heard in the Small Claims Court and cases below £1500 were heard in the Summary Cause Court. Despite being Scotland's superior Civil Court, the threshold to raise a case in the Court of Session was only £1500. With effect from January 2008, those limits were increased to £3000 for the Small Claim Court and £5000 for the Summary Cause Court. The exception is Personal Injury claims. To allow the necessary legal representation and

medical evidence to be obtained, Personal Injury cases will not be heard in the Small Claim Court even if their value is less than £3000. Only cases where the sum sued for is in excess of £5000 can now be raised in the Court of Session. When a case settles for less than £5000, it will be open to the defenders to argue that the expenses paid by them should be calculated according to the scale of expenses applicable to the Summary Cause Court.

## Settling Cases without Legal Advice

Every day innocent people are injured through the fault of others and, as a result, are entitled to compensation for the injuries they have sustained. Compensation can include recovery of medical expenses and loss of earnings, as well as damages awarded for the injury. Unfortunately we frequently come across cases where injured people have

been contacted directly by insurance companies who wish to make a quick settlement. It can be attractive to receive a significant sum of money quickly but in some cases insurance companies pay significantly less than what the pursuer is entitled to. Independent legal advice is essential to ensure adequate compensation is obtained

## Shedding the 'L' plates

The Department for Transport (DfT) has announced that the Government is to launch a consultation on whether to revise the rules for novice drivers. This consultation is prompted by Westminster's Transport Committee report which has recommended zero alcohol levels for the first two years of having a driving licence and a minimum

12 month learning period for young drivers. This period is intended to provide more comprehensive training including driving on motorways and in all weather conditions. The Government awaits the outcome of the public consultation before deciding whether to proceed with implementing the Committee's recommendations.

## And finally

Balfour + Manson will soon be publishing a *Guide to Making a Compensation Claim*.

If you would like to receive a copy email Lesley Phillips – [lesley.phillips@balfour-manson.co.uk](mailto:lesley.phillips@balfour-manson.co.uk)

For any other information or advice please contact:

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