

Pulse

Personal injury and
clinical negligence newsletter

Spring Issue

MOORE BLATCH
resolve



Not such an Easy Rider...

Motorcycle accidents
and the legalities



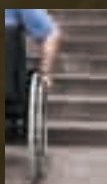
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Not such an Easy Rider...

Ciaran McCabe, Senior Solicitor

Those of you familiar with the 1960's film *Easy Rider* will definitely confirm that it portrays the glamorous side of motorcycling. While Hollywood has long had a love affair with the motorbike, unfortunately some of its biggest stars have had the misfortune of suffering serious motorcycle accidents in recent times.

Hollywood aside, recent figures from the Department of Transport indicate that there are 121 motorcycle-related deaths or serious injuries per 100 million vehicle kilometres, compared to the corresponding figure of 2.6 for motorists. Such figures offer a stark reminder of the real dangers motorcyclists face.

We have been successfully acting for victims of motorcycle accidents for many years, and while we hope you remain safe and enjoy your bike, it is important that you visit a specialist if you are unfortunate enough to suffer an accident while riding your bike.

Some solicitors do not fully understand that a bike handles very differently to a car. In our experience motorcycle accidents are very distinct from accidents involving cars. We have dealt with many types of accident cases including:

- **Filtering**
Compensation claims from accidents where motorcyclists overtake outside or between lines of traffic and are struck by cars
- **Undertaking**
Accident claims where motorcyclists are struck while legally undertaking
- **Defective road surfaces**
Motorbike accidents caused by potholes and other road surface defects
- **Objects in the road**
Motorcycle accidents caused by gravel, branches or other obstructions in the road

The question of speeding is also often raised by the other driver in these types of claim. It is important in such situations to know how to produce evidence to refute such claims, and show that the accident was a consequence of the other driver's negligence, even if speed is a factor. When we are instructed in these claims, we interview witnesses, carry out site inspections, prepare plans and photographs illustrating the scene of the accident, calculate reaction times, lines of sight and braking/stopping distances. We can also obtain reconstruction reports if appropriate.

Those who are often involved in motorcycle accidents are males in their thirties. This is a group who will also often have children, and established jobs. As a consequence they are often the main household earners, therefore we work as hard as possible to obtain early admissions of liability and secure interim payments to relieve financial hardship.

Motorcyclists will often suffer serious injuries such as head injury, spinal cord injury and brachial plexus injury. We will be examining head and spinal injuries further in future issues, but in this issue we want to touch upon what is commonly known as the "bikers injury"—that is injury to the brachial plexus. This occurs when a rider is thrown hard onto his shoulder. The force of the fall tears the limb nerve roots from the spinal cord and, with no nerve supply, all feeling and movement is gone.

The result can be life long paralysis and numbness in the affected arm, coupled with chronic, untreatable pain. This is often described as a continuous crushing or burning sensation that is frequently accompanied by shooting pains that are like an electric shock. Motorcycle accidents are nearly five times more likely than car accidents to result in brachial plexus injuries. Almost 5% of those suffering motorcycle-related trauma have brachial plexus injuries.

There are several types of brachial plexus injury and they are classified as follows:

1. **Avulsion (most severe)**
Where the nerve is torn from the spine
2. **Rupture**
Where the nerve is torn but not at the point of spinal entry
3. **Neuroma**
Where the nerve has torn and healed but scar tissue puts pressure on the injured nerve
4. **Neuropraxia (most common)**
Where the nerve is damaged or stretched but not torn

Symptoms of brachial plexus injury include a limp or paralysed arm, lack of muscle control in the arm, hand or wrist, and lack of feeling in the arm or hand. Long-term neuropathic pain, often extreme and usually difficult to treat, is also common.

There can be no recovery without timely surgical reconnection for avulsion or rupture, either directly or with peripheral nerve grafts. Limited functional recovery is possible (injury dependent) but pain often remains.

The charity Spinal Research recently reported that specialised cells in the nose (olfactory system) have been found to be specially adapted to help nerve cells grow from the smell-sensing surface of the nose to centres within the brain. This capacity has probably arisen because the neurons responsible for our sense of smell are constantly being lost due to everyday exposure to pollutants, colds and flu, etc. and as a result need constant replacement. Fortunately, this unique property has led many scientists to believe that these very same cells, known as olfactory ensheathing cells (OECs), may be capable of promoting the regeneration of nerve fibres damaged following spinal cord injury.

One of the first experimental treatments to be proposed for these specialised cells is for brachial plexus injuries and will combine a graft of these cells (in a biologically-tolerated glue) with a surgical procedure to re-attach the nerve to the spinal cord.

If this experimental treatment proves effective, not only will it help those suffering from this type of debilitating injury but it will take us a crucial step closer to an effective treatment for those left paralysed after spinal cord injury.

On the sofa with Gerry Harlow

Over the next few months, we have exclusive access to talk to senior members of staff at Glenside Manor about the good work that goes on around the site. For this edition, Gerry Harlow MCSP, lead physiotherapist talks to us about his team's work and achievements.

Glenside is a specialist neurological rehabilitation centre near Salisbury with a 42-bed hospital, three nursing homes, three residential care homes, 10 bungalows for supported living and a day-care centre. The 260 staff provide specialist rehabilitation for adults living with brain injuries and neurological conditions. The programmes provided include assessment, progressive care and rehabilitation, long stay care, high-dependency care and neuro-behavioural rehabilitation. The facilities on-site include a hydrotherapy pool, a physiotherapy

suite, multi-sensory rooms, a day-care centre, an internet area, a coffee shop, a hair salon and beautifully landscaped gardens. The teams include Speech and Language Therapy, Occupational Therapy, Physiotherapy, Clinical Psychology, Nursing, Medicine and Social Work, all supported further by consultants in rehabilitation medicine and a consultant psychiatrist. Glenside also has activity organisers, rehabilitation assistants, podiatrists and a specialist dementia care team.

Gerry, tell us about the physiotherapy team.

I lead a team of six qualified physiotherapists and one assistant, there are two clinical specialist neuro-physios, myself and my colleague Simon Berrell MCSP, two senior neuro-physios and two junior physiotherapists, who are acquiring great experience and specialist skills needed to work in this field. We're fortunate that several core members of the team have been together for five years so we're well established.

What conditions do you treat?

We see a wide range of conditions, predominantly traumatic and anoxic brain injuries but also other neurological conditions such as Multiple Sclerosis, stroke and some rare conditions like Guillain-Barré syndrome. Cases can be complex as we're not only dealing with physical problems, but also with memory, cognition, communication and behaviour, all of which can interfere with any physical recovery. I think it's these challenges that make this area of rehab such an interesting and rewarding one.

What equipment does Glenside have?

We're privileged to have excellent facilities in the new hospital where we have a physiotherapy suite of three spacious well-equipped rooms. One is a conventional gym area with exercise equipment and the other two are clinical areas,

one will become our specialist seating and spasticity management clinic. We also have a large state-of-the-art hydrotherapy pool, which provides benefits to many patients.

What range of treatment does the team give?

In less severe cases, we look at muscle strengthening, balance re-training, gait re-education, functional based activities and daily living tasks as well as personal and group exercises. We also use Wii games consoles in guided therapy sessions as a fun way to improve muscle strength and balance with some patients.

In more severe cases, the prevention of further deterioration is the primary goal. If someone is unable to move for themselves they receive external assistance and intervention; we deliver 24-hour posture management with specialist equipment such as bed support systems, tilt-in-space armchairs and wheelchairs to provide optimal comfort and support.

Sometimes obtaining expensive equipment is difficult with limited PCT budgets. If money is available from an insurance claim, it makes a huge difference to the individual as equipment is bought early on when the patient really needs it; this also saves money in the long-term by reducing complications such as pressure sores and contractures needing surgery.

What training is required to become a neuro-physiotherapist?

After a three-year physiotherapy degree, students begin a rotational programme for around two years in an NHS Hospital before deciding which area to specialise in. Glenside has further training and everyone attends regular post-graduate training. In 2005, both Simon and I completed a specialist module of the physiotherapy masters degree, which qualified us to inject Botulinum toxin as a treatment for muscle spasticity. Other colleagues specialise in Functional Electrical Stimulation techniques and the Saebo Arm Training Programme.

Tell me more about how Botulinum toxin helps rehabilitation?

We can inject Botulinum Toxin (botox) into muscles to reduce muscle spasticity, or excessive stiffness in the muscle which is often experienced by those living with brain injury. It works by temporarily weakening the muscle to give a window of opportunity to allow other treatment to take place with the often interfering and over-active muscle more relaxed. It's always an adjunct to an overall treatment programme and not used in isolation so the patient receives continual support with their stretches, splinting, exercises and hydrotherapy.

What happens to your children's damages?

Eleanor Walker, Solicitor

When a personal injury claim has been won, Claimants receive their damages and are free to spend or save them as they choose. But what happens to the money when the Claimant is a child? Can a teenager really be trusted with a lump sum? Do parents have the right to invest their child's money on their behalf?

It is up to the Court, or more specifically the Judge, to decide what should happen to a child's damages. It is usual practice for the Judge to order that the money be held on behalf of the child by the Court Funds Office, until they are 18. Even when the child does turn 18, it is still up to the Court to decide if and when they should receive their damages. If a Litigation Friend has a particular wish to invest or manage the money themselves, they may ask the Judge to do so but the Judge is entitled to refuse (or grant) such a request at his discretion.

The damages are held by the Court Funds Office who is responsible for investing and managing the money in the best interests of the child. The Court Funds Office has approximately 90,000 current children's cases holding nearly £650 million in cash and investments.

They have £1.1 million closed accounts.

An account is opened by the Court Funds Office in the child's name which is referred to as the child's "fund". The fund is put into either a Special Account that pays gross interest, or is invested in the Ministry of Justice Equity Index Tracker Fund. In some circumstances the money is divided and put into both accounts. It is for the Judge to decide how the money should be held, but a general guideline is that if the damages are £5,000 or less, or there is less than five years until the child is 18, then the money will be held on the Special Account. If capital growth is decided by the Judge to be the primary goal, then the money will be held in the Tracker Fund. Every case is different and Judges often take investment advice, particularly where large sums are involved.

Special Account

The Court Funds Office pays two interest rates – basic and special – which are variable rates set by the Lord Chancellor. As of 1 February 2009, the basic rate is now 2% and the special rate is 3% both down from 4% and 6% respectively. The special rate is paid to children's fund accounts, and interest is added to the accounts every six months. The child's Litigation Friend will receive a statement from the Office of Court Funds every six months detailing the interest that has been accrued.

The Equity Index Tracker Fund

The Ministry of Justice in-house Equity Index Tracker Fund is a means of investing in the stock market over the medium to long-term and is managed by Legal & General. All equity investments held on behalf of the child are held

in the name of the Accountant General of the Supreme Court. When the child reaches 18 years old, the equity investments must either be sold or transferred into the child's name. The investments cannot be transferred into anyone else's name. If the child wishes to sell the investments, the Office of Court Funds uses their brokers and sends a cheque for the cash proceeds to the child. Access to the fund is available exclusively to clients of the Ministry of Justice although children who have investments in the fund in their own name once they have turned 18 may retain their holdings.

Payments before 18

It is possible for a child to apply to the Court for part of their damages before they are 18. They do this through their Litigation Friend (usually a parent or close relative) who represents them. The Court must approve any

such payments and it is at the Judge's discretion to approve them. In most cases, the Litigation Friend will be asked to explain what the money is for and how the child will benefit as the Judge will want to ensure that the money is being spent in the child's best interests. For example, if the child wishes to purchase a computer, the Litigation Friend may be asked to provide evidence of the cost of such a computer and to explain why the child should have one. There is usually a Court fee to make an application for an early payment and the Litigation Friend and/or the child may have to attend a hearing.

Tax

An important point to remember is that a child may be liable for income tax if they are receiving an income. Interest on the Special Account is paid gross with no tax deducted and so if the interest

received by the child in any one tax year exceeds their personal allowance, income tax will be due and a tax return will need to be completed. If the money is held in the Equity Index Tracker Fund, any dividends paid to the child will be paid with a 10% tax credit. They will only need to pay further tax if their income is particularly high. It is also important to remember that if a child's investments are sold when they turn 18, they may be liable to a capital gains tax if they have exceeded their annual capital gains allowance.

Useful Websites

- www.courtfunds.gov.uk
- www.officialsolicitor.gov.uk
- www.publicguardian.gov.uk

Moore Blatch case studies

January 2009

Case Study 1

Moore Blatch Resolve recently completed a case for a client who was injured in 2003, when the vehicle in which she was a passenger was negligently struck from behind. She suffered whiplash, back and facial injuries. The client had been diagnosed with multiple sclerosis some years earlier, but until the accident had been living a full life, working full-time and regarded her condition as asymptomatic.

It was her claim that as well as being responsible for her orthopaedic and facial injuries, the road traffic accident was also responsible for the exacerbation of her multiple sclerosis. Medical opinion on the link between trauma and multiple sclerosis is hugely controversial. Several cases alleging this have come before the Courts and have mostly been unsuccessful. For the most part, those relate to cases where the Claimant alleges that multiple sclerosis has actually been precipitated by the accident, rather than exacerbated.

In this case, we were able to obtain supportive neurological evidence and although the Defendant filed evidence in opposition, the case was eventually settled for £25,000.

Case Study 2

Our client was employed in an office environment. The office area included a shiny lacquered wood finish staircase. In July 2005, our client was making her way down the staircase when she

slipped and fell on the staircase due to there being no anti-slip surface.

She suffered broken bones in her foot and subsequently developed a deep vein thrombosis. She was in a plaster cast for a number of weeks and was off work for more than two months.

The client had been unsure of whether to pursue a claim or not, and felt awkward about bringing a claim against her employer. However, she contacted us for some initial advice and we subsequently wrote a letter of claim to her employer in May 2008. The employer's insurance company admitted liability for the accident shortly afterwards and a settlement of £15,000 was agreed in October 2008 without the client having to attend a court hearing.

Case Study 3

Our client was widowed when her husband sadly died from mesothelioma arising out of his exposure to asbestos during the course of his employment. She sought advice and assistance from two firms of solicitors and neither were able to make any headway with the Defendant. She came to us and within six months of taking initial

instructions the claim was settled satisfactorily.

Case Study 4

Our client was employed as a farm hand. In March 2007, during the course of his work, he was instructed by his employer to uncover an 18 foot high silage clamp (pile of cut grass covered in plastic sheeting and old tyres). This task was to be undertaken on his own, by climbing up to the top of the clamp and removing the tyres and pulling back the plastic sheeting. Whilst doing so, our client slipped and fell from the top of the clamp, landing feet first on the ground.

As a result of the fall, our client suffered two shattered heels and he underwent surgery to insert titanium plates in both feet. He was reliant upon a wheelchair for mobility for three months and was unable to return to work for five months. He suffers with some ongoing restricted movement and pain and has been told that he might require further surgery in the future in order to improve these symptoms.

We were instructed by the client at the end of November 2007 and his claim settled less than 12 months later for £75,000.

case study 4

He was reliant upon a wheelchair for mobility for three months and was unable to return to work for five months. He suffers with some ongoing restricted movement and pain and has been told that he might require further surgery in the future in order to improve these symptoms.

If you would like free initial advice on any accident claim please get in touch with us by contacting:

Damian Horan on
023 8071 8054 or
damian.horan@mooreblatch.com

www.mooreblatch.com

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He suffered soft tissue injuries to his back, and suspected fractured ribs. He made a complete recovery from his injuries within three-four months from the date of the accident with no ongoing symptoms, and had also sustained financial losses of £569.94. The Defendant's insurer refused to concede liability and accused our client of riding into their driver's vehicle, despite there being no evidence to support their allegations.
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Case Study 5

In June 2004 our client suffered an anterior dislocation of his shoulder as a result of falling when he lost his footing on a defective stair nosing on the internal staircase at the premises where he worked. A dispute as to liability ensued between the landlord of the premises (who was responsible for maintaining the condition of the communal areas of the premises) and the company who had fitted the carpets and stair nosings.

The landlord denied liability on the basis that it had employed a suitable company to complete works on the flooring. The said flooring company in turn denied that their workmanship had been sub-standard. Court proceedings were commenced against both Defendants, and following an independent engineers report being obtained, liability was eventually accepted by the flooring company shortly before the scheduled Court hearing. Our client received £8,650 in damages.

Case Study 6

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We represented a client in relation to an accident he suffered as a cyclist, when a car emerged from a side road, knocking him from his bike.
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He suffered soft tissue injuries to his back, and suspected fractured ribs. He made a complete recovery from his injuries within three-four months from the date of the accident with no ongoing symptoms, and had also

sustained financial losses of £569.94. The Defendant's insurer refused to concede liability and accused our client of riding into their driver's vehicle, despite there being no evidence to support their allegations.

Proceedings were commenced in April 2008 and the Defendant entered a Defence and Counter Claim for the cost of repairs to their vehicle. The case proceeded to trial at which Judgment was awarded fully in favour of our client for £2,424.11 inclusive of all damages and interest. In his Judgment the Judge severely criticised the Defendant and awarded our client enhanced costs, and interest on costs to a total of £16,000.00.

Case Study 7

Moore Blatch Resolve represented four clients who were involved in a serious road traffic accident in December 2002. The vehicle in which they were travelling was struck by a gang of armed robbers who were attempting to evade police following an armed robbery on an off-licence.

All the occupants of the vehicle sustained injury. Whilst two of the claims were settled prior to the commencement of proceedings, proceedings were commenced against the Defendant criminals and the Motor Insurers Bureau, who dealt with the claim under the Uninsured Drivers Agreement.

Our case was that neither of our two clients would be able to work in the future. The claim for loss of earnings was complicated by virtue of the fact that both clients had retired from remunerative employment prior to the accident. However their evidence was that it had been their intention, after a short break from gainful employment, to set their own consultancy business and jointly work in that business. The

claim for future loss of earnings was hotly disputed on the grounds that there was no evidence to show our clients intention to work again.

The claim was settled three months prior to trial in the sum of £145,000 globally.

Case Study 8

Our client sustained a soft tissue injury to the lower back which resolved within about six months and soft tissue injury to the neck which caused intermittent severe pain.

Shortly after the accident our client had commenced employment as a professional photographer and was required to lift heavy equipment. Due to the chronic intermittent pain the Claimant's contract of employment was terminated on the grounds of ill health. Our client claimed future loss of earnings.

The Defendants denied in the entirety the value of the loss of earnings claim. The Defendant's medical expert opined that our client's injuries were resolved within three months from the date of the accident and the residual symptoms were due to constitution rather than the accident.

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The claim settled six weeks prior to trial with the Defendant finally conceding a future loss of earnings claim. Our client recovered £45,000.
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Useful Contacts

Personal Injury

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Moore Blatch Websites

My Claim

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www.myclaim.co.uk

My Claim is our easy to use website dedicated to resolving personal injury compensation claims.

Clinical Claims

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www.clinicalclaims.com

Clinical Claims is a new site produced by Moore Blatch Resolve that deals exclusively with clinical negligence claims.

Moore Blatch

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www.mooreblatch.com

Visit our corporate site to read profiles on all the team and view detailed information on our other services.

If you would like your organisation to link to one of our websites, please contact:

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