

Brain Injury

Your guide to brain injury



Contents

3. The Personal Injury Department at Field Fisher Waterhouse LLP
4. Brain injury
5. Effects of brain injury
6. Can I claim
7. Funding the case
8. How can Field Fisher Waterhouse LLP help me?
9. Limitation
10. What will we do for you?
11. An example of some of our cases
14. Contacts



“Tanya was the most seriously injured surviving victim of the Potters Bar rail crash. The case was extremely complex involving legal issues in the UK, China and Taiwan. The family is satisfied with the outcome of the case. However no amount of money will compensate Tanya for the horrendous injuries she suffered, and the glittering career which was snatched from her as a result of this avoidable accident.” *Paul McNeil*

We recently recovered a substantial payout in the High Court for a top Taiwanese TV presenter, Tanya Liu, who was injured in the Potters Bar rail crash.

Paul McNeil has recovered a substantial payout in the High Court for a top Taiwanese TV presenter, Tanya Liu, who was injured in the Potters Bar rail crash.

Prior to the accident, Ms Liu worked as a news anchor for the Hong Kong based satellite TV station, Phoenix TV. The channel is the only independent station to broadcast to mainland China, and regularly has an audience of 140 million viewers. Ms Liu interviewed senior political figures and business leaders in China and abroad, including Bill Clinton and Bill Gates.

Following the accident in May 2002, Ms Liu, now 39-years-old, was in a coma for two months having suffered brain damage, spinal fractures and internal injuries. In July 2002, she regained consciousness having been repatriated to Beijing. At the time her recovery was described as

miraculous, after doctors had declared her injuries so severe that she should be allowed to die.

Notwithstanding a remarkable recovery, Ms Liu has been left with intellectual, cognitive and physical difficulties. She is now cared for round-the-clock by professionals and her family in Hong Kong.

Mr Justice Irwin agreed an award against Jarvis Facilities Ltd and Network Rail Infrastructure Ltd which he said was “on my view a substantial sum and reflects the severity of this injury.”

Paul McNeil said: “Tanya was the most seriously injured surviving victim of the Potters Bar rail crash. The case was extremely complex involving legal issues in the UK, China and Taiwan. The family is satisfied with the outcome of the case.

The Personal Injury Department at Field Fisher Waterhouse LLP

Brain Injury Expertise

Field Fisher Waterhouse LLP (FFW) has long been recognised as a leading Personal Injury Practice.

Whilst based in the City of London, we act for clients throughout the UK and abroad.

We have a dedicated Brain Injury Unit thus allowing the lawyers within that unit to be true experts in the field of law, medicine, rehabilitation and compensation for acquired brain injury. We understand the devastating effects of brain injury on the individual and their family. We are committed to providing a highly effective legal service.

We have strong links with professionals such as neurosurgeons and neuro-rehabilitation experts, as well as associated charities such as Headway, the Spinal Injuries Association and the Brain Injury Social Workers Group (BISWG). Jill Greenfield sits on the Committee of Headway North London.

We receive cases from the following organisations:

- Headway
- Spinal Injuries Association
- Association of Personal Injury Lawyers
- Law Society
- AvMA (Action Against Medical Accidents)
- Roadpeace
- London Cycling Campaign

We give you:

- specialist advice from dedicated professionals
- commitment to investigate and progress the case as speedily as possible
- a free initial consultation, wherever you may be
- advice on funding your case, including “no win no fee”
- an approachable and friendly service

Brain injury

It is estimated that one million people in the UK attend hospital each year as a result of an acquired injury to the head. Of these, 11,600 people will suffer a severe brain injury, with only 15% returning to work within five years. 10,000 people will suffer a moderate brain injury. Many of these will still have ongoing physical and psychological problems five years after the event, in common with those who suffer severe injuries.

Brain injuries can occur for many reasons but some of the most common are:

- road traffic accidents
- accidents at work
- assaults
- medical negligence

We will:

- come and see you wherever you are to discuss your case in detail, face to face
- allow you to concentrate on your rehabilitation whilst we concentrate on your case
- investigate your case thoroughly
- arrange for a case manager to be appointed to organise your rehabilitation
- advise you as to the merits of your claim and its value
- obtain interim payments (providing liability is admitted) to fund care and rehabilitation
- use our expertise to maximise the value of the claim.

“ ‘...an excellent team’ agreed observers.”

Chambers

Effects of brain injury

It is not surprising that any damage to the head can have far reaching consequences. Even minor brain injuries can affect a person's day to day life. Only 45% of patients who suffer a "minor" brain injury will have made a good recovery after one year.

Some of the most common difficulties experienced following a brain injury are:

- poor memory
- poor concentration
- reduced planning and problem solving skills
- fatigue
- personality changes
- inappropriate behaviour
- physical disabilities
- sensory impairment (vision problems and noise sensitivity)

Any injury can have a real and devastating impact on you, the injured person, your family and friends, work and the ability to enjoy life. The effects of a brain injury must not be underestimated. Forgetting appointments can cause real difficulties; frustration can lead to outbursts of anger that alienate family and friends. It's important that you have a full understanding of your brain injury and that proper care is provided.

Our clients say

"A combination of commitment, intuition and creativity within the legal scope."

"A very necessary interpersonal manner."

Can I claim compensation?

If the brain injury has been caused by the fault of another, a civil claim may provide you with a lump sum or periodical payments, for example, to travel, for rehabilitation for loss of earnings and for the cost of care. This may enable you to improve your quality of life by allowing you to access specialist services that will help you to adapt to the realities of living with a brain injury.

There are three elements to a successful personal injury claim:

1. Duty of care

It is necessary to show that a duty of care was owed to you, the injured person, by the person or organisation who caused the brain injury.

For example, if the injury was caused by a road traffic accident, there should not be any difficulty in establishing that the motorist owed a duty of care. Similarly, all employers owe a duty to their employees to take reasonable care. In most cases, establishing a duty of care will be straightforward.

2. Breach of duty of care

The second element is to establish that there has been a breach of the duty of care. We must be able to show that, for example, the car driver made a mistake that was negligent. The facts of each case must be examined carefully. We have wide experience in investigating all types of accidents to ascertain whether the perpetrator was at fault. Establishing breach of duty of care is often the most difficult aspect of the claim.

3. Causation

The third element is to prove that the brain injury was caused by the accident. We must show that the harm was caused by or materially contributed to the accident. Again, this is usually straightforward save in cases where there is an injury pre-dating the accident and in medical negligence cases.

Funding the case

Legal costs can be a real concern when you are considering bringing a claim. Once we have more information about the accident, we will advise you as to the best method of funding available. Your funding options are:

1. Conditional fees

If we don't win, you don't pay.

This is a “no win, no fee” system in respect of the Claimant's lawyer's fees. If we think your case is suitable for this, then we will discuss this with you in detail and give you our *Client's guide to conditional fees*. We will also advise you about the availability of insurance to cover your disbursements and the other side's costs if you lose the case. Often, the premium for such insurance can be deferred until the conclusion of your case.

There are no hidden costs and no “case handling” fees.

This arrangement protects your damages settlement. Specifically, we do not take a percentage of your damages as part of our fees.

2. Legal aid

If your brain injury has been caused by medical negligence, you may qualify for legal aid through the Legal Services Commission. We will advise you if we believe that you should make an application to the LSC.

3. Legal expense insurance

We will check whether you have a policy of insurance, which covers you for legal costs. This is often included, for example, within household insurance or motor insurance. **This will be at no cost to you, your legal fees being indemnified by your insurer.**

“The only City firm with a genuine commitment to Claimant Personal Injury work.” *The Legal 500*

How can Field Fisher Waterhouse LLP help me?

A brain injury will mean different things to different people. We understand that a brain injury is a very individual matter. We also appreciate the difficulties that many brain injured victims and their families face in the pursuit of litigation. We are concerned that we take the pressure off you, the victim of the brain injury, and your family, and deal with your claim as quickly as possible.

Jill Greenfield, a Partner in the Department, is recommended as an expert in the field of brain injury claims by Headway and sits on the North London Headway Committee. She is a specialist in pursuing cases that involve all levels of brain injury.

We understand that these are highly complex cases and we regularly work with a variety of medical experts, in particular, neurologists and neuropsychologists who are leaders in their field. We will ensure that your case is properly evaluated and that you get proper care.

Interim payments

In cases where liability is not disputed or is unlikely to be disputed, we can usually obtain interim payments that will allow you to:

- set up a proper care regime, including appointing a Case Manager
- arrange for any rehabilitation that you may need to be paid for privately
- consider and assess the possibility of a return to work
- ensure that you have sufficient funds to meet your needs
- ensure that you have proper financial advice in respect of the use of Trusts and other means that may ultimately protect any award that you may receive.

Limitation

Generally, you have 3 years from the date of an accident in which to formally instigate proceedings.

The Court has discretionary power to override this 3-year limitation period but such instances are rare.

With children and persons under a disability (i.e. those who are incapable of managing their own affairs), the rules are different. The 3-year period does not start to run until the child's 18th birthday or until the person ceases to be under a disability.

Whilst 3 years sounds like a long time, in fact there can be a great deal of preparatory work to be done before proceedings are commenced and we would recommend that advice is taken as quickly as possible after an injury has taken place.

We will give you advice if we think that limitation is likely to present a problem and we will take action immediately if necessary to protect your position as far as possible.

Criminal Injuries Compensation Scheme (CICS)

If you have suffered an assault, your claim may be to the Criminal Injuries Compensation Authority (CICA). This is a government-funded scheme, which provides financial support to the victims of crime. Our lawyers are experienced in dealing with the CICA and will ensure that your claim is properly valued by the CICA. We will ensure that the CICA is fully aware of the devastating effects of the injury and obtain specialist reports when required. This may mean that a formal hearing is necessary and we will represent you at that hearing. You must make your claim to the CICA within 2 years of an assault having occurred. It is therefore imperative that you seek advice as soon as possible after your assault.

What happens next?

Once we have gathered together all of the relevant evidence, including reports and witness statements, we will consider the case carefully with you to advise you whether or not you have a case which is worth pursuing. In some cases, we will seek the advice of an experienced Barrister to give you a detailed opinion on the merits of your claim.

What will we do for you?

In some cases, we cannot say initially whether or not there will be a successful claim but we will advise you if your case warrants further investigation. Our investigations will include:

Obtaining statements

We will see you to take a detailed statement. This must include as much as you are able to remember about the circumstances in which you were injured. This statement will also include details of the treatment you have had to have because of your injury, and its impact upon your daily life.

We will also contact any witnesses if this is appropriate to your case. For example, if you were injured in an accident, we will seek to contact any witnesses who can support your case.

Obtaining your medical notes

We will obtain copies of all your medical records. We will ask you to sign forms authorising the release of your notes to ourselves. It can take some time for all of these to be collected, organised and read by us.

Obtaining a medical report

We will obtain a full and detailed medical report by an expert who specialises in the type of injury that you have suffered. This report should be able to establish the severity of the injury and its current and future impact on your life. This will be used to establish the level of damages that you can expect in order that you can continue to lead a full life. It may be, depending on the level of your injury that a number of reports will need to be obtained.

“A pleasant team to deal with ... it has the experience ... and ‘just gets on with it’.”

Chambers

As well as investigating whether you have a claim for a brain injury, we will consider the likely amount of damages that a Court would award.

Once we have established that you have a claim worth pursuing, we must notify the other side of a claim. This notification is termed a "Letter of Claim". It provides the other side (the Defendant) with an opportunity to investigate your case and the possibility of avoiding the issue of Court proceedings by either agreeing they are liable for your injuries or by offering you compensation to settle your claim. The Defendant has three months to respond to this Letter of Claim before we can generally issue Court proceedings.

Some examples of our cases



“Although I survived an accident from June 2003 it seemed that my injuries had stripped most of my life away. This was until Jill Greenfield from Field Fisher Waterhouse helped us reach a settlement that has helped me to put my life back on track.”

Nathan's case

Nathan was a student when he was involved in a serious road traffic accident when he was knocked off his bicycle by a car. He suffered a spinal cord injury which has left him partially paralysed with a serious brain injury. Throughout, liability was denied by the Insurers of the Defendant vehicle. The Defendant argued that Nathan had pulled out directly in front of his car. We argued on behalf of Nathan that the car had been travelling at speed. To clarify issues, an Accident Reconstruction Expert was used to prepare a useful report. The Defendant sought advice from their own Accident Reconstruction Expert. The Trial on liability was due to take place in July 2006. Instead, at a round table meeting, a compromised settlement was achieved in respect of liability only. A large interim payment was obtained for Nathan and steps are now being taken to quantify the claim, on his behalf.

“Although I survived my accident from June 2003 it seemed that my injuries had stripped most of my life away. This was until Jill Greenfield from Field Fisher Waterhouse helped us reach a settlement that has helped me to put my life back on track. I now know that I will be taken care of. I can try new forms of leisure and hobbies that are catered for my disability such as hand cycling or kayaking. The litigation has opened up many doorways that were closed upon my accident and it has helped me to rebuild a life that is once again very valuable.”



Pedestrian wins an initial £750,000 in the High Court

A pedestrian who suffered a serious brain injury when run over by a vehicle won an interim award of £750,000 at the High Court this week before Mr N Wilkinson QC sitting as a Deputy High Court Judge . The defendants had offered just £100,000. The Claimant, who now requires 24 hour care, will be able to use the money to purchase alternative accommodation and allow carers to be with her 24 hours a day. It is expected that the Claimant will ultimately recover several million pounds when the case ultimately settles.

Jill Greenfield the Claimant's solicitor said, "*It will be some time before my client's claim can be fully quantified. This does not however mean that my client should have to wait for her damages. Her rehabilitation is key and it was felt that money was needed now to implement rehabilitation properly and to give her the best possible chance of living a fulfilling life. I was pleased that the High Court agreed that such a high figure was required at such an early stage in the case.*"

Murphy v Gerald Victor Lilley t/a Bayford Meadow Kart Circuit (1) Playscape Pro-Racing Ltd (2) Royal Automobile Club Motor Sports Association (4)

Paul McNeil acted on behalf of an IT Consultant who had gone on a go-karting trip with work. Whilst he was in the go-kart, he lost control of the go-kart which sped toward a lamp post situated at the side of the track. He hit the lamp post with significant force. Whilst the Claimant was wearing a seatbelt and helmet, he suffered very significant brain damage.

The claim was contested throughout and experts in respect of both liability and quantum were instructed to assist. Ultimately, the claim settled for over £1 million.



L v P

Richard Earle acted on behalf of Miss L who was involved in a road traffic accident on 10 July 1999. L was travelling as the back seat passenger in a car that lost control. L sustained multiple injuries including traumatic brain injury and severe spinal injuries including a number of thoracic fractures and other orthopaedic injuries.

A seatbelt expert confirmed that notwithstanding L's failure to wear a seatbelt and the fact that she was thrown from the vehicle, she probably would have sustained equally, if not more serious injury given that the vehicle turned over several times and was severely damaged. The Defendant, via his insurers, subsequently admitted liability.

The Defendant made a payment into Court of £750,000 including repayable DSS benefits of just over £25,000.

Contacts



Jill Greenfield, Partner

jill.greenfield@ffw.com
+44 (0)20 7861 4557

Jill has over 14 years' experience of acting for claimants. Jill is the firm's referral solicitor for Headway. She sits on the Committee of Headway North London. She has a specific interest in catastrophic injury cases which includes brain and spinal injuries. Jill has acted on a number of high-profile claims, including Tom Dowling v Bowman Farm, The Australian hostel fire cases, the Hatfield train crash and the family of a high profile murder victim. She is described in The Legal 500 as "committed and efficient". She is a member of the Association of Personal Injury Lawyers.



Paul McNeil, Partner

paul.mcneil@ffw.com
+44 (0)20 7861 4019

Paul has specialised in personal injury and medical negligence claims on behalf of victims for over 15 years. He has acted for claimants in the Clapham, Southall, Ladbroke Grove and Potters Bar rail accidents. Paul is a member of the AvMA and the Law Society's Clinical Negligence Panels. He is also a member of the Association of Personal Injury Lawyers and ATLA.



Field Fisher Waterhouse LLP 35 Vine Street London EC3N 2AA
t. +44 (0)20 7861 4000 f. +44 (0)20 7488 0084 info@ffw.com www.ffw.com

This publication is not a substitute for detailed advice on specific transactions and should not be taken as providing legal advice on any of the topics discussed.

© Copyright Field Fisher Waterhouse LLP 2008. All rights reserved.

Field Fisher Waterhouse LLP is a limited liability partnership registered in England and Wales with registered number OC318472, which is regulated by the Solicitors Regulation Authority. A list of members and their professional qualifications is available for inspection at its registered office, 35 Vine Street London EC3N 2AA. We use the word "partner" to refer to a member of Field Fisher Waterhouse LLP, or an employee or consultant with equivalent standing and qualifications.

