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## LawTalk Blog



# When can you claim compensation for pure mental harm?

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Compensation may be payable for mental harm "injuries" where the mental harm has arisen as a consequence of a negligent act. For example, you witnessed your child being severely injured in a [motor vehicle accident](#) caused by another driver. However, if you were the driver and you were totally at fault for the accident, you would not be able to claim for mental harm.

Claims for mental harm, otherwise known and often referred to as nervous shock claims, can arise in two situations:

1. Firstly, where an injured person suffers mental harm as a consequence of his or her physical injury.
2. Secondly, pure mental harm which is mental harm other than consequential mental harm (that is, that referred to in point 1).

Compensation can only be awarded for "pure mental harm" if the person was present at the scene of the accident when it occurred or is a parent, spouse or child of a person killed, injured or endangered in the accident.

Compensation may only be awarded for pure mental harm if the harm consists of a recognised psychiatric illness. In other words, a psychiatrist is required to assess the claim and diagnose the person with a recognised psychiatric illness.

Any claim for mental harm, including pure mental harm, is dealt with in the Civil Liability Act 1936.

Mere grief suffered as a result of the death of a loved one or the disability sustained by a loved one or the strain of looking after a disabled loved one is not enough to satisfy a claim for mental harm. A person needs to have suffered a recognisable psychiatric condition such as a depressive disorder or post-traumatic stress disorder.

In determining whether a duty of care exists in a case of pure mental harm the court will consider the following:

1. Whether or not the mental harm was suffered as a result of a sudden shock;
2. Whether the claimant witnessed, at the scene, a person being killed, injured or put in peril;
3. The nature of the relationship between the claimant and any person killed, injured or put in peril;
4. Whether or not there was a pre-existing relationship between the claimant and the defendant.

Determining the potential for mental harm compensation claims and pursuing such claims is a complex area of civil litigation. We would always recommend people exposed to mental harm under the above conditions, seek experienced legal advice and assistance.

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