



ABOUT THE AUTHOR

I am a member of the Editorial Board of B21 and a Partner at Hilary Meredith Solicitors Ltd. I specialise in serious injury claims including claims arising out of brain injuries, spinal cord injuries and amputations, having worked with victims of accident and injury for almost 20 years.

Hilary Meredith Solicitors Ltd has pursued traumatic personal injury claims on behalf of the Armed Forces for over a decade. Our specialist team offer a sympathetic and professional service, helping Armed Forces Service Personnel whose injuries may be catastrophic and life changing, with often permanent injuries requiring an extensive hospital stay and long-term radical changes to lifestyle, mobility, professional care – and earning ability. We understand the devastating effects that brain injuries can have not only on the injured individual but also on their families and friends. Our experience and contacts allows us to provide the service required to best address your needs in both the short and long term.

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Fighting FOR Justice

Since 1987, members of the Armed Forces have been able to pursue a claim against the MoD, if they've been injured in an accident that was not their fault. However, to succeed, you will need the help of an expert.

ARTICLE BY **GARY BOYD**

An understandably dangerous job, a survey of 4620 Armed Forces personnel, deployed to Afghanistan and/or Iraq, found that on average the prevalence of Traumatic Brain Injury (TBI) was 4.4 per cent, rising to almost 10 per cent in a combat-led role. The view over the Atlantic is even worse, with between 12 and 22 per cent of American troops having been impacted by TBI. Different equipment, exposure, and cultural experiences have all been attributed to this stark contrast, with an issue that is increasingly on the political radar on both sides of the pond.

COMBAT IMMUNITY

Claims against the Ministry of Defence require specialist knowledge and experience. For example, it is widely believed that if an injury was sustained in battle, there is no basis for a civil lawsuit under the doctrine of combat immunity. However, there are significant exceptions to the said general rule, but it's imperative you take professional advice from a recognised specialist and independent civilian lawyer.

In addition to or instead of the option of a civil law suit, the Armed Forces Compensation Scheme is open to all personnel injured 'as a result of service'. This can be a complex process and one that should often be pursued whether there is a civil claim or not.

DO YOU WANT TO PURSUE A COMPENSATION CLAIM?

Many sufferers and their families can feel intimidated by the thought of taking a huge organisation such as the MoD to court. But you can feel assured that at Hilary Meredith Solicitors we are very experienced in pursuing such claims. The first route we take is one called the Alternative Dispute Resolution (ADR). ADR is a process through which the Lawyers for the parties to the claim, in correspondence and/or meetings, negotiate and attempt to agree settlement of a case. Through this mediation process, we frequently secure really excellent settlements without the need for court visits or ►►



unnecessary strain on you and your family who will already be under an unbearable amount of pressure. Because we have so much experience in traumatic brain injury claims, particularly in MoD cases, we have a very high chance of settling out of court and, personally, almost all of my cases involving ADR have reached a resolution this way.

NEXT STEPS

- 1 After discussing with you all the relevant details, we will issue a letter of claim notifying the MoD of the intended civil action.
- 2 A case manager will be appointed for the duration of your claim and will schedule all appropriate appointments with medical experts who will assess your injuries and recommend and implement rehabilitation.
- 3 Appropriate medico-legal experts will report on your injuries and their consequences.
- 4 If an admission of liability is secured, interim payments to you will be arranged. These will pay for any care or rehabilitation needed to improve your injuries, also arranged by your case manager, and can be used to provide relief from financial strains pending the conclusion of the claim.
- 5 The negotiation process begins. At this point a vast majority of cases settle without the need for individuals give evidence in court. Only a small percentage goes to trial.

‘A vast majority of cases settle without the need for individuals to give evidence in court. Only a small percentage actually go to trial’

HOW IS MY CLAIM VALUED?

The component parts that make up an award of compensation are referred to as ‘Heads of Damage’. These Heads fit into two main categories: the award for injury (‘pain, suffering and loss of amenity’), and an award for losses (‘financial losses and expenses’).

Award for Injury: this portion of the claim is intended to compensate not only for the pain and suffering caused by your injury but also for the impact it has on your enjoyment of life.

Financial losses and expenses: the sums incurred, both to date and in the future, can generally be included in the claim for compensation. This loss might include modest expenses such as travelling expenses getting to hospital. In other cases the loss may be more substantial such as time off work, or in se-

vere cases, where the injuries permanently compromise your ability to work.

In most brain injury cases, the impact of the damage is such that the Claimant requires professional nursing care, and this loss can be included in the claim; and in claims arising from severe brain injury this may be the biggest element.

Claims for nursing care can also include nursing provided without charge by your family. Often described as gratuitous care, this takes into account the time spent caring for you, and any loss of income as a result. Accommodation claims, such as modified housing, equipment requirements and any rehabilitation costs will also be assessed as part of the value of the claim.

HELPING THE HEROES

A special mention must go to the Defence Medical Rehabilitation Centre Headley Court, which provides medical rehabilitation to injured members of the Armed Forces. Providing a range of services from physiotherapy to prosthetics, as well as dealing with the psychological impact of injury, the centre does a remarkable job.

Remaining with the military theme, SSAFA assists Armed Forces personnel and their families, offering practical, financial and emotional support to both serving and veteran forces.

CASE STUDY

A Worthy Winner

In July 2013, a Royal Marine won an award for bravery after suffering horrendous injuries in Afghanistan. Thomas Birch was a young Lance Corporal when the Land Rover he was driving on a mountain track in Helmand Province plunged 100 feet down a mountainside.

The 25-year-old suffered debilitating skull, brain and internal injuries in the accident.

It was Gary Boyd, a Partner at Hilary Meredith Solicitors, who helped him launch legal action against the MoD, claiming that a fault in the vehicle was to blame and that he had also been allowed to

drive without a licence or military permit.

In July 2012, the High Court dismissed his claim. However, in 2013, Gary pursued Tom’s claim to the Court of Appeal where Lord Justice Longmore, sitting with Lord Justice Tomlinson and Mr Justice Lewison overturned the High Court decision and allowed the Appeal. They also agreed that Tom was not negligent in any way, and that there was no contributory negligence. Tom was felt very strongly that the Judge’s findings in the High Court were wrong as he overlooked evidence in making



his Judgment. Evidence was given by another Marine in Tom’s unit, confirming that he frequently drove without the military licence required to do so, to the knowledge of the commanding officer. The failure to recognise a breach of duty of care on the part of the MoD in this case was quite shocking, particularly given the age of the

claimant. Tom was 17- years-old when he joined the army and his parents signed over their parental care to the MOD. He was only 18 when this terrible event occurred, robbing him of his army career and a normal life and returning him broken to his parents care. The final decision by the courts was definitely the right one.