



Functional Neurological Disorder: A case explored

Huw Ponting, Enable Law



TOPICS

- What is FND?
- Diagnostic uncertainty
- How it presents
- The role of the experts
- Litigation challenges
- Based on a recently settled case

Time for questions at the end

SCENE SETTING

Whilst many personal injury claims can be difficult and complex from the perspective of the medical science involved, FND poses particular challenges including proving its legitimacy in our adversarial legal system

- Relatively new feature in personal injury litigation, but becoming increasingly common
- Challenges around diagnosis (condition), causation and prognosis
- Difficulty pleading the claim
- Allegations of exaggeration or Fundamental Dishonesty

UNDERSTANDING THE CONDITION

- Historically referred to as hysteria, conversion disorder (psychological symptoms converted into physical symptoms), somatoform disorders or non-organic illness
- Move away from condition regarded as a psychological condition to focus on neurological symptoms
- Positive diagnosis rather than one of excluding other causes
- Changes the way the brain works rather than damage to the brain itself
- Genuine physical symptoms that cannot be explained by changes to brain structure
- Symptoms can include a combination of:- seizures, movement problems, dizziness, speech difficulties, pain, fatigue, issues with vision or hearing

UNDERSTANDING THE CONDITION CONT.

- Period between trigger and onset can vary – can be weeks or months
- Can be triggered by physical &/or psychological trauma – BUT can be dormant in those with complex history of previous trauma, abuse or stressful life events pre-index accident
- No correlation between development / symptoms experienced and the severity of injury
- Progression of the condition can vary

DIAGNOSTIC CHALLENGES

- Neuro imaging often normal
- No single or specific diagnostic test. No biomarker or biological signs.
- Not uncommon for it first to be considered within the medico-legal system
- Can be wrongly diagnosed as a different condition – e.g. frontal lobe epilepsy
- Positive diagnosis based on person's history, symptoms and a physical examination
- It can co-exist with other disorders
- Investigations such as EEG (electroencephalography) or EMG (electromyography) may rule out other disorders
- Can be predisposing factors – abuse, psychological stressors. Important to consider as the case is built

EXPERT INVOLVEMENT

- Who? Usually, neurology led. With (neuro)psychiatry and psychology. Remember FND can co-exist alongside other neurological disorder – brain or spinal injury, or depression or PTSD.
- Vital to have complete set of records
- Detailed statements dealing with onset of symptoms
- Claimant or patient's own video footage of seizures or movement disorders
- Understanding of broader family history
- Function can vary significantly

LITIGATION CHALLENGES

- Diagnosis – predisposing, precipitating and perpetuating factors
- May be necessary to exclude other psychiatric diagnoses – psychosis, Personality Disorders
- Expert selection – timing, discipline, individual identity and order of reporting. Additional experts – care, accommodation
- Early involvement of counsel
- Statements
- Other available evidence – videos, family history
- Litigation often a perpetuating factor in itself
- Treatment may have to wait until post settlement

LITIGATION CHALLENGES CONT.

- Management – MDT and case management
- What treatment – must always be multi-disciplinary; physical therapies (OT, PT), psychological therapies, psychiatry/neuropsychiatry/neurorehabilitation medicine. PLUS medication for secondary symptoms e.g. anxiety, depression and pain
- Inpatient treatment a possibility – very expensive. Prognosis may be variable – schedule considerations
- Contributory negligence
- Part 18 Requests
- Surveillance – likely with potential value of these cases. Utmost care required with statements, responses to requests for further information
- Fundamental Dishonesty and its significant consequences

CONCLUSION

- Understand the condition – diagnostic uncertainty, causation etc.
- Know your client
- Collate your evidence carefully
- Early involvement of experts and counsel – perhaps a no-obligation and early discussion with your potential lead expert(s)
- Expect surveillance
- Consider treatment and prognosis and how you'll plead future loss
- And finally – it is a complex condition but one that is becoming better understood over time and there are a greater number of good experts who can assist, including those at NRC

Time for questions

Thank You



www.nnrc.org.uk



enquiries@nnrc.org.uk



London and Newcastle
offices, nationwide
coverage



ENABLELAW



www.enablelaw.com



huw.ponting@enablelaw.com



Nationwide

