



**LIABILITY FOR NERVOUS SHOCK AND ANXIETY**

**WILL HEALY**  
**11 SEPTEMBER 2024**

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**AGENDA**

1. What is Nervous Shock and Anxiety?
2. Recognised Claims
3. Coverage
4. Impact of AI

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## What is Nervous Shock and Anxiety?

### Medical recognition

- Not all forms of psychiatric harm are recognised by the law equally.
- Psychiatric injury must manifest itself as a medically recognised condition.
- In the past, legitimate claims were based around the idea of ‘nervous shock’, although nowadays you are more likely to find references to post-traumatic stress disorder (PTSD) and various other specifically defined mental illnesses.
- Mental distress falls short of being a diagnosable psychiatric condition.

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## Recognised Claims

In what circumstances does the law recognise claims for distress and anxiety?

### Personal Injury

- The claimant is entitled to compensation for the pain and suffering which is attributable to his injury and its consequences.
- Injury includes disease and physical or mental illness.
- Mental anguish must be compensated for as well as actual physical pain.

**Generally speaking, where a claimant has suffered “mere” distress or anxiety and not any bodily injury or psychiatric harm, the law does not recognise that distress and anxiety as a form of harm giving rise to a right to compensation.**

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## Recognised Claims

Standalone head of loss

### Breach of the Data Protection Act 2018

- S168 DPA 2018 - Distress is included in 'non-material damage' compensation claims.

### Breach of contract

- Damages awarded for mental distress where a major or important object of the contract was to give pleasure, relaxation, or peace of mind.
- Evolved in a series of earlier cases in which damages for mental distress had been awarded in cases of supply of sub-standard holidays - *Jarvis v Swan Tours*.

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## Recognised Claims

Standalone head of loss

### Breach of the Equality Act 2010

- Discrimination based on one of the protected characteristics such as age, sex, race, religion or belief.
- Compensation for discrimination may include/be entirely compensation for injury to feelings.

### **Mail**Online

Racism or brazen scam? Groups of Travellers are behaving bizarrely in pubs while secretly recording themselves and then suing bar staff for thousands of pounds for refusing to serve them

**B B C**

Pontins has agreed to change its working practices after disclosure it had a list of Irish surnames it used to screen out bookings for its holiday parks from Gypsies and Travellers.

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## Coverage

To what extent is covered under a general liability policy

### Commercial General Liability Insurance Policy:

- *...We will pay damages that the Insured becomes legally obligated to pay by reason of liability imposed by law for **Bodily Injury** or **Property Damage**...*
- *Bodily Injury means: physical or mental injury including death, illness, disease, sickness, nervous shock, mental injury or mental anguish.*

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## Coverage

To what extent is covered under a general liability policy

### Problem?

- Can mental injuries and emotional distress can be considered “bodily injury”, even in the absence of physical bodily harm?
- Cover for distress under the Data Protection Act 2018?
- May cause issues for large scale data breaches that affect a large number of individuals, all of whom may have modest claims for distress.
- Exclude liability under the DPA 2018 to minimise large risk exposure or substantially restrict liability exposure in liability policy.

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## Impact of AI

How can AI affect these types of exposure?

### 'Willy's Chocolate Experience' Glasgow 2024



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## Impact of AI

How can AI affect these types of exposure?

### AI in the Workplace

- The use of AI in recruitment processes may allow the company to become exposed to claims for discrimination.
- Potential to result in mass breaches of the Equality Act 2010.

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## Impact of AI

How can AI affect these types of exposure?

### Case study: Amazon 2018

- *“An algorithm that was being tested as a recruitment tool by online giant Amazon was sexist and had to be scrapped, according to a Reuters report.”*
- *“The artificial intelligence system was trained on data submitted by applicants over a 10-year period, much of which came from men, it claimed.”*
- *“Reuters was told by members of the team working on it that the system effectively taught itself that male candidates were preferable.”*

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## Impact of AI

Looking forward...

### Insurance Market

- AI risks that are not affirmatively covered may be 'silently' covered under traditional policy lines that don't exclude them.
- We have not yet seen AI exclusions appear in traditional policy lines.
- As the risk magnifies over time, insurers will have to take a view on whether to price in or exclude that risk.

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## Questions?

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