

BRITISH COAL VIBRATION WHITE FINGER LITIGATION:
SERVICES CLAIMS

1. Introduction

1.1 It is well established that at common law a claimant in a personal injury action can recover the cost of assistance with everyday tasks e.g. gardening, decorating, D.I.Y. etc he reasonably no longer does because of his injury. This is so whether paid assistance is obtained or help is provided by family and friends. Entitlement to compensation for this head of damages requires establishing that:-

1. prior to the injury the man undertook the task(s);
2. he no longer undertakes the task(s);
3. the reason he no longer undertakes the task(s) is because of the injury rather than for any other reason or because of any other medical condition.

1.2 Items 1 and 2 are factual matters. The 3rd raises medical issues as to whether the injury was sufficient to reasonably justify the cessation of carrying out the tasks and that there was no other medical condition which would have precluded continuing to carry them out in any event.

2. Services Claims Under the VWF Handling Arrangement

2.1 There can be no doubt but that men significantly affected by vibration white finger are entitled to recover compensation for this head of damages. The Arrangement will provide for payment of fair and proper compensation in appropriate cases and will enable claims to be dealt with quickly, consistently, efficiently and at a minimum cost whilst at the same time recognising that the evidential burden must be met.

3. The Medical Evidence

3.1 The Parties' medical experts were jointly instructed to consider how medical issues might most appropriately and efficiently be addressed. Essentially, they were asked to consider two alternative approaches:-

- ii) that the doctors involved in the MAP would make an assessment, in each case where a claim of this nature was advanced as to whether or not they accepted it was made out; or

- iii) that an assumption be made that once the condition had reached a certain level(s) causation it should be presumed that a man could no longer carry out certain tasks. The examining doctor would then merely have to consider whether there were any other conditions (VWF apart) which of themselves would have prevented the man from undertaking the task in question thereby rebutting the presumption.
- 3.2 Of the two alternative approaches, the medical experts and the parties have jointly rejected the former and endorsed the latter. The former would obviously lead to inconsistencies and if the doctors involved in the MAP were asked to carry out detailed assessments then this would have a significant impact on the time taken by the doctor to interview and examine each claimant and in consequence upon the operation of the MAP.
- 3.3 The medical experts have jointly provided a list of the tasks which men suffering significantly from VWF might reasonably no longer be expected to carry out. These are:-
- (a) gardening work, including planting, heavier garden work, grass cutting, pruning etc, summer and winter;
 - (b) window cleaning, summer and winter;
 - (c) DIY, normal household repairs including changing fuses, plugs etc;
 - (d) Decorating including paper hanging and painting inside and out;
 - (e) Car washing summer and winter;
 - (f) Car maintenance, the basis servicing, changing plugs, points, oil, anti-freeze and other similar tasks.
- 3.4 The medical experts have jointly produced a matrix setting out at what point on the Stockholm Scale a man suffering from VWF would have difficulties with the various tasks. This is re-produced below:-

DIFFICULTY WITH EVERYDAY TASKS

Stockholm Scale	Tasks					
Vascular (V)	Gardening	Window Cleaning	DIY	Decorating	Car Washing	Car Maintenance
0						
1						
2	X	X			X	X
3	X	X		X	X	X
4	X	X	X	X	X	X
Neurological (SN)						
0						
1						
2 early						
2 late	X		X	X	X	X
3	X	X	X	X	X	X

(X: Indicates difficulty to be expected.)

- 3.5 It can be seen that men at 2V on the Stockholm Scale would be expected to have difficulty with all tasks but for DIY and decorating and at Stage 3V would have difficulty with the latter. Men at late Stage 2 on the Neurological Scale would have difficulty with all tasks apart from window cleaning with which they would have difficulty by Stage 3.
- 3.6 Men suffering from CTS alone who are assessed at late 2SN or 3SN will be treated (and compensated) as if their assessment was for VWF.
- 3.7 The approach jointly recommended by the medical experts would leave to be determined:-
- when the man reached the relevant stage(s)
 - whether the man suffered from any other condition(s) which would have prevented him from continuing to carry out any task(s) in any event; and
 - if so, what that condition was, when it developed and the extent to which it compromised ability to carry out the relevant tasks

4. When the man reached the relevant stage(s)

- 4.1 It is assumed that the condition will not have deteriorated since cessation of exposure to vibration.
- 4.2 The above assumption is based on medical knowledge about the development VWF/HAVS generally. Such an approach has a number of advantages:

- a) it minimises any impact on the operation of the MAP, with consequent savings in time and cost;
- b) it avoids inconsistency of approach between doctors
- c) it avoids the possibility of numerous, time consuming and costly appeals or references to the disputes procedure.

Whether the man had other condition(s) which would have prevented him from carrying any out task(s) in any event; if so what; when did it develop; and what (if any) was its impact

5.1 The range of conditions which might impact on the claimant's ability to undertake the relevant tasks is extensive. For this reason the medical experts have declined to attempt to list them. The tasks themselves are different and the impact of any other condition will vary with the tasks. A bad back might preclude some gardening activities but would not preclude others. Not only is there a range of other conditions but the the potential impact on the relevant tasks is variable.

For simplicity the doctors will be asked:-

- i) Does the claimant have any other condition besides VWF/CTS which would significantly limit his abilities to carry out any of the following tasks:-
 - (a) gardening work, including planting, heavier garden work, grass cutting, pruning etc, summer and winter;
 - (b) window cleaning, summer and winter;
 - (c) DIY, normal household repairs including changing fuses, plugs etc;
 - (d) Decorating including paper hanging and painting inside and out;
 - (e) Car washing, summer and winter;
 - (f) Car maintenance, the basis servicing, changing plugs, points, oil, anti-freeze and other similar tasks.
- ii) If so, list what they are; and
- iii) In respect of each task when did the relevant condition develop to the point when the impact was:-
 - a) Nil
 - b) material i.e. more than de minimus but less than moderate
 - c) moderate
 - d) serious
 - e) complete and would have prevented carrying out the task in any

event

- 5.3 These matters will be addressed by means of addition to the Medical Assessment Process. Some short guidance notes for the doctors will also be required. The text of both is yet to be agreed.
- 5.4 If the claimant had more than one condition which would have precluded an activity it would not be necessary for details of all to be recorded. However, where a claimant has one or more conditions which, when taken together, cause a claimant to reach b) to d) in paragraph 5.1(iii) this should be recorded and the conditions listed.

6. The Factual Evidence

- 6.7 It is necessary to collect factual evidence in a consistent, efficient, and cost effective manner also arise. The Parties have discussed the possible use of a questionnaire based approach. The factual evidence required will be kept to reasonable levels. It would be impracticable to individually investigate or value the separate elements of individual claims; or to investigate in any detail the amount of assistance required by a claimant with a certain task which in turn might require individual consideration of his particular property, garden etc to enable the assessment to be made. Instead, broad assumptions will be made about the average assistance that would be required for the particular task by the individual at the relevant stage.
- 6.2 Such an approach recognises that there will be some individuals who will be able to demonstrate, by production of receipts or otherwise, that the value of the assistance that they have received with certain tasks is in excess of the figures proposed. However, practical and other considerations militate against other than a tariff based approach given the number of claims and the need for a quick, efficient, and inexpensive approach to their settlement.
- 6.3 The questionnaire to be completed by the claimant will be kept simple and will require information as to only those of the tasks he did previously but now claims he is no longer able to do and as to any other relevant medical conditions he may suffer from. It will be supported by a statement of truth. (see schedule 2)
- 6.4 The claimant will identify past and present service providers, giving their name(s), addresses and telephone numbers where known. A claimant witness questionnaire will be provided by the current service provider

where there is more than one service provider by each service provider in respect of the tasks for which a claim is made. Questionnaires will not be required from past service providers. (see schedule 3)

7. Quantum

7.8 The parties have agreed that a multiplier/multiplicand approach for future loss would be appropriate and that the appropriate multiplicands for men at:-

9. 2V only would be £530;
10. 3V/3SN or late 2SN would be £740
11. 4TP would be £1000.

It is accepted that for men at 4V on the Stockholm Scale individual assessment would be appropriate although any multiplicand would not be expected to be lower than that for men at 4TP.

7.2 The figures of £530, £740 or £1000 will be the starting point for men assessed at 2V or 3SN/3V/late 2 SN or 4TP for men who previously did all the relevant tasks. However, those who did not have the correct factual background e.g. did not previously do any particular tasks, would have the annual figure reduced appropriately. Reduction would be made in similar manner for those men whose ability to do certain tasks was affected by another relevant medical condition (see below).

7.3 The breakdown of the annual figure between the tasks is as follows:-

Task	2V	3V	Late 2SN	3SN	4TP
	530	740	740	740	1000
Gardening	250	250	199.80.	177.60.	250
Window Cleaning	60	60	Nil	44.40.	60
DIY	Nil	Nil	199.80.	177.60.	240
Decorating	Nil	210	177.60.	177.60.	230
Car Washing	40	40	29.60.	29.60.	40
Car Maintenance	180	180	133.20.	133.20.	180
Total	530	740	740	740	1000

- 7.4 No payment will be made in respect of a services claim where the man is assessed at less than 2V, or 2 TP or late 2SN.

8. Cut off age

- 8.1 No payment will be made for years after a man reaches his 70th birthday, except as provided for below in respect of men aged 65 to 70 (inclusive) at the date on which the offer is made.
- 8.2 Men aged 66 to 70 inclusive i.e. whose 66th birthday has passed but who have not yet had their 71st birthday would receive an enhancement as follows:-
- Men aged 65 - 5 yrs loss plus the remainder of the 66th year (the annual sum to be apportioned)
Men aged 66 - 4 yrs loss plus the remainder of the 67th year (the annual sum to be apportioned)
Men aged 67 - 3 yrs loss plus the remainder of the 68th year (the annual sum to be apportioned)
Men aged 68 - 3 yrs loss plus the remainder of the 69th year (the annual sum to be apportioned)
Men aged 69 - 2 yrs loss plus the remainder of the 70th year (the annual sum to be apportioned)
Men aged 70 - 1 yrs loss plus the remainder of the 71st year (the annual sum to be apportioned)
- 8.3 Whether the enhancement is paid as past or future loss (or what passes past and what passes future) is determined by the claimant's age at the date of offer.

9. Other Condition

- 9.1 With regard the impact of any other condition for consistency and simplicity it is agreed that where the impact of any other condition is:-
- 1) nil i.e. did not significantly impact on the claimants ability to carry out the activity it should be ignored;
 - 2) minor the annual figure for the task should be reduced by 10% from the time the condition reached that stage.
 - 3) was moderate the annual figure for that task should be reduced by 33% from the time the condition reached that stage;
 - 4) was serious the annual figure for that task should be reduced by 66% from the time the condition reached that stage;
 - 6) was complete the annual figure for that task should be reduced by 100% from the time that the condition reached that stage.
- 9.2 Where a claimant suffers / suffered from dual pathology (as defined in the Dual Pathology Agreement) then provided he is not suffering with any other relevant medical condition that would limit his ability to carry out the

relevant tasks to the levels set out in paragraph 9.1. (2) – (5) above then the discount of 7.5%, to be made in accordance with the Dual Pathology Agreement, shall be made from any claim for loss of services. However, where a claimant suffers/suffered from dual pathology as defined in the Dual Pathology Agreement but also suffers from another relevant condition which would impact on his ability to carry out the relevant task at the levels set out in paragraph 9.1.(2) –(5) then the 7.5% deduction on account of dual pathology shall not apply to the services claim.

10. Past Losses

- 10.11 Subject to proof that assistance has been provided in the form of the claimant's and witnesses questionnaire past losses will be paid as provided for in paragraph 7 above adjusted to reflect the historic value of money in accordance with table D2 in Facts and Figures (Sweet and Maxwell) and further discounted as agreed. The agreed tables are set out at (Schedule 1).
- 10.2 Payment will be made for a maximum of (the most recent) 20 years following cessation of exposure to vibration immediately preceding the offer or in the case of men who have died or who are older than the cut off age the date of death or date when they reached the cut off age as appropriate. For the purposes of determining date of last exposure to vibration of any period 6 months or less will be ignored.

11. Indexation

- 1) Multiplicands for future loss shall be index linked as provided for in paragraph 6.4 of the Handling Arrangement.
- 2) Year on year an additional top row shall be added to the table for past losses in schedule 1. The annual figure and cumulative totals shown in that row shall be the multiplicand for that year (i.e. after indexation pursuant to paragraph 11.1 above), discounted by 20%. The cumulative totals in the table will be revised accordingly.

12. Interest

Past losses will attract interest in accordance with common law principles namely:-

- (a) at the full special account rate, from time to time, from the mid point of the period over which the loss occurred where the loss is not continuing to the date of offer; and
- (b) at half the special account rate, from time to time, from the commencement of the period of loss where the loss is continuing to the date of offer.

For the purposes of calculating interest the cumulative interest tables prepared by Rodney Nelson-Jones and published from time to time in the Law Society Gazette shall be used.

13 Future Losses : Multipliers

- 13.1 A Government Actuary is to be asked to provide a table based on projected mortality figures (as are already used in Ogden tables 11-20) on the assumption that the claimant would be entitled to receive compensation for inability to carry out services up to the age of 70 i.e. on attaining his 70th birthday. The discount rate to be applied shall be 3%, or such other rate as may be adopted from time to time.
- 13.2 In respect of any claim where the multiplicand may be discounted because of the subsequent development of another condition, the multiplier will be split according to the appropriate multiplier for each corresponding number of years, in accordance with Table 22 of the Third edition of the Ogden Table.

14. Inter Relationship with Claims under the British Coal Respiratory Disease Litigation Claims Handling Agreement

Where the claimant also has a claim under the British Coal Respiratory Disease Litigation Claims Handling Agreement, the condition giving rise to that claim will strictly amount to a dual pathology. However, it is one for which the claimant will also be entitled to compensation from the DTI. Double recovery is inappropriate. Any payments already made under the Respiratory Disease Claims Handling Agreement (prior to apportionment) for the same periods of time on a like for like basis will be set off against recovery under this head of damages.

**VWF Services
Schedule 1**

Years between cessation of exposure to vibration and date of offer, death or cut off	2V (annual figure)	2V (cumulative totals)	3V, 3SN, late 2SN (annual figure)	3V,3SN, late 2SN (cumulative totals)	4TP (annual figure)	4TP (cumulative totals)
20 (1999)	424.00	424.00	592.00	592.00	800.00	800.00
19 (1998)	401.20	825.20	560.17	1152.17	756.99	1556.99
18 (1997)	379.56	1204.76	529.95	1682.12	716.14	2273.13
17 (1996)	358.96	1563.72	501.18	2183.30	677.28	2950.41
16 (1995)	339.33	1903.05	473.79	2657.09	640.00	3590.66
15 (1994)	317.63	2220.68	443.49	3100.58	599.31	4189.97
14 (1993)	299.98	2520.66	418.83	3519.41	565.98	4755.95
13 (1992)	285.68	2806.34	398.88	3918.29	539.04	5294.99
12 (1991)	264.42	3070.76	369.18	4287.47	498.89	5793.88
11 (1990)	232.02	3302.78	323.96	4611.43	437.78	6231.66
10 (1989)	204.16	3506.94	285.05	4896.48	385.20	6616.86
9 (1988)	179.90	3686.84	251.18	5147.66	339.44	6956.30
8 (1987)	166.32	3853.16	232.23	5379.89	313.82	7270.12
7 (1986)	152.22	4005.38	212.53	5592.42	287.20	7557.32
6 (1985)	134.55	4139.93	187.86	5780.28	253.87	7811.19
5 (1984)	119.55	4259.48	166.92	5947.20	225.57	8036.76
4 (1983)	104.92	4364.40	146.49	6093.69	197.96	8234.72
3 (1982)	92.34	4456.74	128.93	6222.62	174.22	8408.94
2 (1981)	70.29	4527.03	98.13	6320.75	132.62	8541.56
1 (1980)	49.44	4576.47	69.04	6389.79	93.29	8634.85