



Claiming for COVID-19 Stress Syndrome

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Introduction

Most individuals report feeling worried about the effect COVID-19 is having on their life with worries about the future, feeling stressed, anxious or bored predominately. The drivers of worsening mental health are social isolation, job and financial loss, housing insecurity and quality. There is early evidence from this pandemic that front line, emergency and other workers are presenting with depression, substance abuse and stress-related disorders.

A new psychological injury: COVID-19?

The COVID-19 pandemic has had psychological and social effects on most of the world's population and many people have experienced mild to moderate stress symptoms involved with fears of contracting the virus (and associated fears of dying if infected), the experience of isolation and loneliness, and feelings of insecurity and uncertainty in many aspects of their lives.

The psychological impact of quarantine and its reduction has been a source of interest in the general population but also in the legal world, with claims for COVID-related injury expected.

Increased mental health problems have been identified as occurring in response to the current COVID-19 pandemic (Koch et al, 2020)(a). This is characterised by:

- Beliefs about the threat of damage of COVID-19 (fear of infections after touching surfaces and objects)
- Worries about financial and economic effects of the pandemic
- Ambivalence and prejudice toward non-British people

- Experiencing 'traumatic' stress related to COVID-19 (stressful anxiety, nightmares, intensive thoughts, flashbacks to upsetting images)

- Compulsive rumination about COVID-19 related information and compulsive checking (media; government advice; family and friends' symptoms; temperature monitoring)

Findings from available research identifies other features of the COVID-stress syndrome including:

- Different levels of severity, with 16% of the sample in the most severe group possibly requiring psychological treatment
- Unhelpful behavioural responses (avoidance of public transport; panic buying; over-eating; performing ritualistic behaviours)
- Worry and rumination about the risk of danger of COVID-19
- Psychological risk factors including pre-existing mental health difficulties (i.e. morbid health anxiety, intolerance of uncertainty, disgust propensity, germ aversion and obsessional-compulsive contamination concerns and checking rituals)

Initial findings suggest there are substantial psychological impacts and adverse effects of COVID-19. In all probability, more information and evidence of this will emerge over the next few months.

COVID-19 has resulted in significant fear and uncertainty. Existing mental health care services are ill equipped to deal with the needs of those affected by COVID-19.

Different people who have experienced COVID-19 will have different psychological effects (variable

concern, fear, avoidance). Care planning will be significantly aided by ability to determine the extent to which people are experiencing adverse psychological responses to COVID-19. A recent study (Paluszczek et al (2020); Taylor et al (2020)) was undertaken to create COVID-19 stress scales (CSS), a psychological tool to measure reaction to COVID-19 outbreak. This included: -

- Fears of infection and contact with virus
- Fear of socio-economic consequences
- Compulsive checking and reassurance seeking
- Traumatic stress symptoms

Trauma resulting from COVID-19 can take a significant emotional toll on individuals. This can be exacerbated by round-the-clock news and social media coverage. Symptoms of traumatic stress include: -

- Shock and disbelief
- Fear, helplessness and/or horror
- Sadness of grief
- Helplessness
- Guilt
- Anger, irritability and heightened perception of threat
- Sleeping difficulties
- Unexplained aches and pains
- Intrusive memories including nightmares, flashbacks and intrusive images

In addition, individuals can experience PTSD-type symptoms of emotional and behavioural dissociation and cognitive impairment. These patterns are idiosyncratic and also affected by whether someone has experienced a severe episode of COVID-19 themselves or lost a loved one in a traumatic way or are a front-line worker.

Describing the syndrome: what we know

We understand now that as well as the front rank COVID symptoms (temperature; continuous cough; loss of smell or taste) there are a number of psychological symptoms that become evident in COVID sufferers including: -

- Low mood
- Sleeping problems
- Impaired concentration
- Chronic fatigue
- Anxiety and stress

Long COVID-19: A chronic disorder?

Long Covid could be a serious, chronic disorder that affects a significant proportion of the infected population. Individuals with chronic Covid may often not be able to do their usual activities, at times confining them to bed. They may have severe fatigue and sleeping problems. There is a similarity with Chronic Fatigue 'Syndrome' (not a DSM/ICD classified disorder as yet, although it is, in all probability, being considered by both classification working groups). Other symptoms include concentration impairment and difficulties focusing on tasks.

In early October 2020, researchers thought that up to 60,000 people in the UK might be suffering from long Covid for more than three months, having assessed approximately 30,000 who had repeated symptoms lasting more than one month.

Individuals with characteristics of long COVID-19 have described their experience as including difficulties with thinking akin to a 'brain fog', which is very debilitating. This cognitive impairment disrupts most behavioural activity either at home or, if working, in the workplace, and it can result in recall difficulties.

Since the start of the COVID-19 pandemic, many people have experienced varying psychological symptoms including 'post traumatic' stress symptoms. Many people including healthcare and emergency workers have exhibited symptoms of PTSD – this may vary from a strong emotional reaction with some of the typical stress symptoms through to full-blown PTSD. These will mostly be short-lived within a 3-6-month window. However, some healthcare and emergency workers providing frontline services, as well as people who have lost loved ones or jobs due to COVID-19, may be at greater risk of developing long-term difficulties. Those who have a prior history of trauma or other mental health difficulties may be at increased risk of more ongoing problems. A key factor in the short-term and longer-term effects of COVID-19 will be the personal resilience of each individual (Koch et al, 2020)(a).

A significant increase in patients consulting for 'PTSD due to COVID-19' has been predicted by GP's (RCGP, 2020). They are adapting their assessment techniques used to assess and care for those with PTSD in readiness to cope with a rise in conditions associated with COVID-19. They cover mental health needs of key health workers and those who have been on the frontline of the NHS and other public services during the pandemic. Professionals who have had experience of previous pandemics e.g., SARS and Swine Flu have been able to input their own skills. It is likely that PTSD and related disorders will be more common post-COVID as people adapt to life-changing experience and environment, especially in circumstances where they have lost loved ones or faced significant economic and employment losses and any situation where there has been inadequate P.P.E. (Koch et al, 2020) (a).

COVID-19 and Uncertainty

One of the pervasive experiences described by many during the pandemic has been their uncertainty and how to deal or tolerate this (Carleton, 2016). Typical areas of this have been: -

1. Feeling upset over the lack of certainty over the course of the virus
2. The perception of insufficient information from Central Government and Scientific sources.
3. This uncertainty affects views of the future
4. Difficulty in, or paralysis in, achieving tasks
5. Reduced feelings of self-confidence or doubling one's self-efficacy

6. A desire to avoid other simpler areas of uncertainty

COVID-19 in children

Preliminary research indicates that younger people, including children, can get COVID-19 but in a mild way with minimal disruption. No data is available suggesting psychological concomitants.

Treatment and Rehabilitation: How can 'Long Covid' be helped?

Covid-related PTSD can in all probability be fully treated, depending on the severity of the symptoms and how soon they occur after the traumatic event. The following treatment options may be considered:

- Monitoring symptoms without treatment (watchful waiting)
- Psychological therapies (e.g. trauma-focussed cognitive behavioural therapy (CBT) or eye movement desensitisation and reprocessing (EMDR; behavioural activation)
- Antidepressants and other drug treatments

Further information can be found in Taylor (2017) and Zayfert and Becker (2020) on the technique used to treating PTSD which can be adapted for COVID-19 stress syndrome.

Individuals with Long Covid will require access to general information and advice on living and coping with COVID-19. Some will need an individualised rehabilitation plan, similar to those attending a multi-disciplinary chronic pain service in hospital (outpatient) or an individual outpatient programme of cognitive behavioural therapy. Peer support may also be available in the local community. Designated Long Covid clinics are being planned to include designated one-stop services in line with an agreed national specification (from NHS England) to provide joined-up care for both the physical and mental health aspects of COVID-19. From the psychological viewpoint this will include aspects of: -

- A cognitive assessment to assess any potential memory, attention and concentration problems
- A general psychological assessment covering anxiety, depression and other mental disorder

The COVID symptoms study group will be working closely with the Royal College of GPs to provide educational materials on all these symptoms with further research being understandable (NHS, 2020).

Overlap between COVID Stress Syndrome and other DSM-V/ICD-10 diagnoses

It is essential to demonstrate whether or not the Claimant's symptoms meet the relevant diagnostic criteria for a recognised psychological disorder. The group of diagnoses typically considered in civil cases where there has been a significant single event with or without physical injury include the following: -

- Posttraumatic Stress Disorder (DSM-5 309.81) (F43.10)
- Acute Stress Disorder (DSM-5 308.3) (F43.0)
- Adjustment Disorder (DSM-5 309.28) (F 43.20-25)

- Other Specified Trauma or Stressors-related disorders (DSM-5 309.89) (F43.8)
- Somatic Symptom Disorder (DSM-5 300.82) (F45.1)
- Generalised Anxiety Disorder (DSM-5 300.02) (F41.1)
- Specific Phobia Disorder (DSM-5 300.29) (F40.xxx)

Factors which cause ambiguity in civil legal practice centre on

- a. The range of diagnostic opinion and type of disorder
- b. The duration and severity
- c. The need for and response to therapeutic intervention

When considering which diagnosis is appropriate, there is always a range of opinion. While the lawyer might desire the diagnosis of PTSD for a condition following on from trauma, there are a range of diagnoses which could be appropriate, depending on a detailed analysis of the claimant's condition (Furst, 1995)

Bringing claims following death or injury from COVID-19

This might include health, care and related occupation and emergency workers who have been exposed to COVID-19. It might also include police officers, supermarket staff, transport workers and others who regularly come into contact with infected people.

Injury resulting from human act or omission, rather than just "natural cause".

Psychological injuries and other 'diseases' caused by COVID-19 are not currently prescribed by government. However, the Department of Works and Pensions (DWP) could use secondary legislation include COVID-19 as a prescribed disease on advice from the Industrial Injuries Advisory Council (Morgan and Kenyon, 2020).

- Provision of appropriate PPE
- Working from home conditions and access

If there has been an employer breach of duty by, for example, not following the COVID secure guidelines, a claim might be possible and might succeed, providing the claimant can establish a recognised psychological disorder occurred to prove that 'workplace exposure or conditions' caused the disorder. Clearly the severity of the disorder with or without hospitalisation or outpatient treatment would be crucial and instrumental in persuading a court that is it, in principle, compensatable.

Effects of COVID-19 on conducting personal injury claims

The ability or success of remote medical examinations has divided industry professionals (Scott, 2020), especially concerning video medical assessments using tools such as Skype and Zoom. Remote technology had proved to be a vital resource in "keeping

the litigation ball rolling” during lockdown (Stride, L, 2020).

Survivors of critical illness are at risk of psychological impairment, especially after discharge from hospital.

There are many ways in which mental health might be adversely affected by a pandemic, some meeting the criteria for a recognised psychological disorder. More research clearly will be done on the level of meeting diagnostic criteria and the type of disorder.

The findings of research into acute and chronic stages of infections like SARS, MERS and COVID-19, indicate there is evidence of psychological symptoms such as depression, anxiety, fatigue and stress in the post-illness stage of the first two epidemics with similar emerging data on COVID-19.

The aetiology (causation) of the psychological consequence of infection with COVID-19 is likely to be multifactorial (Lancet, 2020) and might include a number of different effects:

1. Direct effects of viral infections (e.g., brain infections)
2. Cerebrovascular disease
3. Physiological compromise
4. Immunological response
5. Medical interventions (or lack of)
6. Social factors (e.g., isolation)
7. Psychological factors (e.g., stress of illness; anxiety of fatal illness to self or relative; concern re. infection risk of others)

A recent study by the CoroNerve study group (2020) of 153 patients treated in UK hospitals during the acute phase of the COVID-19 pandemic described a range of psychological and neurological complications possibly linked to the virus.

Protecting NHS from COVID-19 Clinical Negligence Claims

The Medical Defence Union (MDU) have suggested (2020) that doctors should be spared from the stress and anxiety of medical negligence claims following the pandemic. They point to the pressure staff have been under, taking difficult decisions about patient care in challenging conditions.

The psychological impact of the COVID-19 pandemic has impacted every aspect of our lives. As a result, access to justice has also been adversely affected. It has been more difficult to bring complaints about COVID-19 related health claims with inevitable delays due to clinical pressures in hospitals, although time limits have not been suspended. This has also adversely affected existing claims. The Care Quality Community (CGC) which is responsible for monitoring, inspecting and regulating hospitals, GP surgeries, dental practices and care homes will be collating data on the impact of COVID-19 including PPE provision and the adverse effects of variable or poor provision.

New guidance is being commissioned by the NHS England for NICE (October, 2020) on the case definition of Long Covid and its reliability.

COVID-19 stress at work

NHS staff took in excess of half a million sick days because of the stress of the pandemic (Swerling, 2020). Doctors and Nurses Union warned that current levels of pandemic-related stress were unsustainable for staff amid increasing anxiety about the continuing virus.

The focus of litigation for COVID-19

The likelihood of COVID-related litigation in the near future is uncertain and difficult to define or predict. Claims for damages by those infected with COVID-19, or, following death, by their families will depend on proof of the manner of causation of the infection. Litigation will focus on negligence in taken precautionary measures and exposure to risk, but scientific uncertainty remains which might mean such claims will be prone to fail (Koch et al, 2020)(b). Given the prevalence of the virus in the particular community concerned is likely to be unknown and given the still limited knowledge as to its transmission, proof of the source of the infection in any one case is likely to be difficult. Inadequate Health & Safety provision over a period of time at work, and failure to provide appropriate personal protective equipment (PPE) and cleansing procedures for those likely to be regularly exposed to the virus, are likely to be key issues in claims. A failure by government to provide proper advice, or to protect categories of citizens for the foreseeable risk of harm, may result in claims where infection has occurred. Claims might arise out of the provisions of the Control of Substances Hazardous to Health Regulations. Claims for infection with COVID-19 are increasingly likely as the scientific knowledge about the virus and its risks and the methods of prevention grow, as was the case with HIV (Koch et al 2020)(a).

The foreseeable fear of infection resulting in psychological harm, if caused by breach of duty, could also result in claims being made.

We will see if there will be an increase in civil cases involving COVID-19 in the UK for example from emergency workers or medical/nursing/paramedical staff who complain of insufficient PPE (Personal Protection Equipment) which has resulted in contracting COVID-19, or claims brought by relatives of workers who have died from COVID-19 (Koch et al, 2020)(a).

Conclusions

We are learning more and more about COVID-19 and its psychological concomitants everyday. Some claims are already under consideration and the initial area of breach and causation are commanding attention. It is likely that, as time goes by with ongoing pandemic infections, the COVID-19 stress syndromes in, both acute and chronic phases will become a more recognised circumstance with the need for comprehensive and reliable assessment of condition and prognosis.

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