CES & Spinal Cord Compression

8 Things Solicitors Should Know Before Instructing An Expert

Drawing on 13 years of medico legal experience, Consultant Neurosurgeon and Spinal Surgeon Mr Nikolaos Tzerakis shares the issues solicitors should identify early when assessing breach, causation and neurological outcome in complex spinal claims.

A Consultant Neurosurgeon since 2012, Mr Tzerakis undertakes 24 to 36 medico legal reports each year across clinical negligence and personal injury, including breach of duty, causation, condition and prognosis.
This guide draws on the practical insights shared by Mr Tzerakis during his INNEG webinar, Cauda Equina & Cord Compression, exploring the clinical and medico legal issues that can become pivotal when assessing these claims.

This eBook has been produced by INNEG and is based on key clinical insights shared during our webinar, CES & Spinal Cord Compression Claims, presented by Mr Nikolaos Tzerakis, Consultant Neurosurgeon and Spinal Surgeon

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Build the chronology around neurological deterioration, not simply elapsed time

In CES claims, the most useful chronology may be neurological rather than purely time based.

Mr Tzerakis distinguishes between suspected, incomplete, retention and complete CES, and stresses that a patient may still be able to pass urine despite having incomplete CES.

When reviewing the records, identify when bladder, saddle, sensory and motor symptoms first appeared and when they changed. Establishing whether the claimant remained neurologically stable or progressed to a more serious stage can be more important to breach and causation than simply calculating the number of hours before surgery.

Ask when CES should first have been suspected, not when it was finally diagnosed

A claimant does not need to present with the complete clinical picture of CES before urgent investigation may be required.

Mr Tzerakis explains that concerning symptoms can be present even where examination has not yet identified clear objective signs. Where CES is suspected, urgent imaging may be required to establish whether compression is present.

When assessing breach, focus on the earliest point at which the presenting symptoms should reasonably have triggered suspicion and further investigation, rather than only when CES was ultimately confirmed.

Check what was actually scanned, not simply whether an MRI was performed

A normal lumbar MRI does not necessarily resolve the issue where significant neurological symptoms remain unexplained.

Mr Tzerakis describes cases where the underlying pathology was located higher in the spine despite the initial investigation focusing on the lumbar region. Spinal cord compression may have several causes, including tumour, disc pathology, infection and haematoma.

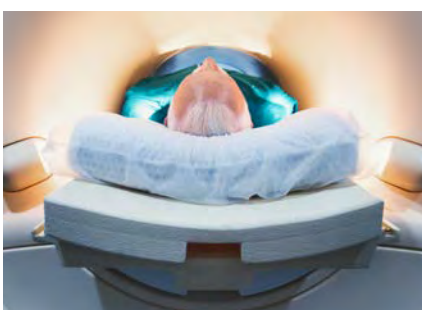
When reviewing a claim, ask whether the correct area was imaged, whether the symptoms remained unexplained after the scan and whether further imaging should have followed.

Test whether "normal neurology" is supported by the clinical records

A note stating "normal neurology" may provide limited evidence if the underlying examination and findings have not been documented.

Mr Tzerakis highlights the importance of detailed records of power, sensation and the relevant neurological examination.

Look beyond the headline conclusion and establish what was actually examined and recorded. Gaps around bladder symptoms, saddle or perineal sensation, lower limb neurology, reflexes, gait and examination findings may become important when reconstructing what clinicians knew, or should have known, at a particular point.



Map the full pathway to identify where cumulative delays occurred

The critical delay may not sit with one clinician or one decision.

Mr Tzerakis identifies potential failures involving referral, imaging, reporting, handover, transfer and actioning results. Several relatively small delays may therefore become significant when the pathway is considered as a whole.

Build the chronology from presentation through assessment, imaging, reporting, referral, transfer, surgical decision and surgery. This can help identify where time was actually lost and where potential missed opportunities arose.

Ask the expert to address the counterfactual neurological outcome

Establishing a delay is only part of the analysis. The separate question is whether earlier appropriate treatment would probably have changed the claimant's outcome.

When framing causation questions, ask the expert what the claimant's likely neurological outcome would have been had appropriate investigation and treatment occurred at the correct time.

This helps distinguish the alleged breach from its consequences and focuses the expert evidence on whether earlier intervention would probably have prevented some or all of the subsequent neurological deterioration.

Avoid relying on an arbitrary 48 hour window when assessing causation

Mr Tzerakis does not support treating 48 or 72 hours as a simple safe window for intervention.

He emphasises that neurological progression matters more than an arbitrary number of hours. In a patient with early symptoms, a large disc and perineal symptoms, he would favour urgent surgery rather than intentionally waiting until the following day.

Instead of focusing on a fixed timeframe, establish the claimant's neurological status at each material point and ask whether intervention at that stage would probably have prevented further neurological loss.

Establish whether there was an earlier actionable opportunity that could have changed the outcome

A serious neurological outcome does not, by itself, establish that an earlier breach occurred.

Mr Tzerakis describes a case in which the claimant ultimately experienced significant problems and required urgent surgery, but the earlier records did not establish relevant CES symptoms or pathology at the point at which negligence was alleged. He considered the case defensible.

Before committing significant cost to expert evidence, establish what should reasonably have triggered different management, when that opportunity arose and whether acting at that point would probably have changed the claimant's outcome.

Before You Instruct

Before instructing a spinal expert, consider whether you can answer four key questions:

When did the claimant's neurological presentation materially change?

At what point should further investigation, referral or treatment have occurred?

Where in the clinical pathway was time potentially lost?

Would appropriate intervention at that point probably have changed the neurological outcome?

A clear chronology, complete clinical records and imaging, and precisely framed questions around the alleged missed opportunities can help the expert focus their opinion on the issues that matter most to breach and causation.

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