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| **Catch 22 - Challenges for single claimants suing for being poisoned**  Poisoning cases can be difficult due to injury to the claimant’s higher intellectual functions.  Air crew can be poisoned by products of combustion, farmers by organophosphates and anyone by a toxic cocktail (see 11th September 2007 New Scientist article ‘Toxic Cocktail’ by Bijal Trivedi).  I am using carbon monoxide (CO) to illustrate the challenges claimants face.  Vital preliminary checks in any civil action   1. Does the claimant have house insurance? If so, are legal fees for personal injuries covered? 2. Is the potential defendant worth suing or does he have insurance? 3. Has the limitation period run out? This is usually three years from the date of injury or the date of knowledge that an action caused an injury.   ------------------------------------------------------------------------------------------------------------------------------------------------------------------------------  **What is carbon monoxide (CO)?**  A deadly gas that can be emitted from faulty cooking and heating appliances powered by any carbon based fuel that burns. Fuels include gas, coal, wood, petrol and diesel.  **CO cannot be sensed using human senses of smell, taste, sight or touch.**  Less than 2% of CO in the air can kill in between one and three minutes.  <http://www.hse.gov.uk/foi/internalops/hid_circs/technical_osd/spc_tech_osd_30/spctecosd30.pdf> (see Para 74 table 23 page 26).  Firemen when talking about CO in smoke (which you can smell) say it takes only three breaths, the first you don’t know there’s a problem, the second you might suspect there’s something wrong but by the third you are incapable of action.  **Why is CO so lethal?**  CO suffocates because CO binds to the haemoglobin in the blood, which normally carries oxygen.  **What is the difference between CO and CO2?**  Carbon dioxide (CO2) consists of one atom of carbon and two of oxygen.  Carbon monoxide (CO) also contains one atom of carbon but only one atom of oxygen.  CO is emitted when there is a lack of oxygen at the flame.  Unburned gas can kill if it displaces the air, so a person suffocates or can die if gas explodes.  Only Registered Gas Engineers (RGEs) can work on a gas appliance by law.  The Gas Safe Register (GSR) is licensed by the Health & Safety Executive (HSE).  Landlords are usually worth suing. However, although most Registered Gas Engineers (RGEs) have Public Liability Insurance, this is not a mandatory requirement of registration; legislation is needed to require this.  There are other toxins in the products of combustion that don’t tend to kill immediately but can make people very ill. See <http://www.co-gassafety.co.uk/about-co/other-toxins/>  -----------------------------------------------------------------------------------------------------------------------------------------------------------------------------  **Challenges for claimants injured by carbon monoxide poisoning**   1. **Lack of awareness of carbon monoxide poisoning, where it comes from and how to prevent it and/or test for it.**   Firstly, someone has to recognise that carbon monoxide (CO) is the cause of their symptoms. GPs rarely think of CO because their training barely covers poisons. The late Dr John Henry sent 200 GPs symptoms of CO but not one GP suggested CO as a cause.  GPs often wrongly assume the illness is psychological, a virus, ME or an allergy etc.   1. **No test for CO by the gas emergency service (which turns off the gas supply).**   This despite the recommendation made (but never implemented) by the Health & Safety Commission/Executive in 2000 that the gas emergency service should carry and use such equipment to test gas appliances for CO. Lord Hunt of Kings Heath has described changing this as a ‘no brainer’. Surely people cannot even be safe unless the source of the CO is found or ruled out? GPs and other medics are naturally more helpful if a test of the appliance finds CO in parts per million.  Shouldn’t the gas emergency service at least leave CO alarms to EN 50291 and air samplers?   1. **Danger of false negative**   CO usually leaves the blood of a survivor very quickly, provided the person is breathing fresh air or oxygen. Therefore, if only the person is tested for CO, (not his appliances and home etc.) there is a high danger of a false negative. It is safer to test the appliances and the air the person has been exposed to but see 2, 5, 6 & 7. Surely GPs should provide CO alarms and air sampling monitors?   1. **Effects of CO often get worse after exposure.**   This is often the case even after the CO has been stopped. Please see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3065430/> This makes instructing solicitors and collecting evidence etc. more difficult due to the effects of the CO.   1. **Registered Gas Engineer under a duty to issue a RIDDOR (Regs. 1995) but HSE seems under no duty to investigate.**   A report is sent to the HSE when there is an Injury, Death or Dangerous Occurrence such as a poisoning incident. However, this seems to be interpreted as a proved hospital case but see 3 above.  HSE will investigate if there is a death and very occasionally it will in a case of a very serious injury and usually only when work is involved. The HSE’s investigation will concentrate on breach of statutory duties rather than negligence. A further problem is that the report written up by the HSE’s expert is privileged so the family won’t receive it until all questions and decisions about prosecution have been made.   1. **Gas Safe Register (GSR) – test of appliance for CO but if claimant is a tenant, only with landlord’s permission.**   Inspectors from the GSR will inspect a gas appliance if work has been done by a Registered Gas Engineer in the last six months. However, if the claimant is a tenant, the GSR’s inspector will not test the gas appliance for CO unless the landlord gives permission (8.2 of the Gas Safe Register’s policy <https://www.gassaferegister.co.uk/media/2376/p001_con001-consumer-policy-our-service-explained-v71.pdf> ). Even if a tenant has the courage to ask, this means the evidence almost invariably disappears. This has been raised with the HSE, which licenses the GSR.  In an owner occupier case, the survivor, complaining to the GSR about the RGE, who serviced the appliance suspected of emitting the CO, will find the RGE will probably offer to come and fix the appliance so the survivor can have heating and hot water. See policy 8.5 of the Gas Safe Register. Evidence tends to disappear. Those exposed to high levels of CO could fail to even know they’ve been poisoned.   1. **Even if the evidence is undisturbed, the cost of an independent court witness is high and great difficulty in finding an expert.**   An independent gas expert court witness should be instructed by solicitor but without proof of CO, obtaining the services of a solicitor and expert is nearly impossible. The cost of such an expert is usually thousands of pounds.  It becomes Catch 22; to prove CO, you have to prove CO.  CMDDA1 is a qualification for ordinary RGEs and allows them to test an appliance for CO if, for example, a CO alarm has sounded. This could be a useful and affordable first step before obtaining a solicitor and investigation by an independent expert court witness. However, it can be difficult to find a CMDDA1 qualified engineer willing to come and test, the cost is between about £200 and £500 and if you are a tenant, most RGEs think they are bound by 8.2 of the GSR’s policy.  A further problem is that the other side might argue that the RGE qualified under CMDDA1 could have changed something on the appliance.   1. **No specific victim support funded by wealthy industry or government.**   The only specific support seems to be that offered by CO-Gas Safety which receives no guaranteed funding and is almost entirely run by volunteers. There are the Citizens’ advice centres, law centres etc. and other charities such as Headway, but they often lack the knowledge of the difficulties, yet vital importance, of gathering evidence to prove exposure to CO.  Also, if the tenant and landlord had a good relationship prior to the poisoning, the tenant often finds it difficult to think of the landlord as ‘the enemy’ and not to be trusted.   1. **Lack of Legal Aid, even for inquests.**   It is now very rare for a claimant to qualify for Legal Aid in a poisoning case. However, damages for bereavement (see 11 below) may be enough to pay for legal representation at the inquest but only in the simplest of cases.   1. **Cost of Court fees.** The cost is £10,000 for a claim of £200,000 and basically 5% below £200,000. 2. **Cost of no win no fee insurance.**   This sounds a Godsend. However, agreements between claimants and their lawyers need to be read very carefully because they can be difficult for a brain damaged claimant to understand. There may be terms which require the claimant to accept their lawyers’ advice on settlement and pay for bills for expert evidence. To read about this see <https://www.apil.org.uk/what-is-no-win-no-fee>  Debra Morris of Affinity Law says, ‘with regard to no win no fee – the cost of an expert will initially at least need to be borne either by the claimant themselves or by the After the Event Insurers.  The After the Event Insurers would need to authorise this cost, and without supportive factual and medical evidence providing causation, they are unlikely to agree to the cost of an expensive expert report – again a catch 22 situation.’   1. **No automatic test for CO on death.**   Someone has to think about CO as a possible cause. This should be changed.   1. **No damages for death itself.**   The law does not provide damages for death itself. There are also claims for loss of dependency, e.g. the loss of financial support or support by providing services. There are sums that the deceased’s estate can claim for pain and suffering and loss of amenity etc. However, in cases of instant death, these will be minimal or non-existent.  There are also bereavement damages which are basically a mere £12,980 and funeral expenses. However, even these miserly sums couldn’t be claimed by parents for the death of two sons who lived and died together from CO in a landlord’s property, because both sons had attained 18. Nor had they married but if they had their spouses could have brought a claim.   1. **Need for solid medical evidence yet the stress of bringing an action and examination by medics**   Victims report to us the huge stress of the examination by expert medics. Please see our one minute film about Sue who had carbon monoxide poisoning <http://www.co-gassafety.co.uk/one-survivors-story/>  In our experience medics, even toxicologists and neurologists, find the effects of CO hard to assess.   1. **Burden of Proof**   In a civil case this is only on the balance of probabilities which doesn’t sound difficult. However, in poisoning cases evidence of poisoning, causation and expert medical evidence are usually extremely difficult.  The system itself seems to prevent the claimant from being able to prove poisoning. Lack of proof means numbers affected are underestimated; yet if the respected university research is extrapolated over the population, 3-5 million people are being exposed to levels of CO far above WHO guidelines in the UK alone (see <http://www.co-gassafety.co.uk/about-co/numbers-affected-by-co/>).  Costs fall on the victim and the taxpayer, not the wrongdoer. Industry therefore has less incentive to prevent deaths and injuries. Yet even the costs of the known deaths and injuries cost the taxpayer £178 million a year in the UK (see <https://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50iii132.htm>).  Also being exposed to CO increases the risk of dementia by 1.6 fold <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4706265/>  There seems little point in funding the Health & Safety Executive if their recommendations are ignored by industry, Government and politicians.  With all the obstacles it seems there is no such thing as civil justice anymore.  Debra Morris of Affinity Law who has read it and says, ‘As a practising solicitor in this field and as a trustee of Headway I agree with this article and hope it will be published to counter the endless cries of compensation culture by those who don’t know what it’s like for victims. It is very often an almost impossible uphill task for those who’ve been poisoned to receive any recognition for their injuries or sympathetic medical treatment, let alone monetary compensation.’  Thank you for reading this. We would love to hear your opinions and comments. Please email Stephanie Trotter OBE at [office@co-gassafety.co.uk](mailto:office@co-gassafety.co.uk) and put ‘Challenges for claimants’ in the subject line.  2,032 words without the title.  *Stephanie Trotter, OBE is a barrister and President & Director of the independent charity, CO-Gas Safety. This charity has been run by Stephanie and other volunteer directors (mainly victims) since 1995 and works to prevent deaths and injuries from unintentional carbon monoxide poisoning and other gas dangers. The charity also helps victims and families as well as collects, collates and publishes data of deaths and injuries from unintentional CO.*  *In 1995, the charity talked to victims and families and concluded that awareness of the dangers and proof of CO are the main issues so lobbied the Government for changes.*  *In 2000 the Health and Safety Commission/Executive recommended:-*   1. *A levy on the gas suppliers to pay for raising awareness of the dangers and for research*   *(the charity would prefer the levy on the whole fuel industry) and*   1. *That the gas emergency service carry and use equipment to test gas appliances for CO.*   *Neither of these excellent recommendations has been implemented, in the charity’s opinion, due to lobbying by the fuel industry. CO-Gas Safety will be marking its 25th anniversary in January 2020.*  183 words  © Copyright Stephanie Trotter 2019  183 |
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