

# [Bill and at risk of physical harm, regardless](https://assignbuster.com/bill-and-at-risk-of-physical-harm-regardless/)

BILL VPOWERPLUS PLCTo begin with, the issue here is whether or notBill can seek damages for negligence for psychiatric illness.

As shown in Chadwickv British Railway Board1, to claim for psychiatric illness, the claimant must show a recognisedmedical condition usually induced by shock. In this case, Bill’s depression isa recognised medical condition induced by the shock of Annie dying in his arms. In order to prove this however, the claim must fulfil the traditionalrequirements for an action for negligence2. That is, the defendant must owe the claimant a duty of care, the defendant mustbe in breach of that duty and the claimant must have suffered damage as aconsequence. DUTY OF CARE Thedefendant must owe the claimant a duty of care3. Duty of care is relatively difficult to prove in cases of psychiatric harm, asduty is usually owed if the claimant could be reasonably foreseeable as avictim. There are two major classifications for avictims namely; primary victim and secondary victim.  In Page v Smith (1996)4 aprimary victim is a victim who was directly involved in the accident and atrisk of physical harm, regardless of whether or not it was actually suffered.

As long as physical harm is reasonablyforeseeable, establishing foreseeability of psychiatric harm is unnecessary5. People that assist in an accident are secondary victims because they usually donot know the victims6. However, because of their response to the cry of distress, they are treateddifferently7. Lord Steyn, in White v Chief Constable of South Yorkshire8Police established that a rescuer could only be considered as a primary victimif he ‘ objectively exposed himself to a danger or reasonably believed he wasdoing so’. The courts have usually concluded that defendants don’t only owe aduty of care to those  who they haveinitially endangered by their negligence, but also to those who rescue thoseinitially endangered victims9. In thiscase, Bill is primary victim as rescuer. It is reasonably foreseeable for a person, who is exposed to thenegligent act of using faulty gas valves, to be at risk of suffering a physicalharm.

He ran back into the house help and assist Annie after the explosion. Thehouse was devastated, and Annie was on fire, he proceeded to extinguish thefire, knowing it could burn him at any time, which would make the situationobjectively dangerous.  Although, hesuffered no physical damage, the risk of it, is sufficient to make him aprimary victim. The fact that it was the negligent act of fitting a faulty gasvalve, that endangered Bill, establishes a duty of care between Power plus andBill. In conclusion it can be said, that a duty ofcare is owed by Power plus to Bill, due to the fact that he is a primary victimas a rescuer.  It is important to notehowever, that due to policy reasons, the courts can be quite reluctant to findduty of care as rescuer, as shown in Alcock10.

This is due to the fact that, they wouldn’t want to open floodgates for claims. However in White11, the courts established that rescuers would only be considered primary victimsif, they were objectively exposed to danger, even if the rescuer wasn’tnecessarily of this danger. BREACH OF THE DUTY OF CAREThe next thing to consider is that there needsto be a breach of that duty. The claimant needs to show that the defendant wasin breach of that duty.

A breach of duty can only be found if the defendant’sconduct falls below that of the reasonable standard set by the law12, as seen in Blyth v Birmingham Waterworks13. In other words, the defendant must be at fault.  WhenAnnie and Bill were called out to fix the gas leak, they found an old pipewhich needed replacing. The fact that Power plus had installed a faulty gasvalve in a house with an old gas pipe, is standard that falls well below thereasonable standards expected by a gas maintenance company. It is their job tomaintain gas infrastructure within a home and install working gas valveswithout faults. Therefore, in conclusion, Power plus havesimply breached their duty of care, as they had installed a faulty gas valve, which was conduct that was well below the standard expected of Gas Company.

CAUSATION. The final element needed for a claim to succeedis causation14, in other words, the damage the claimant suffered as a consequence of thenegligent actions of the defendant. The defendant must have factually causedthe damage, as shown in Barnett v Chelsea15. In addition, the defendant must also have legally caused the claimant’s damageas seen in Mcghee v NCB16, withoutbeing too remote. In application, but for the negligence of Powerplus in breaching their duty of care, would Bill’s psychiatric harm have occurred? In other words, but for exposing Bill as a rescuer, to danger, by installing faultygas valves, would Bill’s psychiatric harm have occurred? The simple is yes.

IfPower plus had done their job by making sure they installed proper gas valves, then Bill’s psychiatric harm caused by the shock from trying to save Anniewould not have occurred. In addition, Power plus’s installation of faulty gasvalves, did materially contribute, as it led to a dangerous situation for Bill, who they sent to do his job.  Finally, psychiatric harm must not be too remote. To prove this we must consult WagmoundNo117, which establishes that the damage must be one that is foreseeable.

If it is, then the defendant will be liable for all damages, regardless of the extent ofit. When applied to this, it is reasonable to see that psychiatric harm couldoccur, as an explosion could lead to all sorts of trauma, be it physical orpsychological. Although, the defendants could argue that they had reasonablyforeseen that their negligence could cause the claimant some psychiatric harm, therefore their liability should be limited to the cost of the time taken ofwork18.

However, when the egg/thin skull rule as seen in smith v leech brain, isapplied, the defendant must take the victim as he finds him19. In other words, regardless of whether or not he already had depression prior tothe accident, they would still be held liableTherefore, in regards to Bill, it is quiteclear that Powerplus’s breach of their duty factually and legally caused Bill’spsychiatric harm. It is also safe to conclude that the damage is not tooremote. In conclusion, having proven that Power plusowed Bill a duty of care, power plus was in breach of that duty, and breach wasthe not too remote cause of Bill’s damages, it is safe to conclude that Billwill be able to sue for Negligence for Psychiatric illness and succeed. Billwill be able to claim general damages as shown in Bennett v Greenland Houchen& Co20. PC KEANEV POWERPLUS PLCTo begin with, the issue here is whether or notPC Keane can seek damages for negligence for psychiatric illness.  To claim for psychiatric illness, the claimantmust show a recognised medicalcondition usually induced by shock21. In this case PC Keane’s depression is a recognised medical conditioninduced by the shock of Annie dying in his arms.

In order to prove thishowever, the claim must fulfil the certain requirements. DUTY OF CAREThe defendant must owe the claimant a duty ofcare. Duty is usually owed if the claimant could be reasonably foreseeable as avictim22.

It has generally been established, that thedefendant would usually owe a duty of care, to those, that would respond to anemergency23. There are two major classifications for a victims namely; primary victim andsecondary victim.  In Page v Smith (1996)24 aprimary victim is a victim who was directly involved in the accident and atrisk of physical harm, regardless of whether or not it was actually suffered.

In this case, PC Keane does not fulfil the requirements of a primary victim, ashe was not directly involved in the accident, and according to White25, he could not be a rescuer, as he was not within the zone of danger.  There was no risk of harm to him, as the firehad been extinguished, and the situation was no longer objectively dangerous. Therefore, the only other way he could claimis a secondary victim.  “ A secondaryvictim is a victim who suffers psychiatric injury as a result of witnessingsomeone else being harmed or endangered” 26. There are certain requirements that must be fulfilled for a secondary victim27, if duty of care is to be found.

These requirements include; psychiatric harmmust be foreseeable as seen in Mcloughlin v O’Brian(1982)28,  the relationship between the victim and claimantmust have been a close “ of love and affection” as shown in Alcock v ChiefConstable of South Yorkshire Police(1992)29, a proximity in time and space30, and finally there must be proximity of perception, as seen in Sion v HampsteadHealth Authority31. The claimant must prove that psychiatricillness was reasonably foreseeable. This connotes showing that a person of” ordinary fortitude” or “ customary phlegm” might reasonably have sufferedpsychiatric illness in the circumstances32. Whenthe facts are considered, it is reasonably foreseeable that a police officer ora person responding to an emergency call of an explosion, where he witnessesdistressing and extreme circumstances, would suffer a psychiatric illness. Thiscan be supported by consulting Bourhill v Young33.

However, to find duty of care as a secondaryvictim, we would need more than just reasonable foreseeability34. We would need to consider the relationship between Annie the victim and PCKeane.  The only relationship PC Keanehas with Annie, is the relationship between a police officer and victim, whichas a matter of fact, does not fall under the class of persons whose claim wouldbe recognised as a result of their relationship with the victim. The class thatwould be recognised is that of “ love and affection”.

There, is no evidence toshow that this existed. This is shown in Alcock35, where people who tried to claim psychiatric injury from seeing people die, sawtheir claim rejected, due to the fact that they did not have the requirement ofa close relationship of “ love and affection “ with the “ immediate” victim. Thecourts require that the close relationship must at least mirror that between aspouse, husband, parent or child36. The next requirement would be that of proximityin time and space. The Lords in Alcock, said that succeeding as a secondaryvictim requires the defendant to show a high degree of proximity to theaccident in time and space37. In other words, they have to either witness the accident as it goes on, or witnessits immediate aftermath. PC Keane, did not witness the accident, however he didwitness a burnt Anna literally dying in Bill’s arms. In other words, he didwitness the immediate aftermath.

Therefore, this would suffice, as meeting therequirement, as he was within proximity in time and space. The last requirement to meet  is that there must be a proximity ofperception38. In other words, As lord Jauncey put it in Alcock39″. The means by which the shock is caused constitutes a second control, although in these appeals I find it difficult to separate this from Proximity.” This is quite similar to proximity in time and space requirement, except thecourts added “ sudden shock40″to it. In other words, as said in Alcock41, “ thepsychiatric illness in question must result from the sudden psychologicalimpact of, witnessing a single event or in its immediate aftermath”. When weconsider the facts, we can find that the depression could be said to haveresulted from the traumatic psychological impact of seeing a burnt Annie, beingcomforted and eventually dying in Bill’s arm. In conclusion, however, due to the fact, thatPC Keane did not fulfil the requirement of a close relationship with the victimof “ love and affection”, we cannot find duty of care.

If duty of care cannot be found, Power Pluscannot be held to liable; as the courts would require all the elements fornegligence to be fulfilled before liability can be found. Therefore, PC Keane’sclaim would fail. EDWARD VPOWERPLUS PLCThe issue here is whether Edward can claimdamages in negligence for psychiatric harm. To prove this, Edward must showthat he is suffering from a recognised medical condition usually induced byshock.  This is a basicrequirement and it is proven in Alcock42where Lord Ackner says “ the law gives nodamages if the psychiatric injury was not induced by shock. Psychiatricillnesses caused in other ways, such as from the experience of having to copewith the deprivation consequent upon the death of a loved one, attract nodamages”.

When the facts are applied, wefind that it needs to be a recognised psychiatric harm. As shown in Hicks vChief constable of South Yorkshire Police(1992)43, the law does not regard grief or anxiety , which is the psychiatric effectEdward experienced, as a recognised psychiatric harm. It is possible to note that, although with the facts presented, had he suffered from a recognisedpsychiatric illness, we would have had to identify what sort of victim he was. However, the first requirement is that the psychological harm must be amedically recognised one44. Overwhelming grief is not a medically recognised.

Although, grief was seen tobe recognised as a medically recognised illness in Kralj v Mcgrath45, this will not apply to this case, as the claimant in that case suffered from “ Pathologicalgrief”, which is a medically recognised. Therefore, due to the factthat all Edward suffered was just grief, he will not be able to claim innegligence for psychiatric harm, due to the fact that he was not suffering arecognisable psychiatric harm. 1