Compass Chambers

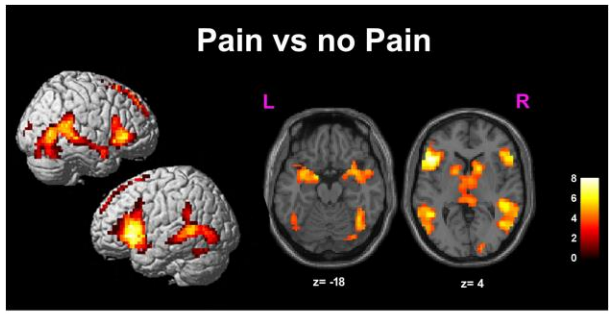
TAKING THE PAIN OUT OF PAIN DISORDERS

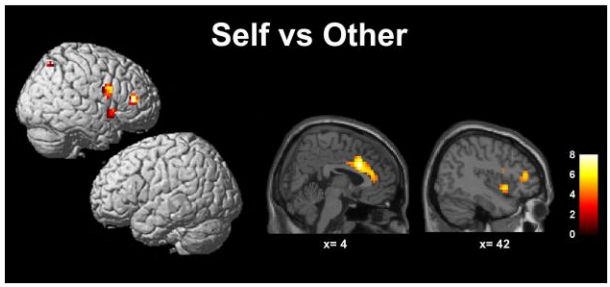
The Update



Tom Brownlee
Hugh Masters

November 2026







A Clear Definition?

*"Pain disorder (now often diagnosed as somatic symptom disorder with pain) is chronic, debilitating pain, often lasting over 3 months, that is **influenced** by psychological stress and is disproportionate to any physical injury. It causes significant distress, reduced function, and can include symptoms like burning, stiffness, and increased sensitivity to touch."*

*"Somatic symptom disorder (SSD) is a chronic **mental health condition** where individuals experience extreme distress over physical symptoms (like pain, fatigue, or dizziness), regardless of whether they have a medical cause. It is characterized by excessive thoughts, feelings, or behaviours in response to these symptoms, often impairing daily life."*

Functional Neurological Disorder (FND) is a condition where the brain struggles to send and receive signals properly, causing real, involuntary symptoms like weakness, tremors, and seizures without structural brain damage. Often viewed as a "software" rather than "hardware" issue, it is common, treatable, and diagnosed by neurologists via positive clinical signs rather than scans

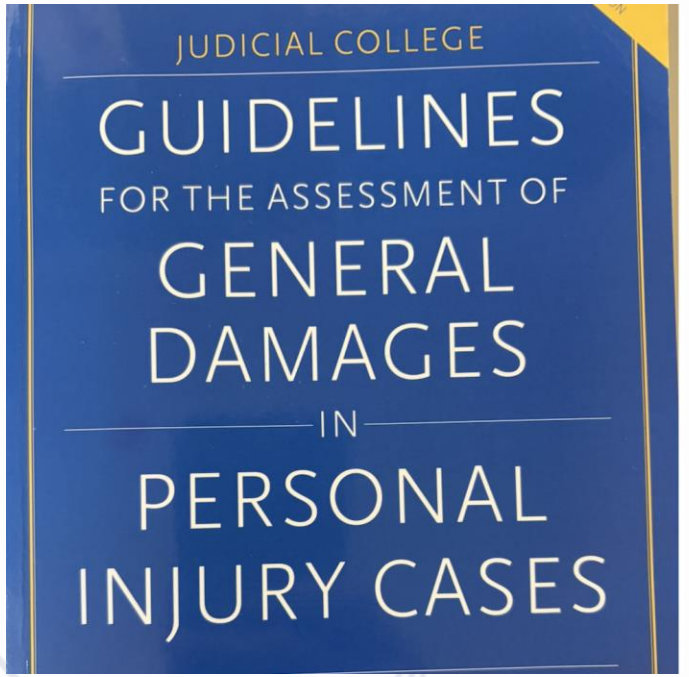
A Clear Definition?

"If he/she is not malingering, whether his/her pain is functional, nociplastic, or neuropathic in origin is not clear. The view of a physical pain or nerve specialist may be helpful alongside a psychiatric view. I will discuss this further below. However, to sketch out the different possibilities for the court, and in terms of my meanings in this context, functional pain would be maintained and amplified by psychological factors. Nociplastic pain would be theoretically maintained by abnormal processes of neuroplasticity in the nervous system. Neuropathic pain would be secondary to peripheral nerve damage. Diagnostic labels would be drawn from a differential of (broadly respectively) somatic symptom disorder, chronic primary pain, and chronic post-traumatic pain."



Does the Diagnosis matter?

- Judicial College Guidelines
- But:
  - Identifying the correct expert;
  - Does the particular diagnosis explain any behaviour?
  - Prognosis;
  - Treatment.



With the exception of cases of Complex Regional Pain Syndrome (also known as CRPS), no attempt has been made to subdivide between different clinical conditions. Guidance instead reflects the impact, severity, and prognosis of the condition. Where the condition principally affects a single part of the anatomy, cross-reference to the relevant chapter within these Guidelines may assist. The presence of an overlapping psychiatric injury is commonplace in such cases.

SPOTTING THE RED FLAGS



- Unexplained symptoms when compared with the initial injury.
- Symptoms far in excess of what experts would expect to see.
- Have you ruled out other diagnosis
- Hypersensitivity to pain
- Sensory abnormalities
- Cognitive /Memory /Concentration issues
- Paralysis / Weakness
- Involuntary symptoms
- Pre existing history
- (not an exhaustive list!)

PRIORITIES IN PREPARATION



- Medical Records
- What is the diagnosis?
- Which expert to instruct?
- Disagreement between your own experts
- Are they “at it”
- Surveillance?
- Early engagement?

Brian Taylor v Forth Valley Health Board [2025] CSOH 103 TOM

The pursuer

[4] Assessment of the pursuer's evidence requires great care. He presented in the witness box as a difficult witness who was dogmatic and argumentative, was obsessed with certain matters (some of which bore little relevance to the matters in issue), was obstructive in his answering of questions, and required to be warned as to potential contempt of court. Normally such a presentation would be fatal to a pursuer's case as completely lacking in credibility and reliability. However, that sort of presentation is typical of individuals who suffer from SSD. His presentation in the witness box was consistent with the way that he generally presents. It is consistent with the way he had presented to expert witnesses and other witnesses in the case. Professor Carson explained that patients with severe SSD are not reliable historians. There was good research evidence that such patients give inaccurate histories to doctors. The research had not established the reason for that: it might be genuine misremembering and reattribution, it might be writing things that the patient thinks are wrong out of the story, it might be a distortion of processing which falls away from how an ordinary person might experience the same event, and it might be outright deception. In these circumstances, in assessing the pursuer's evidence at the proof, his evidence on any particular point must be carefully considered in the round with any other evidence presented on that point and should not be accepted without some other supporting evidence.

Brian Taylor v Forth Valley Health Board [2025] CSOH 103

[58]It has not been an easy task to decide whether to prefer the evidence of Dr Rooney or Professor Carson. Both of them are distinguished in the relevant field. Each had given considerable thought to the issues, and were doing their best to assist the court. Psychological conditions such as SSD do not lend themselves to precise analysis based on observable physical circumstances, and much comes down to differences of judgment on difficult grey areas.

So what does *Taylor* tell us?

- Reclaiming Motion heard in September 2026 – causation and material contribution?

  "*not based on logic or philosophy; it is based on the practical way in which the ordinary man's mind works in everyday affairs of life*"

- The contrasting approaches to the pursuer's evidence.

Cossey v Buccleuch Estates Ltd 2022 CSOH 50

[86] These examples, when taken along with the pursuer's account of her accident, vouch that she has demonstrated a history of providing inaccurate information on matters affecting the claim advanced on her behalf. Whether that is explained by a symptom of her underlying condition or some other reason does not really matter. What it demonstrates is that her evidence cannot always be treated as reliable. That conclusion has to be kept in mind in assessing the pursuer's evidence as to the persistent nature of her pain.

VS.

Taylor v Forth Valley Health Board 2025 CSOH 103

[4] Assessment of the pursuer's evidence requires great care. He presented in the witness box as a difficult witness who was dogmatic and argumentative, was obsessed with certain matters (some of which bore little relevance to the matters in issue), was obstructive in his answering of questions, and required to be warned as to potential contempt of court. Normally such a presentation would be fatal to a pursuer's case as completely lacking in credibility and reliability. However that sort of presentation is typical of individuals who suffer from SSD. His presentation in the witness box was consistent with the way that he generally present

WHERE DOES THIS LEAVE US?

- Is there an obvious direction of travel from the courts?
- What does that mean for preparation of these cases?
- 3 KEY POINTS -

✓Medical Records
✓Correct expert instruction
✓Treatment

Compass Chambers

Highlighting what a pain, pain disorder cases are



Tom Brownlee
Hugh Masters
November 2026

