

HS HINCHLIFFES **SOLICITORS**

PERSONAL INJURY SPECIALISTS

GUIDE TO ACCIDENT COMPENSATION CLAIMS

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I'VE SUFFERED AN INJURY AND BELIEVE SOMEONE ELSE MAY BE AT FAULT

WHAT CAN I DO?

INJURED IN AN ACCIDENT?

If you have suffered injuries and financial losses as a result of an accident that was not your fault, you may be entitled to claim compensation.

It is likely that we will be able to assist you in making a claim if:-

- it can be shown that either an individual or a company has been negligent and the accident happened because of this;
- your injuries were as a direct result of the accident (or you had an existing medical condition that was made worse by the accident);
- the likely value of your injuries is at least £1,000.

Even if you were partly to blame for the accident, you may still be able to make a successful claim, but your compensation may be reduced by an agreed percentage to reflect the level of your contributory negligence.

WHEN CAN I MAKE A CLAIM?

Compensation can be claimed following most types of accidents, and which may have happened:-

- while at work;
- while on the road (including as a driver, passenger, cyclist or pedestrian);
- while in a public place (eg in the street, in a shop or a restaurant);
- while in someone's home;
- while on holiday.

However, not every accident will result in an entitlement to compensation and it is therefore vital that you obtain the right advice.

Normally, if your claim falls within the jurisdiction of the Courts of England and Wales, you must start it within 3 years of the date of the accident, otherwise your entitlement to compensation will be lost.

WHAT CAN I CLAIM?

You can claim 2 types of compensation - "**general damages**" and "**special damages**".

General damages are paid for the actual injuries, to compensate you for the pain and suffering, and to reflect any inability to carry out your normal life following the accident (eg not being able to work or enjoy a hobby).

Special damages are paid for the financial losses you have suffered or will suffer in the future as a result of the injuries (eg lost wages, which can sometimes amount to a

considerable sum), and for any expenses incurred because of the accident (eg prescription charges, or travelling expenses in going to your doctor or to hospital).

More details about each type of compensation are set out in section 3.

WHO PAYS THE LEGAL COSTS?

If we are able to assist you in making a claim we are normally willing to represent you under the terms of a Conditional Fee Agreement (CFA), which means we will only be paid for the work we have done if your claim is successful. In that situation, the legal costs will be paid by the insurers for the party found to be responsible for your injuries, and which are paid in addition to the compensation.

However, it is necessary for the claim to be supported by some type of insurance or other cover, to protect you in case the claim is not successful. Therefore, when you first contact us we will ask you for details of your existing insurance or similar arrangements, so we can check whether you already have sufficient cover. If so, we will ask the relevant insurance company to agree to pay the expenses we incur on your behalf, together with the other party's legal costs should the claim not be successful. This will not normally affect your "no claims" status under the particular insurance policy.

*Sometimes those insurers will contact you direct to persuade you to use one of their own panel solicitors to handle the claim. They may state that you must use their solicitors, or suggest that you will get a better service or have a greater chance of success than if you use us, or that we may take some of your compensation to pay our costs - **this is not true**. Their main reason for wanting you to use their solicitors is that they will charge them a large fee and the insurers therefore benefit financially from your decision. However, it is entirely your choice who handles the claim for you.*

If you do not have any existing insurance or other cover, we will arrange for you to take out a specific policy to protect you. A premium must be paid at the end of the claim but, subject to your compliance with the terms of the CFA, you will not have to pay it. This is because if your claim is successful it will be paid by the other party's insurers, and if your claim is lost the policy itself pays the premium, together with any expenses that we have incurred on your behalf (eg medical report fees, Court fees) and any legal costs due to the other party.

Providing you co-operate fully throughout the claim, you will not be asked to pay any legal costs, and you will keep all the compensation recovered.

WHAT HAPPENS NEXT?

Following your initial enquiry we will tell you if we think you are entitled to compensation and if your claim has a reasonable chance of success. We will then ask you for your insurance details so that we can make the necessary checks. As soon as possible we will ask you to sign our terms of business documents and then the claim can begin. We appreciate that these early stages can be very confusing, but we will explain everything clearly as we go along.

Unless your accident happened on the road, we will then write to the person believed to be responsible for your injuries, and the claim will then usually be dealt with by their insurers, who will normally have just under 4 months to decide whether they will accept responsibility or will defend the claim.

Most road accident claims are now dealt with using a secure online system and we will add details of your claim to the system, following which the other party's insurers have only 3 weeks to decide whether they will accept responsibility.

Medical evidence is then obtained, together with details of your financial losses and

expenses. Sometimes it is also necessary to obtain statements from witnesses and explore in more detail the circumstances leading to your injuries. We then explore with the other party's insurers whether the claim can be settled.

In most cases it is possible to resolve matters without involving the Court, but if it is not possible to agree a settlement an application to the Court may be made. Even after this happens, only a very few cases actually proceed to a trial where a Judge decides whether compensation is payable and if so how much. More details about the Court's involvement are set out in section 4.

In most road accident cases it is usually possible to bring the claim to a conclusion within 5 or 6 months, and for other types of accidents within 9 to 12 months. However, we will not advise you to settle your claim unless we believe the full value of your injuries and financial losses can be established. This ensures you receive the maximum compensation that you are entitled to.

Throughout the claim we will keep you fully advised of developments and will explain each step that is taken. We aim to provide an efficient and professional service.

WHY USE US?

Legal advice is essential when you are making a claim for compensation for injuries. We specialise in this area of law and have the experience to assess whether you have a claim that is likely to succeed, and if so, to investigate the level of compensation you can expect to receive.

You do not need to visit our office, as we can usually deal with all information on the telephone or in correspondence, but if you do wish to visit us, we are always pleased to see you. Please let us know in advance if you have any mobility problems.

Our aim is for you to keep all the compensation recovered and pay nothing toward the legal costs. All we ask of you is that you give us your full co-operation and work with us to ensure your claim proceeds as smoothly and as quickly as possible.

REGULATION

We are authorised and regulated by the Solicitors Regulation Authority.

Our solicitors are members of the Association of Personal Injury Lawyers (APIL) and the firm is an accredited practice. We are committed to the APIL Code of Conduct & Consumer Charter (visit www.apil.com for details).

Our Head of Department is a member of the Law Society's Personal Injury Panel.

PURSUING YOUR CLAIM

THE STEPS TAKEN

STEPS TAKEN IN PURSUING A CLAIM

If we are able to help you in making a claim for compensation following an accident, we will deal with it as quickly as possible, to enable you to put matters behind you and get on with your life. However, the amount of time taken will depend on the circumstances of each case.

It may seem to you that it is taking a long time, but a lot is happening and we set out brief details of the steps that are usually taken to give you an idea of what is likely to occur and what you may be asked to do.

In most cases it will not be necessary for the Court to become involved, but even if this does happen all claims start in the same way.

Initial Instructions

At the start of your claim we will need to take full details from you about what happened and how it has affected your life. We can usually obtain this information over the phone, or we can arrange to meet.

Legal Expenses Insurance Cover and Bankruptcy Checks

We will ask you for details of your existing insurance arrangements, whether you are a member of a union and also whether you have any debt or insolvency issues. We do this because your answers are likely to affect the way in which we must handle your claim, and also to comply with our professional rules.

Our first letter to you will enclose a questionnaire dealing with these issues, for you to complete and return to us. We will then be able to investigate whether you have any legal expenses insurance or other cover that will protect you if the claim fails. If not, we will arrange appropriate insurance cover (as referred to in section 1).

Our Terms of Business and Legal Costs

To comply with professional regulations we must then write to you with details of our terms of business, and will normally send you a long letter, a Conditional Fee Agreement and other relevant documents.

These documents include details of the legal costs likely to be incurred during your claim and appear very long and complex. However, you need to keep in mind that providing you co-operate fully you will not have to pay these costs, but we must still give you these details, because if we do not do so and your claim is successful, your opponent's insurers may be able to avoid paying them.

We will discuss these documents with you in detail, and will then ask you to sign and return them to us. Once received, we will then be able to proceed with your claim.

Authorising the Release of Records

We will ask you to sign various Forms of Authority so we can obtain copies of relevant

records. These will usually be medical records from your GP and any hospital or medical practitioner who has provided you with treatment following the accident.

We will always need to obtain your GP's records, even if you have not seen your GP following the accident. This is because the medical expert preparing a report on your injuries will need to review your pre-accident health and consider any affect this might have on the cause of your injuries and your recovery.

We may also need to obtain records showing your usual income, eg from your employer or your accountant.

Letter of Claim

As set out in section 1 and unless your accident happened on the road, as soon as we can we will write to the party believed to be responsible for the accident setting out the basis of your claim. They normally have 3 weeks to send this to their insurers, who in turn normally have a further 3 months to investigate the matter and decide whether to admit or deny responsibility. This allows around 4 months for us to obtain medical evidence and details of your financial losses.

There is a shorter process for most road accident claims.

Financial Losses

We will send you a questionnaire for you to complete with details of your financial losses and expenditure resulting directly from the accident. We will also ask you for receipts and other documents in support of the items you wish to claim. These items can include travelling expenses (eg in attending GP or hospital appointments), lost earnings (now or in the future), the cost of medical treatment and painkillers, etc. We will prepare a "Schedule of Special Damages" listing these items for you to approve, before sending it to the insurers.

Further details on the items that you can include in your claim are set out in section 3.

Medical Report

We will arrange an appointment for you to see a medical expert, usually within 30 miles of your home, which you must attend. The expert will then prepare a detailed report describing your injuries, any treatment received or suggested, and giving an indication when you are likely to recover. We will send you a copy for approval, before sending it to the insurers.

Statements

We may need to obtain a written statement from you, setting out in your own words exactly what happened and how the accident has affected your life. We may also need to obtain written statements from other people who either witnessed the accident or have been involved in some way.

Rehabilitation

If you would benefit from rehabilitation treatment (eg with a physiotherapist) we will explore with the insurers whether they will arrange and pay for this. It is in their interests to do so, because if you recover quickly this might mean that the value of your claim is less than if you take a long time to get over your injuries and have to take extended time off work during this period.

VALUING THE CLAIM

If your claim is straightforward we will be able to assess the amount of compensation you are likely to receive. We do this by comparing your claim with similar cases where compensation has already been paid, and also by looking at the Court's guidelines on the value of certain injuries.

If your claim is more complicated we will send details to a Barrister, who will advise on the amount of compensation you may receive. This is an "Advice on Quantum". By this time, if the insurers have either denied responsibility for your accident or have not yet made their decision, we may also ask the Barrister to assess the strengths and weaknesses of your claim and whether it is likely to succeed if determined by a Judge at a trial. This is an "Advice on Liability". We will send you a copy of the Barrister's "Advice".

Negotiating Settlement

Whether responsibility for your accident is accepted or denied, we will negotiate with your opponent's insurers with the aim of settling your claim. If no offer is made, we may make one on your behalf, setting out the sum that you would accept, having first agreed this with you.

When the Claim Settles

Usually within 2 to 4 weeks of agreeing the compensation with the insurers, they will send us a cheque for this amount and we are normally able to forward this to you straight away. If you have obligations to account to another party at this stage you will already have been made aware of these.

We will also send details of the legal costs and expenses incurred in pursuing the claim to your opponent's insurers. We will negotiate with them and once a figure is agreed they will send us a cheque for this. We will let you have full details.

What if the Claim Fails?

Your claim may not be successful. Your opponent's insurers may deny responsibility for the accident and provide full reasons for this, and we and/or the Barrister may then decide that your claim would not likely succeed if it had to be assessed by a Judge at a trial. We would report this to you and your claim would be stopped. Or, you may proceed to a trial and the Judge may decide that your claim was not proven. In either event, we will notify the insurers providing cover for your case, and they will pay on your behalf any costs that you have then become responsible for.

Co-operating With Us

For your claim to have the best chance of succeeding and to ensure you have no liability for any legal costs, you must co-operate fully at every stage.

WHAT COMPENSATION MIGHT I RECEIVE?

COMPENSATION EXPLAINED

COMPENSATION I MAY BE ENTITLED TO

As indicated in section 1, if you have suffered injuries and financial losses as a result of an accident that was not your fault you can claim 2 types of compensation:-

“General Damages” - for your injuries;

“Special Damages” - for your financial losses and expenditure resulting directly from the accident.

GENERAL DAMAGES

This is to compensate for your “pain, suffering and loss of amenity”, and in most cases forms the largest part of the compensation.

The level of general damages applicable in your claim is based on the type of injuries you have suffered, how long it will take for you to recover and whether you will have any long term or permanent effects, eg scarring.

“Loss of amenity” is the extent to which your life has been affected by of the accident. You may be a keen golfer and are unable to play because of your injuries, or you might not have been able to participate in other hobbies even if only for a short time. This also covers any changes that you have had to make in your employment because of your injuries, and any inability to fully carry out household or domestic tasks, etc that you used to perform.

SPECIAL DAMAGES

This is to reimburse you for your financial losses and any expenses you have had to incur as a direct result of the accident. Examples of the types of special damages that you may be able to claim are set out below.

As set out in section 2, we will send you a questionnaire to complete with as much information as possible and will ask you to return this to us with all receipts, invoices or other documents in support of the amounts you wish to claim. It is often easier to recover specific items if you can produce evidence that the expense has been incurred. You can keep topping up this information during the claim, and before any settlement negotiations are started we will send you for approval a “Schedule of Special Damages” setting out all the items that you wish to claim.

It is not always possible to recover every item that you claim, but the more evidence provided in support of each specific item, the more chance you have of recovering it.

Loss of earnings

This includes wages that you have already lost and, if appropriate, income that you might have received in the future, but will not now do so because of the accident.

We can normally calculate your losses by obtaining details from your employer of all money paid to you for a 13 week period prior to the accident and since the accident.

If your employer has paid you anything while you were off work, eg contractual sick pay (but

not Statutory Sick Pay) and your employment contract requires you to reimburse this, we will claim it on your behalf so you can reimburse your employer from your compensation.

Calculating your anticipated future loss of earnings can be more difficult, but is usually only necessary if your injuries are very severe. In such cases we might need to assess the level of any pay increases, promotion prospects and other benefits (eg pension) that you would likely have enjoyed if the accident had not happened.

Travelling expenses

We will include either the fare paid (eg for bus, train or taxi) or at the rate of 45p per mile and any parking fee, for journeys taken because of the accident, eg:-

- (a) Visits to your GP, hospital or other medical practitioner providing treatment.
- (b) Attending the appointment with the medical expert.
- (c) Other journeys, but you will need to state why each one was necessary.
- (d) Journeys by close relatives to visit you in hospital.

Medical and care expenses

These items can include:-

- (a) Hospital charges for emergency treatment.
- (b) Prescription charges and the cost of non-prescription items, eg pain killers.
- (c) Surgical supports, bandages, tubigrip, etc.
- (d) Treatment provided by physiotherapists or other practitioners on a private basis, which has not been arranged and paid for by the other party's insurers.
- (e) The cost of treatment in a private hospital might also be recovered if the NHS waiting list is too long.
- (f) Care provided by Social Services or a private agency.
- (g) Care provided by family or friends, claimed at an hourly rate (eg helping you with cooking, cleaning, personal hygiene, etc) - but usually only a proportion of the amount claimed is actually paid.

Other expenses or items of specific loss

These items can include:-

- (a) Repair or replacement costs for damaged clothing, jewellery or other belongings.
- (b) Items bought because of the injuries, eg larger clothes or shoes while in plaster.
- (c) Additional utilities costs because you had to spend more time at home than normal.
- (d) Additional telephone and postal costs in contacting people involved in the claim.
- (e) Vehicle repair or storage costs, expenses in hiring a temporary replacement vehicle and any policy excess, following a car accident.

Miscellaneous expenses or losses

These items can include:-

- (a) Costs incurred in employing others to undertake domestic cleaning, decorating, general DIY, gardening, etc that you would have dealt with yourself but were unable to because of your injuries.
- (b) Sums lost in having to cancel activities or holidays.
- (c) Costs incurred in obtaining specialised equipment or in adapting your home or car if your injuries were particularly severe.

WHO DECIDES HOW MUCH I RECEIVE?

General Damages

We will arrange for a medical expert to consider your medical records, examine you and prepare a detailed report describing your injuries, any treatment received or suggested and indicating when you are likely to recover. We will send you a copy for approval. It may be necessary for more than one report to be obtained.

Once we have your full medical evidence we will consider all of the injuries you have suffered and assess how long you have taken to recover from each one. We will then give you our assessment of the amount of compensation we believe a Judge at a trial would award you. We do this by comparing your claim with similar cases where compensation has already been paid, and also by looking at the Court's guidelines on the value of certain injuries. However, as set out in section 2, if your claim is more complicated we will send details to a Barrister for a written Advice on the amount of compensation you may receive.

Your compensation may be reduced if the accident was partly your fault.

Agreeing the compensation to be paid to you

We will send the medical evidence and Schedule of Special Damages to your opponent's insurers with the aim of negotiating a settlement with them. We will consult you before reaching a final agreement.

If negotiations are not successful an application to the Court may be necessary, and if this becomes necessary we will explain the process to you. It is still possible to agree a settlement even after the Court has become involved and very few cases need to be decided by a Judge at a trial.

STATE BENEFITS

Any State benefits you have received as a direct result of the accident may need to be repaid from your compensation so that you are not compensated twice. We will discuss the details with you should this situation arise.

COURT PROCEEDINGS

WHAT HAPPENS WHEN THE COURT BECOMES INVOLVED IN MY CLAIM?

WHEN DOES THE COURT BECOME INVOLVED?

If it has not been possible to settle your claim with your opponent's insurers within 3 years of the date of the accident and either responsibility for the accident has been denied, or responsibility has been accepted but the amount of compensation cannot be agreed, the Court will need to become involved. We will therefore issue Court proceedings on your behalf. It may ultimately be necessary for a Judge to decide at a trial whether your opponent was responsible for your accident and injuries and/or how much compensation you should receive.

It may still be possible to settle your claim even after this step has been taken, and we will continue to try and achieve this.

From this point forward, if your claim is lost you may be asked to pay your opponent's legal costs, but we will ensure you have adequate insurance or other cover in place so that you will not have to pay these sums personally.

PART 36 OFFERS

Before Court proceedings are issued, and with your agreement, we will usually have made a formal offer to your opponent setting out the sum that you will accept to settle the claim. This is called a "Part 36 Offer". This is an important tactical procedure, because if the offer is not accepted and the trial Judge decides that you should receive an amount equal to or higher than your offer, your opponent will have to pay additional interest and legal costs.

ISSUING COURT PROCEEDINGS

For most accident claims this involves sending various documents to the Court setting out details of your claim, but there is a shortened procedure for dealing with road accident cases. You will already have approved the documents, and which include:-

- **Particulars of Claim** - briefly describing what happened and why you believe your opponent was to blame.
- **Medical Evidence** - describing the injuries, treatment received or suggested, and indicating when you are likely to recover.
- **Schedule of Special Damages** - a list of your financial losses and expenditure resulting directly from the accident.

The Court sends a copy of the documents to your opponent or their solicitors, who have 14 days to indicate whether they intend to defend the claim. If so, within a further 14 days they must provide us and the Court with a written "Defence", setting out why they believe they are not responsible. We will send you a copy and ask for your comments.

Both before and after Court proceedings are issued the parties must consider whether some form of alternative dispute resolution (eg mediation or arbitration) would assist in resolving the claim and we will give you advice about this at the appropriate time.

THE COURT TIMETABLE

The Court will decide how the claim is to be dealt with and sends both parties an “Order” setting out the steps that need to be taken to prepare for a trial, and the date by which each step must be completed. The Court expects the parties to agree this timetable in advance, and aims for the claim to be ready for a trial within 6 months.

We will do whatever is necessary to prepare your claim and will send you any documents that require your approval. At certain stages we must also provide the Court and your opponent with full details of the legal costs we have incurred and are likely to incur in pursuing the claim, and we must also send a copy to you, but this is for your information only.

Occasionally a Judge may wish to discuss specific issues with both parties prior to a trial, but you will not normally need to be present during these discussions.

The usual steps to be taken are:-

List of Documents and Disclosure

Each party must prepare a list of all the documents they have that are relevant to the claim, even if some may assist the other party’s case. The “List of Documents” is sent to the Court and the other party’s solicitors, who can then request copies of any of the documents identified.

Witness Statements

Each party must set out the detail of their case in witness statements. Sometimes the statements only need to deal with specific issues, eg if only the value of the claim is disputed, or if certain documents need to be commented upon.

We will need to prepare a statement from you, and if necessary from other people in support of your claim, eg if they witnessed the accident or provided you with help and assistance afterwards.

Your opponent must also prepare statements from everyone who they believe can assist their case.

Both parties then send copies of their statements to the Court and to each other at exactly the same time. We will send you copies of your opponent’s statements and ask for your comments. It is usual for all witnesses to give evidence at the trial.

Further Medical Evidence

If you have ongoing symptoms the Court may allow you to obtain further medical reports, which must be copied to the Court and your opponent.

If your opponent disagrees with your medical evidence, the Court may allow them to obtain their own medical report, a copy of which must be sent to the Court and to us. An appointment will be arranged with the new expert, which you must attend.

Both parties may be allowed to ask questions of the medical experts. If both parties have obtained their own medical report, the experts may need to prepare a joint statement setting out details of the issues upon which they agree and disagree, and they may also need to give evidence at the trial.

Arranging the Date for the Trial

When all the steps have been completed, the Court will ask both parties for dates when the trial could not take place (eg because a witness is on holiday) and will then fix a date for the trial.

THE TRIAL

We will normally instruct a Barrister to represent you, and although the Court procedure is formal, you should not be frightened by it. Real trials are rarely as dramatic as those you see on the television.

A few days before the trial we will send to the Court a bundle of all the documents relevant to your claim, so that the Judge can read them in advance.

At the start of the trial the issues involved in the case will be summarised and any preliminary matters will be dealt with.

Under oath, your Barrister will then ask you about your claim, highlighting the points set out in your statement. You will need to be very familiar with its contents and be ready to answer questions, as your opponent's Barrister and the Judge will then want to ask you about your claim. This process is known as giving evidence. The witnesses and experts supporting you and your opponent will then give evidence in turn.

When all the issues have been discussed, each Barrister will summarise their case, emphasising points that they feel are particularly important and the Judge will make a decision. If your opponent is found to be responsible for the accident and your injuries, the Judge will then assess the amount of compensation that you should receive. The Judge will also deal with the payment of the legal costs.

CHILD CASES

If a claim is made by someone who is under 18 years of age, any settlement must be approved by a Judge to ensure it is fair and reasonable. Court proceedings are started in a similar way, but if the parties have already agreed the level of compensation that they feel is appropriate, there is no need for a timetable to be followed and an informal Court appointment is immediately arranged. The approved compensation is invested by the Court until the claimant reaches 18.

This Guide is for general information only as each claim must be individually assessed, and is relevant for claims commenced prior to the Government's changes to the Civil Litigation system, likely to be implemented in autumn 2012.