



# SERIOUS PERSONAL INJURY CLAIMS

How to make a claim for a serious personal injury if you have been injured as a result of an accident on the roads, at work, on holiday, in a public place or elsewhere.

You may be entitled to make a claim for compensation and this factsheet will help you to:

- identify the issues that will need to be addressed if you wish to bring a serious injury claim
- find out if your circumstances merit bringing a claim
- understand how the personal injury team at Penningtons Manches LLP can assist you in bringing your claim

There are many issues to be considered before bringing a claim and for general information please see our factsheet on personal injury claims.

## WHAT IS MEANT BY 'NEGLIGENCE' AND 'CAUSATION'?

The tests for negligence and causation are the same regardless of the nature and severity of the injury suffered. Please see our Personal Injury Claims factsheet for the issues that need to be considered.

We are always happy to talk through on a 'no obligation' basis to establish whether your circumstances merit bringing a claim, the likely prospects of success and what would be involved.

The first steps in your case will be to investigate liability for your accident and injuries, identify the defendant, and ascertain whether or not liability is disputed. If there is a dispute, then we will obtain further evidence and advise as appropriate. If we feel that the prospects justify proceeding, we will issue court proceedings to determine liability.

In serious injury cases, due to the need to be able to assess long term prognosis and investigate a number of aspects of the claim in value terms, liability is sometimes dealt with first and quantum (value of the claim/compensation) subsequently.

## WHAT TYPE OF COMPENSATION CAN I CLAIM?

The legal term for the compensation you can recover is 'damages'. There are two types of damages:

- **General damages** can be claimed for pain and suffering caused by the accident and for the impact of the injury on your day-to-day life. The value of this aspect of the claim is assessed mainly on evidence obtained from an independent medical expert about the nature and impact of your injuries and your future prognosis but also on your evidence.
- **Special damages** can be claimed for out-of-pocket expenses such as loss of earnings, the cost of care, travel expenses and medical expenses incurred because of the accident. Special damages cover the financial losses sustained already and also any likely future financial losses. Part of our role is to investigate any future losses which you may sustain so that you can be compensated for them. Again, this is largely based on expert evidence on losses arising from your injuries.

## KEEP A WRITTEN RECORD

We strongly advise that you keep a written record of how your injuries affect you and keep documentary evidence (such as invoices, receipts, tickets etc) of any related expenditure as this will help to ensure that you recover the appropriate level of compensation.

## HOW WILL I KNOW HOW MUCH TO CLAIM?

The valuation of your claim is largely based on expert evidence as to past, current and future symptoms, needs and losses arising from your injuries. We will not advise you to settle your claim until it is possible to ascertain with a reasonable degree of certainty what your future prognosis and needs be.

As we have particular expertise in dealing with complex and multiple brain and spinal injury cases, we are very familiar with the issues that need to be explored and use experts regarded as being at the top of their field in assessing these injuries and their impact.



The sort of expert evidence that may be needed might include the following:

- Neurologist – to assess the impact of any brain injury
- Spinal surgeon / neurosurgeon – to assess the effects of spinal injury
- Neuropsychologist / neuropsychiatrist - to assess impact of brain injury on day to day function and to provide guidance with regard to rehabilitation needs
- Care expert – to assess care provided and likely to be needed in the long term
- Occupational therapist – to assess current and future needs in therapy terms and in relation to items of aids and equipment to assist with day to day living
- Architect – to assess whether your existing home needs any alteration to enable you to use it more easily and to assess whether an alternative property may be needed
- IT specialist – to assess what technology is available to assist you with day to day living
- Physiotherapist / speech and language therapist - to assess current and future needs in these areas
- Employment consultant – to look at issues of employment / retraining options.

We will also discuss whether you would benefit from a case manager to co-ordinate the different elements of your care and support.

### HOW DO I CHOOSE A LAWYER?

It is important to choose a solicitor who:

- is experienced in personal injury work
- fully understands the broad range of issues that arise in such claims
- has access to equally competent medical experts and specialist personal injury barristers

When choosing a solicitor, you should also look at their specialist credentials.

- Headway and the Spinal Injuries Association have list of recommended solicitors. The Law Society also has a panel of recommended Personal Injury solicitors. If you are considering a number of solicitors, check if they are on these lists/panel.
- You should also ask if their firms are accredited

by the Association of Personal Injury Lawyers (APIL).

- You can also look online at the two legal directories – Chambers UK and The Legal 500 - to see if they are ranked as leaders in the field of personal injury.
- You should find a lawyer who will provide some initial advice without charge.
- Last but not least, you need to feel confident in and comfortable with your solicitor. Pursuing a claim can be a lengthy, difficult and stressful process for a claimant so it is important that you find your solicitor easy to talk to, approachable and supportive.

### HOW LONG HAVE I GOT TO MAKE A CLAIM?

Any court proceedings for personal injury must be issued within three years of the accident (or the date on which you were aware that you had suffered a significant injury as a result of the accident, if this is later). For children, the three year period does not start to run until their 18th birthday and, for those lacking capacity, perhaps due to brain injury, the three year period does not start to run unless and until they recover capacity. The court does have discretion to allow proceedings to be issued after the three year period but it is only exercised on rare occasions.

### HOW DO I FUND A PERSONAL INJURY CLAIM?

There are several options available for pursuing a personal injury claim. Much will depend on the circumstances of the accident. We can advise in more detail but here are the main ways of funding the claim:

- Legal Expenses Insurance. This may be provided as part of a motor or household contents insurance policy or by a credit card company. It is always sensible to check to see if you have this insurance cover or whether there is another organisation such as a trade union which will fund the case.
- Conditional Fee Agreement (CFA). Sometimes called 'no win, no fee', this is an agreement by us that we will not charge you if you do not win your case. In return, you agree to pay us a 'success fee' if you do win the case. This arrangement is usually available from the outset of the case. It



usually operates with an 'after the event' (ATE) insurance policy which protects you against any liability for costs such as experts' fees and against any liability for the other side's costs.

**(For more details, see our fact sheet on Conditional Fee Agreements).**

Public funding (Legal Aid) is no longer available for most personal injury claims.

If you win your case, you will recover the majority, if not all, of your costs from the other side. If you do not succeed for any reason, you will be protected against any liability for costs if you have the benefit of legal expense insurance or a Conditional Fee Agreement and insurance.

We can provide more detail of all of these options on request.

### **WHY SHOULD I CHOOSE PENNINGTONS MANCHES?**

We are on the recommended solicitors' list for Headway and the Spinal Injuries Association and have particular expertise in brain and spinal injury cases. We are rated as specialists in personal injury work by the legal directories Chambers UK and The Legal 500.

We also have experience in most areas of personal injury litigation with particular expertise in serious injury cases and fatal accidents. We use a highly regarded team of independent medical experts and specialist personal injury barristers so that you can be confident of an experienced team managing your claim.

### **ACTING FOR CHILDREN AND THOSE LACKING CAPACITY DUE TO INJURY**

As we regularly work with families on behalf of those who due to age or injury are unable to conduct litigation for themselves, we are familiar with the issues that need to be considered here. We have a specialist team dealing with the Court of Protection who can also advise you on managing the long term security of damages obtained and the use of trusts.

### **WHAT SHOULD I DO NEXT?**

In order to enable you and us to assess whether you have a claim with good prospects of succeeding and to discuss what would be involved, we usually offer an informal meeting or discussion / review of documents initially without charge and we are always happy to have an informal discussion in the first instance to discuss your options and how we may be able to help.

### **FIND OUT MORE**

**For further information or to discuss your potential claim with an experienced solicitor, please contact:**

**T: 0800 328 9545**

**E: [pispecialist@penningtons.co.uk](mailto:pispecialist@penningtons.co.uk)**

