



SERIOUS PERSONAL INJURY CLAIMS

This factsheet provides information about why you or a family member may wish to make a claim for damages after suffering serious personal injury as a result of an accident and what is involved in such a claim.

This factsheet will help you to:

- find out if the circumstances of your accident and injury merit bringing a claim;
- understand what is involved in bringing such a claim and what you might achieve;
- understand how the personal injury team at Penningtons Manches Cooper 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.

WHO CAN I CLAIM AGAINST?

In order to bring a successful personal injury claim, you need to be able to identify a defendant – an individual or entity whose action or inaction resulted in your injury and that defendant needs to be able to ‘meet’ any claim in terms of financial resources – normally by way of insurance. There are some exceptions to this – some cases involve more than one defendant and in the context of uninsured drivers there are some additional options to claiming against an insurer but in the main you need to be able to identify the appropriate defendant(s) and they need to have insurance for you to be able to pursue a successful claim.

WHAT DO YOU NEED TO PROVE?

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

To succeed in a personal injury claim you need to:

- as above, identify the defendant(s);
- establish that they owed you a duty of care (for

example one road user to another or an employer to an employee to provide a safe system of work);

- establish that they acted in a way that created a foreseeable risk of injury to others;
- establish that that action (or inaction) led to you suffering injury;
- establish what injuries you have suffered as a result of the accident in question.

The first steps in your case after identifying the defendant(s) will be to investigate liability for your accident and injuries 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 and proceed through a court timetable, to trial if necessary. Once liability is resolved, we can then look to value the claim and enter settlement negotiations.

In serious injury cases liability is often resolved at a stage where it is too early to assess an individual’s long-term recovery and outcome from their injuries. Final settlement can therefore be some time later, but once liability is resolved, it is usually possible to secure interim payments of damages to reimburse losses / fund treatment etc.

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 medical experts about the nature and impact of your injuries and your future prognosis but also on your evidence.
- **Special damages** can be claimed for financial losses due to the accident such as loss of earnings, the cost of care, travel expenses and



medical expenses. In serious injury claims this often covers lifetime care provision, accommodation needs and long-term therapy and equipment needs. 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 assessment is largely based on expert evidence. This provision for future, potentially very costly, needs and the input to understand what those needs will be and how to meet them is the main reason we will advise bringing such a claim.

We strongly advise that you keep a written record of how your injuries affect you and 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 THE CLAIM BE VALUED?

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 are.

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 to assess these injuries and their impact.

The sort of expert evidence 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 the 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 aids and equipment to assist with day to day living and to look at vocational support required;
- architect – to assess whether your existing home needs any alteration to enable you to use it more easily and 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 (a rehabilitation specialist, usually nurse or occupational therapist) 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 involving serious injuries;
- 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 lists 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 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. 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. 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 on all of these options on request.

WHY SHOULD I CHOOSE PENNINGTONS MANCHES COOPER?

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 as a team and also individual members of the team are rated as specialists in personal injury work by the legal directories *Chambers UK* and *The Legal 500*. Members of the team are also accredited as personal injury specialists by the Law Society and APIL (the Association of Personal Injury Lawyers).

We have experience in most areas of personal injury litigation, with particular expertise in serious injury cases – brain, spinal and amputation injury claims and fatal accidents. We have succeeded in recovering damages in many complex and disputed claims and achieved substantial settlements for clients who have suffered life-changing injuries.

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.



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WHAT SHOULD I DO NEXT?

In order to enable you and us to assess whether you have a claim with good prospects of success and to discuss what would be involved and what you might achieve, we usually offer an informal meeting / review of documents, initially without charge. 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@penningtonslaw.com

