



PERSONAL INJURY CLAIMS

If you have been injured as a result of an accident, whether it was an accident on the roads, at work, on holiday, in a public place or even at home, you may be entitled to make a claim for compensation.

This information sheet aims to help you identify whether you have a potential claim, what to do if you have, and what you might claim. It also gives you information on the assistance that the specialist personal injury team at Penningtons Manches Cooper can provide in bringing your claim.

NEGLIGENCE

Generally, to succeed with a claim you will have to prove that the accident was avoidable and was someone else's fault – ie that they were negligent and in breach of a legal 'duty of care'. A duty of care is a duty that the law places on someone to take care not to injure others. For example, car drivers have a duty of care towards all other road users, employers have a duty of care to their employees and householders and public venues have a duty of care towards visitors to their premises. In general terms, people and entities have a responsibility not to do things which create a foreseeable risk of injury to others – and if they do put others at risk and injuries result, then there is a basis for a claim.

Examples of negligence:

- a car driver drives too fast for the road conditions / speed limit or fails to stop at a traffic light
- an employer fails to provide or safely maintain appropriate safety equipment for employees or to train them properly for the job they are doing
- a fellow employee operates a piece of machinery without following safety instructions
- the owner of a building fails to repair a
- dangerously unstable wall which is adjacent to a footpath
- a school fails to carry out proper risk assessments for activities or have adequate supervision
- an animal owner fails to control their animal(s) properly
- a hotel or pub has inadequate lighting at night around steps or fails to warn of a hazard such as a wet floor or icy paths
- a shop sells a faulty product that carries a safety risk
- a construction site has inadequate warnings and barriers to prevent individuals accessing areas where they are at risk.

CAUSATION

To succeed in a claim, you must also prove that the type of injuries caused were a foreseeable outcome of that negligence and would not have happened without the negligence. In many cases, this is simple – a passenger in a car accident would not have been injured had one of the drivers involved not caused the accident. In other cases, this can be more complicated, for example where there are multiple people potentially at fault, where the accident happens in unusual circumstances or where the individual injured is partly at fault by having put themselves at risk.

You will only be compensated for the effects of the accident, so for example if you already suffer from back pain and suffer a back injury, you are only compensated for additional pain and its consequences, not all of your back problems and again this can be an area of dispute.

INITIAL STEPS

If you decide to pursue a claim and are advised to proceed, then the initial steps are likely to include:

- setting up funding
- gathering details of the defendant(s)
- obtaining full details from you about the accident circumstances, events since and any evidence that you hold and preparing a witness statement
- obtaining and reviewing any accident reports, police reports and Health & Safety Executive reports
- contacting witnesses



- obtaining your medical records
- starting to gather details of your losses
- approaching the defendant(s) and their insurer(s) and setting out the claim against them and the basis for it
- assessing their response
- seeking interim damages to fund treatment required.

DAMAGES

There are two types of damages that you can claim:

'General damages' are 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 independent medical experts about the nature and impact of your injuries and your future prognosis.

'Special damages' are claimed for financial losses incurred because of the accident – such as loss of earnings, the cost of care, travel expenses and medical expenses. Special damages cover financial losses sustained already and also any likely future financial losses – and part of our role is to investigate any future losses which you may sustain so that you can be compensated for them. Expert evidence is often required for aspects of this – for example future care and treatment needs, pension losses, accommodation needs or prosthetics (for an amputee).

Often once liability has been resolved we can agree an interim payment of damages from the other side to fund rehabilitation, medical treatment or care or to cover loss of earnings whilst the case is ongoing.

The aim of compensation is to put you back in the position that you would have been in but for the accident – insofar as money can achieve that. Valuing the claim therefore involves a very thorough consideration of your pre accident life and what you need in place to try and regain as much of that as possible. Every claim is tailored to the individual claimant.

LIMITATION

Any court proceedings for personal injury sustained in the UK must usually be issued within three years of the accident. This limit does not apply to those who lack capacity to conduct litigation. For children, the three year period does not start to run until their 18th birthday.

WHO PAYS?

In most personal injury claims, the defendant(s) have insurance to cover the claim – and will also pay most of the legal costs. Occasionally there is not valid insurance in place. For road traffic accidents, this is managed by the fact that the Motor Insurers' Bureau (funded by insurers) will deal with the claim but it can present a difficulty in other types of claim. One of the initial things that needs to be done when looking at a claim is to identify the potential defendant(s) and ensure they have insurance available to meet the claim.

HOW LONG WILL IT TAKE?

The two main factors that affect how long a claim will take to conclude are whether liability is disputed (and needs to be resolved) and when medical experts can give a final prognosis for the claimant's injuries – enabling the claim and losses to be assessed. Most cases take between 12-36 months to resolve but big cases involving serious injury can take considerably longer.

CHOOSING A SOLICITOR

To pursue a personal injury claim it is advisable to instruct a solicitor. In doing so you should consider the following points:

- expertise – is the person you approach a solicitor specialising in personal injury work and familiar with the issues?
- have they got experience of similar cases and injuries to yours?
- are they accredited by any recognised body – the Law Society and the Association of Personal Injury Lawyers run accreditation schemes for personal injury solicitors
- what you might have to pay and when – including whether any initial advice is free



- whether they are recognised in the national legal directories – Chambers UK and The Legal 500
- who will actually be doing the work on your case and their breadth of expertise
- rapport – you may need to discuss some difficult issues and the case may go on for some time and be hard fought. You need to feel that you get on with your solicitor and can work with them
- website – look at the solicitor's website for details of their expertise, previous cases and credentials.

FUNDING THE CLAIM

There are two main options available for pursuing a personal injury claim:

- **Legal expenses insurance.** This may be provided as part of a motor or household contents insurance policy, or by a credit card company or union, and we can advise you on this.
- **Conditional fee agreement.** Sometimes called 'no win, no fee', this is an agreement by us not to 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 operates with an after the event insurance policy which protects you against any liability for things such as experts' fees and against any liability for the other side's costs. If you win your case, you will recover the majority of your costs from the other side but will pay some out of your damages. If you do not succeed for any reason then you will be protected against any liability for costs.

EXPERTISE OF THE PENNINGTONS MANCHES COOPER PERSONAL INJURY TEAM

We operate as a team across our offices but have clients all around the country and are recognised as a national team.

Members of the team are on the Law Society recommended personal injury solicitors panel and are senior accredited litigators with the Association of

Personal Injury Lawyers (APIL). The team is also accredited by APIL.

We are rated as specialists in personal injury work by the legal directories Chambers UK and The Legal 500 and are on the recommended solicitors list for Headway, the Spinal Injuries Association and the Brain Injury Group. Our particular expertise is in serious injury cases – brain and spinal injury and fatal accidents.

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

