Making a Personal Injury claim

If you have been injured in a road accident that wasn't your fault, or slipped or tripped whilst at work or out and about and suffered an injury as a result, or if you have sustained an injury as a result of other consequences that were not your fault, you may wish to bring a personal injury claim against the party responsible for your injury.

If you do want to bring a claim for compensation for a personal injury, you will need to get advice from a lawyer specialising in these types of cases. We recommend that you do so **as soon as possible after your accident** as there are strict time limits on taking legal action. There have also been some recent changes brought in by the Government which change the way that claims are made in some circumstances, which we will address below.

If the lawyer agrees to represent you, they may offer you a range of ways to pay their fees, including a **Conditional Fee Agreement**, more commonly known as a 'no win no fee' agreement, a **Damages Based Agreement** which entitles them to claim a proportion of any amount you receive in settlement, or they may offer to represent you on the basis of an **hourly rate** for the work that they do. They may also ask you if you have any **Legal Expenses Insurance** cover, which you may have as part of your household insurance or other insurance policies. Your options are set out in detail below.

When this has been agreed, you would expect the lawyer to ask you;

1. What happened;
2. About witnesses or other parties that might have seen what happened;
3. If you were injured and what those injuries were;
4. If you sought medical treatment;
5. If you had been involved in any other earlier accidents or made a claim; and
6. What you have lost or what has been damaged

Having established what happened, the lawyer will contact the other side to advise them of the claim and ask them whether they accept that the accident was their fault – this is called **establishing liability**.

The lawyer also needs to find out what the claim is worth, which is known as **establishing quantum**. In order to do this, they need to send you for a medical appointment so your injuries can be assessed. An independent expert will examine you and produce a report which the lawyer uses to value the claim. This is because the amount of compensation awarded in a successful claim depends largely upon the nature and seriousness of the injuries sustained, and it is important that the lawyer can prove that the injuries sustained are as a result of the accident, and are not a result of pre-existing conditions or other accidents.

The compensation you receive for your injuries are known as **General Damages**, and includes pain, suffering and loss of amenity caused by your injury, and includes both physical and/or psychological

injuries.

In addition to General Damages, you can claim what is known as **Special Damages**. These are losses arising as a result of your injury, including loss of earnings, travel costs, any cost of care and assistance provided, out of pocket expenses attributable to the accident, and any future losses, such as future earnings and pension, and the cost of continuing treatment, e.g. physiotherapy, nursing, speech and language therapy. The total claim will comprise the sum of the total General Damages together with the Special Damages.

Your lawyer may ask the other party to pay **Interim payments** towards the cost of care and treatment, which they may agree to pay, with the payment being deducted from the final settlement amount.

Once the claim has been valued, your lawyer will try and negotiate settlement with the party you are claiming against. They may agree to settle for the amount that your lawyer has valued the claim at if they accept that the accident was their fault, in which case the claim will not need to be referred to court. However, if they do not accept that the accident was their fault, or they do not accept your lawyer's valuation of the claim, the matter will then have to be referred to a court to decide.

You may have to attend a trial and give the judge your account of what happened, and having heard the evidence – which includes the medical evidence and the witness' account of what happened, if applicable, the judge will decide whose fault the accident was and, if it was the fault of the party you are claiming against, what the value of the claim is.

Funding a Personal Injury claim

If you want to be represented by a lawyer in a personal injury claim, there are different ways to fund the claim which may be available to you, depending on your circumstances. The most common forms of funding are set out below.

Paying privately

You can pay your lawyer's fees and costs privately if you so wish. If you choose this option, the lawyer should write to you confirming what their hourly rate is and what other costs may be chargeable in relation to the claim, for example court fees and barristers' costs, if appropriate. The lawyer should also provide an overall estimate of the fees you can expect to pay for the work that they will have to do in order to represent you in your claim, and they may require you to place a sum of money on account with them before they will agree to commence your claim. We would then expect the lawyer's firm to issue regular bills throughout the course of the claim.

Conditional Fee Agreement (CFA)

This is a common form of funding for personal injury claims – they are more commonly known as 'no win no fee' agreements. In a CFA claim, your lawyer will not receive any fees if you lose your case.

Your lawyer will normally ask you to take out insurance to cover this situation – commonly known as After the Event Insurance. If you win your case, your lawyer's fees and expenses will normally be paid by the party you are claiming against.

Although the intention with this type of agreement is that you do not have to pay any money if you do lose your case it is possible, in some circumstances that you will have to pay your legal fees and expenses. This is a rare occurrence however - you would only be ordered to pay fees and expenses if it is found that either that the claim had no merit from the start, that there had been an abuse of the claims process, or that there had been fundamental dishonesty in the claim. You may also be ordered to pay the fees and expenses of the party you are claiming against in these circumstances, and where the other side make a formal offer (known as a 'Part 36 offer') which you reject and the court do not then award a higher amount. It is important to note however that this is not a common occurrence – the intention with a CFA is that you are protected from having to pay legal fees if your claim is unsuccessful on merit.

As there is an element of risk to the lawyer and to the insurer in this form of funding, the lawyer will assess the prospects of the claim at the outset and then throughout the course of the claim, to ensure that the prospects of success are and remain reasonable.

The insurer will usually agree to cover the risk of having to pay the other party's costs and expenses whilst the prospects of success are assessed as being more likely to succeed than to fail. If evidence comes to light that changes the firm's assessment of the prospects of success, they may choose to end the agreement and the insurer may withdraw cover. The lawyer will write to you to explain if this is the case and set out what your options are then to progress the claim.

When a claim is funded through a CFA, the lawyer will send you a copy of the agreement which they will require you to sign before they start work on the claim. It is very important that you read and understand the agreement before you sign it, as this is a legal contract and, once you sign it, you are bound by its terms. This agreement will place obligations on you as a claimant to behave in certain matters, and if you do not do so you risk breaching the agreement. It will also place obligations on the lawyer in progress the claim and to provide you with updates and relevant information in relation to the claim.

A CFA may include a provision of a success fee – which entitles the lawyer to retain a percentage of any settlement sum you receive, and will impose obligations on you such as the requirement to co-operate with the lawyer throughout the claim and not to mislead them. It is also worth bearing in mind that most CFAs state that if you choose to end the claim before it settles or reaches court, you will be liable for the firm's fees and costs up to the point that you end the agreement. If you are unsure about any of the terms and conditions set out in the CFA, you should ask your lawyer to explain them to you.

Damages Based Agreement (DBA)

In a DBA, the lawyer will be paid a proportion of the total damages recovered as part of the claim. This will usually be set out as a percentage of the damages. Like a CFA above, the lawyer will ask

you to sign an agreement if you choose this funding option which imposes obligations on you. You must ensure that you have read and understood the agreement before signing it.

Legal Expenses Insurance (LEI)

It may be the case that your lawyer can fund your claim through a Legal Expenses Insurance policy which you can obtain yourself or which may be part of another insurance policy such as your household policy. It is always worth checking whether you hold such a policy before you instruct a firm as the insurance can be used to pay the lawyer's fees and costs without you having to make any deduction from the settlement amount to pay the lawyer's fees or any success fee they impose under a CFA or DBA.

Use of evidence

Medical evidence

To support a claim for compensation for injuries you will have to prove that your current symptoms were caused by injuries sustained in the accident. To value the claim a Court will need to know how long it will take before you recover or if there will be lasting symptoms.

It is important to note that your lawyer is unlikely to be a medical expert who can provide medical advice and opinion that can be presented to a judge in court. They will therefore instruct medical experts to examine you and provide their opinion on the injuries you have sustained. You may have to attend an appointment with a medical expert so that they can examine you in person. It is important that you attend any appointments arranged for you by the firm as a failure to attend can reduce the prospects of a successful claim.

The medical experts are independent – they do not work for your lawyers. The experts also do not have a duty to you as a client, but to the courts, with the court expecting experts to provide an impartial opinion. This can mean that clients are not always happy with the contents of their medical report. If you receive a report that you feel is fundamentally wrong or contains errors, you should raise this with your lawyer who should listen to these concerns and can raise questions with the expert who can amend their report if they feel it is appropriate to do so.

The medical expert will seek to establish whether the injuries claimed for have been sustained AS A RESULT of accident, and to prove a link between the accident and the injuries sustained. They will seek to either rule in or out pre-existing conditions, and injuries sustained as a result of other accidents.

The firm will either instruct a medical expert directly to obtain the medical evidence, or may instead use a Medical agency. These agencies specialise in the provision of medical reports through their own sourcing of medical experts, expert witnesses, consultants and GPs. The expert that they recommend will then be approved by your lawyers as being appropriate to provide the evidence.

The amount of compensation awarded in a successful claim depends largely upon the nature and seriousness of the injuries sustained. A medical report will provide an opinion on the extent of the injuries sustained, whether they were sustained as a direct result of the accident, and set out an opinion on how long it will take for you to recover from those injuries, as well as recommending relevant treatment to assist with your recovery or whether any further medical assessments are required. The firm can then use that information to assess the valuation of the claim – how much compensation you should receive. They assess this by looking at other similar claims that have been determined by the courts, their own experience and expertise and other published guidance.

Other experts and expert witnesses

In addition to the medical experts, your lawyers may instruct other experts and expert witnesses to provide evidence in support of your claim. These include accident scene experts, engineers and motor vehicle experts. These experts will work in the same way as the medical experts – they are independent and will examine the evidence before providing a report for the court which is independent and impartial. If your lawyer is instructing such an expert, we would expect them to tell you they are doing so and the reasons for this, and then share the findings of the expert with you.

Will I have to go to court?

It is important to note that not every personal injury claim is settled in court with a judge deciding whose fault the accident was and what compensation is payable. Personal injury claims are often settled before court – either through negotiation between the lawyer and the defendant's lawyers, or through mediation, with the parties meeting to discuss the claim and agree an outcome. However, in cases where the parties cannot agree, either who was responsible for the accident or what the value of the claim is, or both, the claim will usually be referred to a court for a judge to decide.

If your claim has to be decided at a court trial, your lawyer will tell you this and inform you of the date of the trial and whether you need to attend in person. If the lawyer tells you that you need to attend it is important that you do so. If you fail to attend court for a trial, it can have serious consequences for your claim.

If I do need to go to court, what happens and what do I need to do?

Your lawyer should give you help and advice on what you need to do both before the date of the trial and whilst at court on the day, but if you are unsure you should ask your lawyers for advice. Lawyers know that trials are stressful for their clients, and if you are worried about what will happen and what is expected it is worthwhile raising this with your lawyers. If you are nervous and do not know what to expect, you can arrange to go to another trial at court beforehand, as they are open to the public, to understand what happens. This can be arranged through your local county court.

Your lawyer may choose to instruct a barrister to represent you at the court hearing. This may be for one of two reasons – either that the lawyer does not have sufficient rights of audience to represent a claimant at court, or they may decide that a barrister's expertise and experience would be beneficial in court on the day. If your lawyer is intending to instruct a barrister, they should advise you that they

are doing so and provide you details of the barrister so you are aware of who they are before you go to court.

If you need any reasonable adjustments or help at the trial due to a disability, let your lawyers know so they can arrange this with the court.

On the day of the hearing – what happens

Make sure you arrive in plenty of time before the trial is due to start. If you are travelling to the court by vehicle, make sure you know where you can park, and bear in mind that it can be very busy in the area around the court and it may not be possible to park close to the court. If you are running late, you will have to let either the court or your lawyers know.

If you are late for your trial, the judge could either defer your claim for another time or even dismiss it. If the judge does not hear the claim on the day, they could make you pay costs, such as the defendant's expenses.

Although your trial will be a formal hearing, it will take place in a normal room, and the judge won't wear a wig or gown. The defendant will also normally attend together with their legal representatives if applicable, and you will sit separately before the judge. Hearings such as this are open to the public so there may be other people there to watch it.

The judge will have read all the evidence beforehand, but they may still ask your lawyers and those of the defendant, if applicable, to summarise the case and also ask you both questions. If you are asked questions, you must make sure that you answer what is being asked as clearly as you can.

Having heard the evidence, the judge will then give their decision or 'judgment' at the end of the hearing and briefly explain the reasons. They will explain whose fault they decide the accident was, and if it was the other party's fault what they need to pay you. If either side doesn't attend, the court will send a copy of the judge's reasons to each side. If you are unhappy with the judge's decision it may be possible to appeal it, but you will have to speak to your lawyers about this and they will provide advice on whether an appeal is possible and what the prospects are of bringing a successful appeal.

Other things to consider

The courts see a trial very much as a last resort and are keen for parties to negotiate settlement before a court hearing is needed. The courts therefore encourage mediation, negotiation and the parties making formal offers to settle before the matter gets to trial.

Either party has the option to make a formal offer prior to trial. These are referred to as "Part 36" offers as the rules around making formal offers are set out in Part 36 of the Civil Procedure Rules, which are the rules which set out how claims have to be progressed.

A Part 36 offer is a formal offer which is usually time restricted – that is, the other party only have a short time to accept the offer before it is withdrawn, but if a Part 36 offer has been offered and

rejected, this can have serious consequences for the party who rejects it if the claim then goes to court. If the judge decides that the offer was reasonable and does not award a higher amount in damages, they can then make a costs award against the party that rejected the offer, making them pay the other parties' costs and expenses. If the defendant makes a Part 36 offer in your claim, we would expect your lawyer to tell you and provide advice on whether they think that the offer is reasonable and whether it should therefore be accepted.

Recent changes to the personal injury claim process

The Government have been concerned about the number of whiplash claims following road traffic accidents and have implemented changes to the claim process from May 2021. If you are making a claim for whiplash injuries after this date, these changes will apply to your claim. If whiplash is only part of your claim – if, for example, that is just one of the injuries you have sustained, you should seek advice from your lawyer on how best to proceed. For claims which do not include whiplash – this will be the case if, for example, you have suffered a trip or fall, these changes may not apply.

From 31 May 2021, the Government have changed the limits in value for small claims from £1,000 to £5,000 for General Damages, plus up to £5,000 for Special Damages. This means that the value of these claims total no more than £10,000. As part of the changes, legal costs for whiplash claims are no longer recoverable.

To make the claims process easier, the Government have introduced a new digital portal which you can use to make a claim for any road traffic related personal injury valued at under £5,000, including claims for whiplash. This means you are able to settle your own claim without the use of a lawyer if you wish. The Government have said that they anticipate that the majority of road traffic accident claims will use the portal in future.

The Government say that the new online portal will revolutionise how claims are made, creating a system that is simple and more efficient to use. It has been tested by professionals in the industry and reviewed to ensure it is easy to understand - with user-guides available to explain how to make and progress a claim at every stage. For those who require additional assistance, a helpline will also be available.

The Government have also introduced a new fixed tariff of compensation for whiplash injuries setting out how much can be claimed for an injury, depending on how long it impacted the claimant with the duration up to two years. It provides claimants with a clear guide to how much their injury would be worth when they make their claim. To settle a claim, you must first obtain supporting medical evidence, as you will no longer be able to claim without this. The Government say that the new whiplash tariffs will give claimants clarity, predictability, and certainty about how much their claim will be worth, while ensuring costs are controlled and that compensation is proportionate to the injury suffered.

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