Your Guide to Pursuing a Personal Injury Claim
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Introduction

Thank you for asking us to deal with your personal injury claim.

We hope you find this guide helpful and you may wish to refer to it throughout the course of your case. Personal injury claims are complicated and it is impossible to cover every eventuality in this guide. It is intended to give you no more than a simple overview of the personal injury claims process. It is not tailored to your individual circumstances and should not be relied upon as a statement of advice. We will give you detailed and specific advice on your claim as it proceeds.

In summary, we will start off by advising you of the ways in which the legal fees can be covered. We will then investigate your claim. When you first come to us if your claim is close to the time limit in which Court Action must start then we will need to issue court proceedings straight away. In all other cases we will try to settle your claim out of court. If we cannot do this we will then review your case and advise you on whether to issue court proceedings. We will then issue any court proceedings, take this through to any trial and deal with the costs claim.

We explain this in more detail in the rest of this guide.

Important things that you must do

The guide explains what we will do to deal with your claim. However there are a number of things that you must also do to ensure that your claim stands the best prospects of success. These are set out below:

- you must give us details of the accident (see ‘In the Beginning’ on page 4)
- you must co-operate with us throughout the claim (see ‘In the Beginning’ on page 4)
- you must mitigate your loss (see ‘Mitigating your Loss’ on page 4)
- you should seek legal advice at the earliest opportunity (see ‘Time Limits’ on page 4)
- you should tell us if there is anything that will help you get over any continuing symptoms (see ‘Rehabilitation’ on page 6)
- you must keep all documents that relate to your claim until it is completed (see ‘Disclosure of Documents’ on page 6)
- you must authorise us to obtain information from your medical advisors and your employer where necessary (see ‘Disclosure of Documents’ and ‘Medical Evidence’ on page 6)
- you should tell us if you receive means tested DWP benefits so that we can advise you about appropriate steps you can take to protect these (see ‘Protecting your Means Tested Benefits’ on page 8)
- if your opponent tries to contact you directly about your claim, you should ask them to contact us instead. If they have their own solicitors, they should do so via them
One of the first things we need to do is to take your
detailed instructions. We need to know where, when
and how your accident happened. We need to know
who you blame for your accident, and why. We need
to have details of any witnesses or authorities you
reported the accident to. We need to know what injury
the accident has caused you and how it has adversely
affected your life.

We also need to know if you have any insurance
policies or other memberships, union, etc., which
may cover the costs of your claim. Armed with this
information, we can give you an assessment as to the
benefits of making a claim, any risks you may face, how
much your claim may be worth and how long it is likely
to take.

In order to succeed with your claim we depend upon
your full co-operation and complete instructions to
progress your claim effectively. It is important that we
work together to ensure that your case has the best
possible chances of success. This includes:
- giving us information when we request it
- going to medical appointments as required
- attending court appointments if necessary

Mitigating your loss

You have a legal duty to mitigate your losses. This
means that you must take reasonable steps to minimise
your losses. For example:
- if your injury has prevented you working, you must
take reasonable steps to resume your pre-accident
employment or suitable alternative employment
- you will need to give careful consideration to any
medical treatment recommended by your GP or
other medical advisors

If you are found not to have mitigated your loss you are
unlikely to recover compensation for this.

Time limits

As a general rule you have 3 years from the date of an
accident in which to either settle your personal injury
claim, or to start court action in relation to that claim.
This deadline is firm and the sooner you seek legal
advice the better. If you fail to take action in good time,
you may lose the right to claim compensation.

There are some exceptions to this rule, for example a child
who is under 18 at the time of the accident has 3 years
from their 18th birthday to pursue a claim.

Another exception is if you are not immediately aware that
an injury has occurred, for example if disease develops
years after exposure to asbestos. In such cases it might
be possible to bring your claim within 3 years of the date
you discovered your injury.

In order to maximise your chances of securing
compensation, you should seek legal advice at the earliest
opportunity. Evidence and witnesses are lost over time and
prompt action could mean the difference between your
claim succeeding or failing.

Who can claim

If you are the injured party you can make a claim on your
own behalf.

If the injured person is under 18, or not able to manage
their own affairs, they will need an adult to act as ‘Litigation
Friend’. This is usually a parent, guardian or carer.

You may be able to make a claim following the death of
someone who was a close relative or on whom you were
financially dependent.

Whose fault

You can only claim compensation if someone is to blame
for your injury. In law, someone is held to be at fault (or
‘liable’) if they cause you injury through their negligence
and/or by breaching a law or regulation. For example if your
employer fails to comply with Health & Safety regulations
and you are injured as a result, your employer may be
found to be at fault for failing to comply with the regulations.

In some cases, the injured person may themselves be
partially responsible for the accident. This is known as
Contribution Negligence.

In cases where contributory negligence applies, your
settlement will be reduced accordingly. For instance, if you
agree, or a court decides, that you were 20% responsible for
the accident, your compensation would be reduced by 20%.

What is an ‘injury’

Even if liability is admitted, you can only claim compensation
if you suffered an injury or illness as a result of your
opponents acts or omissions. The injury can be physical
or psychological, or both. In order to prove your claim, we
will need to obtain medical evidence confirming that you
sustained an injury.
Starting your Claim

Road Traffic Accident Claims under £10,000

From 30 April 2010 new rules were introduced for claims arising out of traffic accidents valued between £1,000 - £10,000.

We send a Claims Notification Form with details of your claim electronically to your opponent’s insurer. The insurer will have 15 working days in which to respond.

If the insurer admits liability, we will obtain a medical report on your injuries.

Once we have your medical report we will send it to you. You then need to approve the content. When you have done so we have 15 working days to send a ‘Settlement Pack’ to your opponent’s insurer.

This settlement pack is an offer to your opponent to settle your claim in full. We will need to discuss the contents with you but in brief the settlement pack will need to contain:

- your medical report
- the additional amount of compensation we are claiming for your injury (General Damages)
- any receipts/evidence of financial losses being claimed (Special Damages)

The insurer then has 15 working days to either accept your offer or make a counter offer.

If the insurer makes a counter offer, there will be a further 20 working days for consideration and negotiation.

Where agreement has not been reached we will move to the next stage in the process which involves an application to the court to determine the amount of compensation you are entitled to.

Where liability is not admitted or your opponent does not comply with time limits, the claim will continue under the appropriate stage of the Pre Action Protocol.

Pre-Action Protocol

All other personal injury claims, including road traffic accident claims which are not covered, or are no longer part of the above process, must follow a Pre-Action Protocol. This is a legal process to ensure parties make proper efforts to agree settlement of claims before proceeding to court action. The aim of the protocol is to ensure early exchange of information and co-operation between both sides.

The majority of injury claims are governed by The Personal Injury Pre-Action Protocol. Claims arising out of disease or illness or clinical negligence are subject to their own protocols.

Once we have the necessary information we will prepare a Letter of Claim. The letter starts the protocol process and provides your opponent with details of when, where and how your accident happened. It sets out why you blame your opponent for the accident, and confirms that you intend to claim compensation. The letter also provides brief details of what you are claiming for, wherever possible.

Opponents have 21 days to acknowledge the Letter of Claim, and 3 months thereafter to investigate the claim. They then have two options:

- they can admit liability (fault) for your accident. The next step is then to value and settle your claim
- they can deny liability for your accident

If your opponent denies liability, they have to give reasons and provide evidence and documents to support this. For example in an accident at work, your employer may argue that they undertook adequate risk assessments. If your employer wishes to rely on such an argument, they must provide the written risk assessments as proof.

If your claim is denied by your opponent, we will review the reasons they give and the documents they provide. We may need them to provide further documents. We may also need to ask you or other witnesses about what they say.

We will then review your chances of succeeding with your claim. As long as we are satisfied that your chances of success are more than 51%, we will usually continue to pursue the claim on your behalf.
Rehabilitation
If you continue to suffer with symptoms following your accident, we will want to discuss with you whether your recovery can be helped with specialist treatment, equipment, adaptations or any other support.
The Protocol requires both parties to co-operate in promoting your recovery by assessing and providing for your rehabilitation. Where appropriate we will ask your opponent to provide for these needs.
We will ask the medical expert who examines you to comment upon this, however in the meantime you should:
- let us know if there is any medical treatment that you are not receiving, or equipment, adaptations, etc. that might speed up your recovery
- ask your medical advisors whether any such treatment, equipment or adaptations etc might help you

Disclosure of documents
Both you and your opponent will be required to disclose any relevant documentation to the claim. You are both obliged to search for and retain relevant documents even if these do not help your claim. In other words both you and your opponent are required to disclose any document that might be relevant to the claim, even if it is potentially harmful to your case.
You must also disclose documents that you have a right to ask for copies of, such as your medical records.
The documents that you must disclose will usually include documents containing personal information about you. This includes your full medical records. It may also include your employer’s personnel file for you, any occupational health records and details of your earnings.

You must not destroy any such documents until after your claim has been concluded. If you do so, your credibility as a witness will not only be affected, but you also risk being found in contempt of court.

Expert evidence
In all cases it is necessary to obtain expert medical evidence. It may also be necessary to obtain other expert evidence. For example, this may be from an engineering or Health & Safety expert.
Experts will be independent from both parties and their duty is to the court. It is their role to undertake an assessment of the factors relevant to the case.
The expert will then write a report, addressed to the Court, setting out his findings.

Medical evidence
In order to secure compensation for an injury, we need to obtain a medical report from an independent medical expert. The protocol requires us to try and agree who should be instructed.
This expert will need to have access to your medical records so that he can either comment upon the relevance of any pre-accident conditions or injuries, or so that he can confirm that there were no such problems before the accident. We will ask you to sign a form of authority before obtaining your medical records.

It is important that the expert you see regarding your claim is independent. This ensures that he has no bias when preparing his report. The experts we use are experienced in the field of personal injury claims, and care is taken to select an expert with experience of your particular injury.
If you have suffered serious or multiple injuries, you may need to see more than one expert. For example if you suffer a broken leg and a head injury, you would see an Orthopaedic Surgeon about your leg and a Neurologist about your head injury.
We will usually wait until your opponent has admitted or denied liability before arranging your medical examination, to save unnecessary fees.
The medical report will confirm the type of injury you suffered, how the injury has affected you at home and at work and for how long the injury has lasted or is likely to last.

How long will my claim take
Every case is different and depends on a number of factors. For example a straightforward whiplash injury where recovery is made within 3 months and where liability is admitted the outset we would expect to settle this within 6 - 9 months of your instructions to us.
By contrast a serious head injury case where the period of recovery can be very protracted could take 5 years or more to conclude.
In some cases it may be possible to obtain interim payments from your opponent throughout your case.

We will give you our best time estimate at the beginning of the case and review this as the case progresses.

A great deal depends upon the approach taken by your opponent and the time it takes you to recover from your injuries.

If liability is admitted early on, we can then concentrate on gathering evidence to value your claim.

If your opponent denies liability we will also need to gather evidence to establish liability. This may involve an application to the court for your opponent to produce documents.

Ultimately if liability and/or the value of your claim cannot be agreed it will be necessary to start court proceedings to advance your claim.

Usually the overriding factor in how long a claim takes to conclude, is your recovery time. Any settlement you accept will normally be on a full and final basis.

In most cases you are not allowed to return to your opponent for further compensation if you settle your claim and later discover that your injury is more severe than first thought, or if you do not recover as expected. For this reason we usually recommend that you do not settle your claim until you are fully recovered from the effects of your injury or your condition has stabilised.

If the expert who prepares your medical report is satisfied that you have made a full recovery, we can value your claim on this basis. If you are still suffering, the expert will usually give a prognosis as to when he expects you to make a full recovery. He may also recommend treatment.

Although it is important to obtain early medical advice from your own GP or other medical advisors, it is rarely helpful to obtain expert medical evidence immediately after an accident. In most cases it is too early for the expert to give a prognosis.

As your solicitors we are here to advise you, but your claim is just that, your claim. If you wish to settle your claim sooner than we would recommend, you can instruct us to do so. Our concern is that you make an informed decision.

What is my claim worth

Most Injury claims are split into two parts:

- your past and future financial losses (Special Damages)
- compensation for Pain, Suffering & Loss of Amenity (General Damages)

Your financial losses may include:

- loss of earnings
- medical expenses i.e. prescription charges/physiotherapy
- travel costs i.e. to medical appointments
- care & assistance

As a result of the accident you may have needed someone to help you with tasks which you would normally have undertaken yourself. This can be such things as washing, dressing, shopping and housework. You can claim for the time someone spends helping you, even if the care is provided by a parent or spouse, as long as the care is over and above the help you would normally receive, even if you have not paid for this.

If you are receiving additional care a diary can be a useful tool for recording time others spend in caring for you or assisting you. Please be sure to record the nature of the task and the time taken. The more detailed your notes are, the more likely you are to recover this.

- equipment & expenses i.e. vehicle repairs, damaged clothing or mobile phones, etc.

This list is not exhaustive. You should keep receipts for all expenses you incur and notify us of all expense you have been put to.

Compensation for pain & suffering

In addition to your financial losses you are entitled to compensation for the pain, suffering and loss of amenity you experience as a result of your injuries.

The value of this part of your claim is determined on the period and severity of suffering. For example a neck injury lasting 3 months is worth less than a similar injury lasting 1 year.
If you suffered multiple injuries you will not be compensated for these individually. Instead you will receive an award taking into account the overall suffering the accident has caused you.

The value of your claim will be assessed by looking at the Judicial Studies Board Guidelines and by looking at previous decisions made in Courts around the country involving people who have sustained injuries similar to yours.

**State benefits**

Most state benefits received as a result of your injury are repayable to the Department of Work and Pensions by the person paying compensation for the injury.

A department called the Compensation Recovery Unit (CRU) are responsible for recovering certain benefits paid to you by the state, from your opponent, if your opponent is found to be at fault for your claim.

The CRU will issue a certificate setting out the amount of benefits, if any, which are due to them. This certificate will be sent to both us and to your opponent and it is your opponent’s duty to discharge this sum.

Any such benefits may be offset against your compensation. We will provide you with specific advice if this affects your claim

**Protecting your means tested benefits**

Your financial circumstances change when you receive personal injury compensation. This means that your means tested benefits may be at risk. You can, however, protect your entitlement to your benefits and retain your compensation too by taking various steps such as setting up a personal injury trust.

This may also affect other people where your means are taken into account when assessing their benefit entitlement.

Please let us know if you are likely to be affected by this.

**Interim payments**

It is possible to obtain an interim payment on account of your compensation before your claim reaches the point of final settlement. Such payments may be necessary to pay for treatment or to prevent hardship.

It is usually easier to obtain an interim payment in cases where liability has been admitted. In cases where liability is disputed, it is possible to apply to the court for an interim payment, but you will have to persuade a Judge that your claim is very likely to succeed and that you will be entitled to substantial compensation from your opponent. This is not a straightforward exercise and we will consider if it is appropriate in your case, should you wish us to do so.

**Settlement offers**

Once medical and any other expert evidence is finalised, we can usually value your claim and begin settlement negotiations. Offers can be made formally or informally by either party throughout the course of the claim.

An offer of settlement can be made under Part 36 of the Court rules. A Part 36 Offer is a special procedure under the rules of the Court where an offer of settlement can be made by either party. The aim is to encourage settlement. There can be costs penalties where the result at trial is not as good as the offer.

If your opponent has failed to make an adequate settlement offer you may wish to make your own Part 36 Offer. This will put your opponent at risk of paying more costs and interest and may prompt them to settle your claim.

**Mediation**

Prior to starting court proceedings, we will consider whether Alternative Dispute Resolution or ADR is appropriate.

One form of ADR is Mediation. This would involve an informal meeting with your opponents, and an appointed mediator. The mediator’s role is to find areas of agreement between you and your opponent, and to encourage a fair settlement. The aim of mediation is to save costs and achieve an early settlement.

In personal injury claims, negotiations are often ongoing from an early stage, and can continue after the start of court proceedings up to the trial date.

In more complicated cases it is increasingly common for a joint settlement meeting to take place with your opponent’s legal team without an appointed mediator to try and agree settlement.
Court Action

In some cases, it is not possible to agree a fair settlement with your opponent. Your opponent may deny blame for your accident, or may dispute the level of compensation you are entitled to, or both. If we have made reasonable attempts to settle your claim and these have been rejected by your opponent, the next step is to start court proceedings to bring your case to a conclusion.

Starting Court Action

We will need to prepare court documents including a Claim Form, and Particulars of Claim which will set out the basic facts of your case. We will provide the court with a schedule of special damages setting out your financial losses together with copies of your medical reports. The court will then formally issue your claim and copies will be sent to your opponent.

Your Opponent’s Response

Your opponent then has a period of up to 28 days to respond to your claim, known as a Defence. The options for your opponent are:

- to admit your claim in full and agree to pay you compensation
- to admit that you are entitled to compensation but dispute the amount
- to deny your claim entirely, that is to deny that you are entitled to any compensation at all

Steps to Trial

The court will then send forms, known as an Allocation Questionnaires to both parties asking them to suggest a timetable for the case, known as directions.

Typical directions would include:

- a date for exchange of all documents relevant to the claim
- a date for exchange of witness statements
- a date for providing an up-to-date list of expenses
- a date for putting questions to the medical expert
- the approximate timescale for trial

The Court will consider both parties’ suggestions, and will then set a timetable. The Court will also give a trial window usually a period of three weeks during which the final hearing will take place.

The Trial

Most cases will settle before Trial. In the unlikely event that your case is heard in Court, you will be represented by a Barrister instructed by us. The Barrister will put forward your case. We will have filed your witness statement and all other appropriate statements, reports and documents with the Court.

You will be asked questions by your own and your opponent’s Barrister and you need to answer these honestly.

The outcome

Once the Judge has heard all the evidence, he will make a decision as to how much compensation, if any, you should be awarded. He will usually retire for a short period before giving his decision.

If the Judge finds your opponent to blame for your accident, he will assess the value of your claim and will make an Order requiring your opponent to pay you compensation, and normally your legal fees in addition.

In some cases the Judge may apportion blame. If a split liability settlement is ordered, the Judge will decide whether your opponent should pay your legal fees. You may recover some or all of your legal fees, depending on what offers were put forward prior to the final hearing.

The Judge may find that your opponent was not to blame, and in this case you would recover no compensation. It is likely you will be ordered to pay your opponents costs.
What Happens on Settlement?

Once payment of your compensation is received we will pass these monies onto you, different rules apply to Children or people unable to manage their own affairs. Our aim is for you to recover 100% of your compensation.

In a personal injury claim, your opponent is usually obliged to pay your legal fees if you recover compensation of more than £1,000. As a general rule, many injuries that cause symptoms for over 1 month are worth more than £1,000. If your claim exceeds this limit, you should recover your costs from the other side.

Prior to the issue of court proceedings, most opponents will deal with claims themselves or via their insurance companies. Because no solicitors are involved, your opponent cannot claim for their legal fees if your claim fails. However, once court proceedings are started your opponent will have to instruct a solicitor. At this point your opponent begins to incur legal fees and you are potentially liable for your opponent’s solicitor’s costs if your claim fails, or if you withdraw the claim before it has been won or lost.

Generally, the winning party has their costs paid by the other side, so if your claim succeeds your opponent pays your costs.

Road Traffic Accident claims settled under the special process referred to above, or otherwise without the need to issue court proceedings are paid under a standard formula known as ‘predictable costs’.

Costs are otherwise usually subject to some negotiation. If agreement cannot be reached, there is then a procedure for the court to assess a fair amount for the costs under a process know as ‘detailed assessment’.

Once our costs are paid, we will return any original papers to you and place our papers in archive for 6 years. After this time your papers will be destroyed in a manner befitting confidential material.
What Happens if I Lose?

The usual rule is that the loser pays the winner’s legal costs. This can happen, for example:

- if you cannot prove that the accident is your opponent’s fault
- if you do not better a Part 36 Offer that your opponent has made
- if the court considers that you have acted unreasonably during the claim, even if you win overall

If your opponent is successful in defending your claim once court action has been started, then it is likely that you will be responsible for your opponent’s costs.

At the very outset of your case we will have considered the best method of protecting you from having to pay any legal costs. We will have checked any existing insurance policies you hold for Legal Expenses Insurance. Some home and motor insurance policies offer this additional cover, as do many Unions. It is important that we check for the existence of any insurance cover because if you do not have any cover, we will have to obtain a new policy for you.

We will always recommend that adequate insurance is taken out to cover the costs of your claim. We can recommend a policy which is appropriate to your claim, and usually we can suggest a policy on a deferred-fee basis, which means that you do not have to pay the insurance premium up front. The insurance company will issue a policy to cover you, but the premium does not become payable until such time as your claim is settled and our costs paid by the other side. We will endeavour to recover the cost of the premium as part of our costs, on the basis that this is a reasonable expense incurred as part of your claim.

If your claim is unsuccessful, most policies include a self-insuring element which ensures that if your claim does not succeed, your premium is paid by the insurers themselves.

We will need to provide regular updates to your insurance company as to the progress of your case. There will be an indemnity limit on your insurance policy and we will review this regularly throughout the course of your case.

There are a number of policies available and we will discuss your options with you. It is important that you comply with the terms of your policy, whether it is a new or existing policy. If you are found to have breached the terms of the policy, by providing misleading information or failing to provide instructions or to take advice regarding reasonable settlement offers, the insurance company may revoke the policy. This would mean that you were no longer protected if your claim failed and you were ordered to pay your opponents costs. You would become personally liable for these costs.

If you are in any doubt at all as to whether you have complied with the terms of your policy, you must notify us immediately.
This information is for general use only and is not case specific. You are recommended to seek legal advice regarding your particular case.