

A GUIDE TO CLAIMING DAMAGES FOR PERSONAL INJURY

1. INTRODUCTION

Making a claim for damages (compensation) for personal injury can be a worrying and stressful experience. We recognise that most of our clients have never been involved in anything similar before, and are unclear as to what their role and ours may be. This Guide has been prepared to help you.

To recover damages for personal injury sustained in an accident, you will have to show the following:-

- that the accident occurred wholly or in part through negligence on the part of your opponent.
- that the accident has caused the injury, loss and damage in respect of which you are seeking compensation.
- that the injury, loss and damage you have sustained was a reasonably foreseeable consequence of your opponent's negligence.

In many cases, this can be shown fairly simply. However, in some cases it may not be easy to say whether anyone was negligent, or whether your injuries were caused by that negligence. You do not have to prove this beyond all doubt, but you have to show that it is more likely than not that your opponent was negligent (this is called proving 'on the balance of probabilities').

Most accident claims are resolved by negotiation rather than by trial. The advantages of a settlement over a trial are that the claim can be concluded that much more quickly, and the outcome is one which you have had an opportunity to consider. At trial, the evidence does not always go the way one expects it to, and surprising results do occur.

2. MAKING A CLAIM

In acting for you, we will do our best to negotiate a settlement of your claim on the best terms available, while at the same time pursuing your claim to trial without delay.

We will advise you of any areas of difficulty there may be in your particular case, in establishing negligence on the part of your opponent, or causation of your injury.

Your claim for damages may include the following:-

- any financial loss or expense you have suffered, for example the cost of repairing a car, prescription charges, travelling expenses and telephone calls, medical treatment.
- in particular, any lost earnings through having to take time off work following the accident.
- all anticipated future loss and expense, including any loss of earnings which is likely to arise in the future.
- damages to reflect any disadvantage you may suffer in the future in seeking employment.

- damages to reflect the pain, suffering and restrictions caused by your injuries.
- if your claim arises as a result of the death of someone close to you, you may be entitled to damages for bereavement.

If you have been off work as a result of your injuries, you should be aware of the welfare benefits to which you may be entitled, in particular invalidity benefit, reduced earnings allowance and industrial disablement benefit. We can advise you on this if you think you may be eligible.

Where you have been in receipt of welfare benefits as a result of your injuries, the Benefits Agency has the right to deduct from your claim the benefits which you have received up to the date on which your claim is concluded, or up to five years from the date of the accident if earlier. The benefits are recouped from the different heads of loss for which you are claiming, on a 'like-for-like' basis. For instance, benefits you have received because you have not been working (such as Income Support) can only be recouped from any sum you recover for lost earnings.

3. NEXT STEPS

You have three years in which to commence Court proceedings against your opponents seeking damages for personal injury (two years if the accident occurred whilst you were travelling by air or sea). That three year period generally runs from the date of the accident, although in the case of claims for industrial disease the period runs from the date on which you should have been aware that someone had made a mistake, and that you had suffered some injury. We will monitor the limitation period for you, to ensure that the three year period is not overlooked, but you should be aware of the period also.

Personal injury claims can often take a long time to resolve. The main factor which delays the resolution of a claim is the time it takes to establish a firm prognosis in respect of your injuries, i.e. how long it is likely to be before the effects of your injury disappear, whether you are likely to be left with any permanent symptoms etc. The period varies according to the severity of the injury. In the case of a straightforward injury, the claim may be resolved in six to twelve months. In the case of a whiplash injury to the neck or back, where the symptoms do not resolve rapidly, it will generally take one to two years to resolve the claim, or longer. In cases involving head injuries or serious orthopaedic injuries, it may take up to five years for the claim to be concluded, or even longer in certain circumstances.

We will do what we can to resolve your claim in the shortest possible time. It is not, however, in your interests for a claim to be settled too soon. Once a claim has been settled, it is too late to ask your opponent to pay you more money, if the injury turns out to be more serious than was thought at the time you settled. You should not agree to settle your claim until the prognosis is clear from the medical evidence which has been obtained.

In pursuing your claim, we will be taking the following steps:-

- obtaining details from yourself, your employer etc of all loss and expense both to date and in the future.
- obtaining medical evidence to show the extent of your injuries and to establish the prognosis.
- if liability for the accident is likely to be disputed, we will be obtaining statements from any witnesses whose evidence may be relevant, including, where appropriate, any reports made by the Police or Health and Safety Executive.
- we will obtain reports from experts to support your claim, for example, health and safety experts, experts on nursing care or accountants.

- we will at the appropriate stage commence Court proceedings on your behalf, and deal with the necessary procedural steps which have to be taken to get the case ready for trial.
- we will, if appropriate, instruct a barrister who specialises in personal injury cases to advise on your claim.

We will keep you informed of our progress in taking these steps, by sending you copies of our correspondence, by writing to you, and by regular interviews with you. If there is anything you are unsure about at any stage, you should not hesitate to telephone us for advice. We are here to help you, and to make things as easy as possible for you. We recognise that it helps you if you have confidence in what we are doing on your behalf.

There is much you can do to assist us in dealing with your accident claim. It is important that you keep written records of the following:-

- the circumstances of the accident and the names and addresses of any witnesses involved
- details of all expense you incur which you wish to claim from your opponent
- details of your injuries and treatment at various stages (this may be particularly useful when you are examined by our medical expert, who will want you to describe your symptoms and treatment to date)
- any questions which you may wish to raise with us when we next meet.

We will need to prepare a written statement of your evidence in relation to both the circumstances of the accident, and the sums you are claiming as a result of the accident. It is important that this statement is as accurate and comprehensive as it can be, because increasingly Judges at trial are relying on written submissions from witnesses, rather than oral evidence given in the witness box. This means you may not have a chance to expand on the contents of your statement if the case gets to trial.

You should therefore check the statement through carefully, making sure not only that it is accurate and comprehensive, but that you are happy with the words used. Do not let us put words into your mouth!

WARNING

The information contained in this guide is for generic use only and cannot be relied upon for any specific purpose. We recommend that specialist professional advice is taken before entering into (or refraining from entering into) a particular transaction.

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