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## Things to consider when thinking of making a claim

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At the Legal Ombudsman, we know that making a personal injury claim can be a difficult and confusing exercise, and one that is outside most people's experience. If you have been injured and want to make a claim there are a number of things that you may wish to know about the claims process and what might happen. Here are some commonly asked questions that you may want to ask a firm of lawyers before you choose to instruct them to represent you in a claim.

### **Do I have a personal injury claim?**

If you have had an accident that you believe was not your fault but was the fault of someone else and you were injured as a result of that accident, you may be entitled to bring a personal injury claim against that third party and claim compensation and the costs you incur as a result of your injuries, for example loss of earnings and the cost of any treatment you need to recover. Ask your lawyer if, in the specific circumstances of your case, they consider that the other party is likely to be found responsible if the matter goes to court and whether you can expect to receive compensation. If they determine this to be the case they will be prepared to represent you in a claim against the other party.

### **Do I need a lawyer to make a claim?**

Ask your lawyer to confirm whether you need a lawyer to make a claim, or whether it would be better or necessary to make the claim yourself. From May 2021, the Government have introduced new rules via its Whiplash Reforms which is designed to make the claims process easier and allow claimants to make whiplash claims without needing legal representation. There is a new digital portal which you can use yourself 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.

Your lawyer will be able to advise you whether it would be better, or indeed necessary, for you to make a claim yourself via the new portal, or whether they will still be able to represent you. This depends on the circumstances of the claim and the nature of the injuries you have sustained.

### **How long will a claim take?**

How long a claim takes depends on whether the other party admits liability and whether settlement can be negotiated between your lawyer and the other party, or whether the other party do not accept that the accident was their fault and the claim requires a court hearing and for a judge to decide. Most claims settle within 12-24 months but this depends on the circumstances and your lawyer will be able to advise you at the start and throughout how long they anticipate the claims process lasting.

### **Are there time limits for making a personal injury claim?**

Generally, your lawyers will have to lodge court proceedings within three years of the date of your accident. This is known as the limitation date. However the three year limitation date does not apply in

all cases, for example if the injured party was under 18 years of age at the accident date. Your lawyer will be able to advise you of the date by which you need to have lodged the claim at court.

### **What will I have to pay?**

There are a number of different ways to pay the firm's fees which they will be able to advise you of if you ask them. You can pay their fees privately, and if you choose to do so they will usually charge you on the basis of an agreed fixed fee or on an hourly rate. It may also be the case that you are able to use a Legal Expenses Insurance policy to pay the firm's fees, and it may be worth checking your household insurance provider to establish whether you hold this cover. However, most people enter into either a Damages Based Agreement, or a Conditional Fee Agreement or 'no win no fee' agreement. With a Damages Based Agreement you agree to pay the firm a proportion of any compensation you receive.

### **What is a no win no fee agreement?**

The most common form of agreement in personal injury claims is the Conditional Fee Agreement, or 'no win no fee' agreement. This is an agreement which protects you from having to pay the firm's legal fees if you lose your claim. The firm will also commonly obtain an After the Event Insurance policy with this type of agreement which covers you from having to pay the other party's legal expenses if you lose your claim. As there is risk to the firm of lawyers in entering into this type of agreement, they will assess the prospects of success of the claim – how likely you are to win it, and only agree to represent you if they determine that your claim has prospects of 51% or higher – that is, it is more likely to succeed than to fail.

It is important to note that, under a no win no fee agreement, you do remain ultimately liable for the firm's fees in the event that you end the claim before you either win or lose it. You should read the terms set out in the Conditional Fee Agreement and ask the firm if you have any questions or concerns about it before you agree to sign it and be bound by its terms.

### **Will I have to go to court?**

A large proportion of personal injury claims settle before court, so making a claim does not automatically mean that you will have to attend a court hearing. However, if the other side do not accept liability for the accident or, if that is the case but the parties cannot agree on what would be an appropriate settlement, you may be required to attend a court hearing. Your firm will usually represent you at such a hearing, or instruct a barrister to do so. Ask your lawyer if they think you will be required to attend court and what you can expect to experience if this is the case. Personal Injury lawyers are used to bringing claims to court and will be able to provide you with all the help and advice you need if you have to attend trial.

### **Will I have to attend a medical appointment?**

It is likely that you will need to attend a medical appointment with an independent medical expert as part of your claim. There are several reasons for this. Firstly, that it is unlikely that your lawyer is a

medical expert who will be able to assess your injuries and provide an opinion on how serious they are and how long it will take for you to fully recover, whereas a medical expert will be able to do so. Secondly, the expert is independent – their duty is to the court rather than to the client - and will therefore be able to prepare a report which a judge can use to rely on in coming to a decision on how to value the claim, if necessary. The expert will also be able to establish whether the injuries are a direct result of the accident, as opposed to being pre-existing conditions or caused by a different accident – this is known as establishing causation. Finally, the expert will be able to recommend any course of treatment necessary and appropriate to assist in recovery of the injuries.

Your firm may instruct a named expert to examine you or instruct a medical agency who use a number of different experts. Most appointments are face to face, however since the start of the Covid-19 pandemic we have seen that some experts are happy to conduct appointments via Zoom or other internet platforms. Ask your lawyer whether you need to attend an appointment in person and what you can expect at such an appointment if you need to attend.

### **Do the firm charge a success fee and if so how much will I have to pay**

Many firms charge their clients a success fee in the event that the claim is successful. This will be a proportion of the settlement sum, but cannot exceed 25% of the total settlement fee. You should ask your lawyer before you instruct them if they charge a success fee, and how much that fee is. At the Legal Ombudsman we see a lot of complaints from customers who were not told about a success fee and consequently received a smaller sum in settlement than they expected.

### **How much compensation can I expect to receive if my claim is successful?**

The amount of compensation awarded in a claim depends on the level and extent of the injuries sustained, both physical and psychological, and the time it will take for the injured party to recover. Your lawyers will assess the value of the claim in terms of compensation based on the medical evidence it obtains and should then be able to inform you of how much you can expect to receive if the claim is successful. Your firm of lawyers may be able to give you an initial indication of possible compensation at the start of the claim, but they can only assess this properly once they have received and analysed the medical evidence.

### **I am injured and suffering, what treatment can be arranged or do I have to go to my GP?**

At the time that many people make a personal injury claim they are still suffering the symptoms of the injuries they sustained. These can often be serious and painful – back and neck injuries for example can take considerable time to heal and will often require physiotherapy. The cost of any treatment required can form part of the claim – see the question below, and the medical report that the firm will obtain sets out recommendations for treatment.

There is nothing stopping you obtaining treatment from the NHS via your GP or local hospital in the meantime, and in fact we would recommend that you seek medical treatment as soon as possible through your GP or local hospital. Firms can and do however also arrange medical treatments for their clients via approved medical experts to assist with recovery. Your lawyer may ask the other party

to pay interim payments towards the cost of any care and treatment, which they may agree to pay, with the payment being deducted from the final settlement amount. You should ask your lawyer what treatment options are available to you and for their advice on how you should proceed with treatment.

### Can I claim loss of earnings and any costs I incur as a consequence of my injuries?

There are two elements that you can claim from the other party if you have been injured and it was their fault. Firstly, 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.

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### How to contact us if you would like further information

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Postal address: Legal Ombudsman  
PO Box 6167  
SLOUGH  
SL1 0EH

Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Telephone: 0300 555 0333

NGT Lite users: 18001 0300 555 0333

Overseas: +44 121 245 3050

**If you need information in another language, large print, Braille or on audio CD then please let us know when contacting us.**