

Personal Injury Claims

Expert knowledge means success

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Note: This publication has not been updated since it was last published. Some of the hyperlinks may have changed and may need updating. In addition, some of the information in this publication may be out of date.

Introduction

Every year thousands of people get hurt - some are injured while driving their cars while others slip and fall whilst walking to or from the shops. If you're hurt because someone else was careless or negligent, you may have a claim against that person for the personal injuries you suffer.

A "personal injury claim" is a claim that an injured person has against the person or company that caused the injury through fault, negligence, carelessness or breach of a statutory duty. A common example of a personal injury case with which most persons are familiar is where a person is injured in a car accident. Usually, someone is at fault ("negligent") in causing the accident -perhaps by going through a red light, speeding, or following too closely. The injured person would have a "personal injury claim" against the person whose negligence caused the accident. There are many types of personal injury cases. But they all share the common ingredient of someone being injured as a result of someone else's carelessness (fault). Fault can be established by showing that someone has broken a duty of care towards you (negligence) or breach of a regulation created under an Act of Parliament (breach of statutory duty).

In today's fast world, the chances are you'll suffer an injury at some time or other - in a motor car or bicycle accident, in a slip or trip and fall on the pavement, in an accident at work or a bad experience with a defective or dangerous product. Many people suffer added insult to their injuries: they are frustrated in their attempts to get help and compensation to cover their pain and damages. This publication explains how claims arise, how to pursue a claim and what to do if you suffer injury.

Accidents that happen because of a defect on property that is visited by the general public such as shopping malls, cinemas and offices can result in a claim for compensation. Occupiers of premises are under an obligation to ensure that their property is maintained to a safe standard - for example, Local Authorities are responsible for the

maintenance of pavements and roads and must ensure that the underfoot conditions are reasonably safe.

There are specific rules and regulations outlining the minimum standards breach of which is regarded as a breach of statutory duty.

Personal Injury Accidents and Claims

Personal injuries can occur in a wide variety of ways. The type of accident and the cause of it, may affect whether you are entitled to be compensated. If another person (including a company) is more at fault for your injury than you are, you may well be able to make a claim against that person, that company or their insurer¹ (if they have one). In the UK, Common Law imposes a general duty of care on everyone to exercise "reasonable care" so as to avoid acts or omissions (actions) that might foreseeably result in injury to others likely to be affected by those actions. What is or is not "reasonable care" varies according to the magnitude of the risk and the gravity of the harm likely to occur.

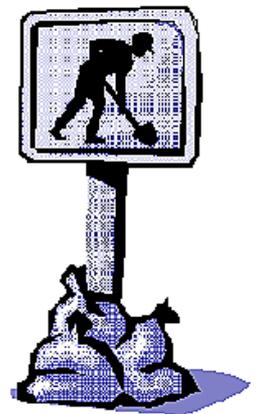
In certain cases, a breach of duty imposed by a statute or regulations will give rise to civil liability² and a claim for damages. The standard test adopted by the Courts has been to ask the question:

"Was the duty imposed specifically for the protection of a particular class of person, or was it intended to benefit the public at large?"

If the answer to the first part of the question is "yes", a civil claim may be allowed subject to the following conditions:

- The claimant must be a member of the class; and
- There must have been breach of the statute or regulation; and
- The claimant must have suffered damage of a kind against which the statute or regulation was designed to give protection; and
- The claimant's damage must actually have been caused by the breach of statutory duty.

"The object of an award of damages for personal injury is to put the claimant in the same position, financially, as he or she would have been in but for the injury sustained."



The following lists some of the most usual personal injury accidents and the resulting claims:

Road Traffic Accidents

- While driving or as a passenger in your own car or in someone else's car;
- While driving or as a passenger in a company vehicle, or your own car while on the job;
- While riding a bicycle or motorcycle;
- While walking, running, jogging etc. as a pedestrian; and
- While on public transportation.

Fault or "negligence" is determined by traffic regulations and as to which driver's carelessness contributed most to the accident and injuries, including your own conduct such as failure to use seatbelts, or using the telephone whilst driving in the fast lane on a Motorway.

Trip and Slip Accidents

- While in a shop, an office, or any other business;
- While at someone else's home or any other private property;
- While on any public property i.e. street, public building, park, and other public areas.

Injuries are usually only subject to compensation if caused by an unsafe condition that another party should have known about, appreciated, and corrected before the accident.

Dangerous or Defective Product Injuries (Product Liability)

- Injury caused by a dangerous or defective product;
- Injury caused by a dangerous or defective (unsafe or hazardous) rental property.

More complicated rules determine if injuries caused by dangerous products will be compensated.

Accidents at Work

- Injury at work caused by some fault on the part of the employer or third party: This can include accidents caused by defective equipment or machinery, the failure to provide adequate safety equipment (such as protective clothing), unsafe work practices. It also includes injuries caused by the carelessness of a fellow worker.

Other Claims - careless conduct caused by:

- A neighbour;
- A child or animal;
- Medical or other professional negligence;
- Travel accidents;
- Toxic exposure.

In the UK there is no automatic right to compensation for injuries caused at work.

The claimant has to prove that the employer was at fault. Employers owe their employees a common law duty of care and must take reasonable steps to prevent foreseeable injury.

There are also a number of statutes and regulations that provide for protection of an employee's health and safety, breach of which may give rise to liability. Generally, injuries at work are covered by employers' liability insurance, which compensate for medical expenses, lost wages, and permanent impairments, without regard to fault by anyone.

If someone caused the accident other than the employer or a fellow worker, a fault-based claim can be made that could include damages for pain and suffering in addition to the employers' liability insurance. To make a claim for damages against an employer, an employee must prove three things:

1. There is, in fact, a duty of care owed to the employee by the employer; and
2. There is a breach of that duty; and
3. The injury or disease from which the claimant suffers is a consequence of that breach.

How Accidents Happen

In 1896, there were only 4 cars registered in the whole of the United States.

Unfortunately, 50% of them ran into each other in St. Louis, Missouri.

Regardless of how careful you are, the chances are fairly great that at some time in your life you will be injured due to the carelessness of someone else, or the result of an unfortunate set of circumstances.

What should you do if you are injured as a result of someone else's negligence?

After reporting the accident (for example to your employer, the premises occupier etc), you should not discuss your accident with any other people outside of your family until you have had the opportunity to speak with a solicitor who specialises in personal injury claims. Your action points are:

- If you need medical treatment, you should of course obtain it as soon as possible - remember to let the doctor know about your accident and give him/her a complete description of any injuries you suffered;
- If you can't work because of your injuries, you should inform your employer that you are absent as a result of the injuries you received in the accident;
- As soon as possible after the accident, make a complete record of all the circumstances of your injury:
 - The date, time and location of the accident;
 - The names, addresses and telephone numbers and other contact details of any witnesses;
 - If possible, take photographs of the accident scene;
 - Keep a record of all of the problems you have because of the injury - this record should include the names, addresses and telephone numbers of your doctors and a daily description of the problems caused in your life because of the accident.

Making a Claim

Usually, you should make a claim within three years from the date of injury³. If the injury is latent, the three-year period may not start to run until the injury becomes evident.

For anything other than the smallest of claims (value at £1,000 or less) you should see a solicitor. Nowadays, most solicitors work on a conditional fee basis when they handle personal injury claims. This means that payment of their fees will be dealt with on a "no-win, no fee basis" until a result is achieved in the claim from the other side.

If your claim is unsuccessful, you will not owe your solicitor any fee at all. Some solicitors will pay the disbursements

necessary to bring your case to trial (such as obtaining medical or other expert reports) and will recoup this expenditure from the other side. But, if there is no recovery, most solicitors will expect you to reimburse them for the advanced costs – although this is usually dealt with by what is called "after the event insurance".

Remember to get an agreement in writing about the fee arrangements agreed with your solicitor before any work is done on your claim.

A claim for damages must be based upon either negligence or breach of statutory duty. You have the obligation to prove who is responsible for your personal injury and also have to prove that you were not guilty of any negligence that may have contributed to you having sustained a personal injury. You also have the obligation to "mitigate" (minimise) your damages and you have to prove your damages.

Apart from a claim for financial losses and expenses, personal injury claims are concerned with the pain and suffering which is directly related to the type of injury, the extent of your recovery, and the prognosis for your future.

Assessment of Lost Earnings

In personal injury claims, the claim for damages usually falls into:

- Past losses, on which special account interest is payable; and
- Future losses, which are commonly assessed by applying a multiplier to the future annual loss multiplicand.

Lawyers acting for the claimant will usually instruct a forensic accountant – an accountant who specialises in assessing lost income in injury claim cases - to assist with loss of earnings and pension computations.

In calculating the loss of earnings, a calculation is made by comparing the claimant's expected earnings (if the accident or injury had not occurred) net of deductions for notional income tax and National Insurance, with actual net earnings. It often means making an assessment of both expected and future anticipated actual earnings – this involves making a number of assumptions about what the claimant and/or

Consultation on Fatal Accidents Claims and Special Damages

The Department for Constitutional Affairs has consulted on significant proposed changes to treatment of fatal accident claims and other aspects of special damages in major injury claims.

The aims of the proposed changes are to:

- stop a compensation culture from developing;
- find ways to discourage and resist bad claims;
- improve the system for those with valid claims by providing fair compensation in a more timely and cost effective way.

Changes are proposed in numerous areas including:

- fatal accident and injury claims;
- psychiatric illness;
- collateral benefits;
- private healthcare; and
- accommodation costs.

Further information on the proposed changes can be found later in this publication.

The consultation ran from 4 May 2007 to 27 July 2007 and the summary of responses had not been released at the time of publication.

The consultation can be viewed at:
www.dca.gov.uk/consult/damages/cp0907.pdf

his or her business would have done, if the accident had not occurred and the injury had not been sustained. Of course, the calculation must also take account of the claimant's duty to mitigate his or her loss.

The Income Multiplier

A multiplier is used in personal injury law to determine the equivalent lump sum amount to compensate an accident victim for both loss of earnings and future care costs. It is applied to an annual, recurring cost or lost income stream and is often calculated using financial tables. There are various factors, which have been considered in discussions of appropriate multipliers in House of Lords decisions.

The factor which is always taken into account in fixing a multiplier is the discount applied to future payments to determine their present value. This computation is made since a lump sum settlement will be earning interest throughout the assumed life span or earning period so that not to discount the settlement amount would over compensate the victim. This is a pure financial computation dependent only on the applicable net rate of return and the number of years over which the payments are assumed to continue.

Central to the calculation of a multiplier, is the determination of the appropriate rate of return for investments suitable for a typical victim. If safe investments yielding 4.5% after inflation were available then the use of that rate to calculate multipliers would produce lower awards. Conversely, the House of Lords found that 3% was a more appropriate rate of return for the type of investments which would be made to fund the care of a severely injured person since such a person could not necessarily ride out the ups and downs of equity investments.

The courts have often grappled with the additional element of mortality, disability or other unknown contingency during the period of care or earnings and often have further reduced the multiplier ostensibly to take the possibility into account that the victim may die or, in the case of a lost earnings computation, become disabled prior to the end of the period. This approach may be flawed for two reasons. In the case of lost earnings, the lowered life expectancy may be the direct result of the injuries sought to be compensated so that any discount for contingencies should not exceed that

appropriate for an average person of the victim's age and prior health, not affected by the injuries resulting from the accident.

Tables have been produced and used in some cases which combine the financial discount and the risk of normal mortality. In the computation of life long care costs, as pointed out by Lord Lloyd of Berwick, the care cost multiplier should not be reduced where there was an agreed life expectancy since, as was quoted: "... *in the case of life expectancy, the contingency can work in either direction. The plaintiff may exceed his normal expectation of life or he may fall short of it.*"

The tables and formulae used to calculate present value, assume that the stream of costs or earnings is constant - that is, there is no cost or earnings inflation. Any adjustment for inflation has traditionally been reflected in the net rate of return applied to the care costs.

The life care multiplier differs from the loss of earnings multiplier in that the actual life expectancy of the victim is used even though this may be less than his life expectancy had the accident not occurred. On the other hand, as pointed out above, there should be no discount for 'contingencies' or 'vicissitudes of life' beyond the agreed or proven life expectancy. Assuming the life expectancy can be determined, the only remaining question is the rate of return appropriate for an investment by a severely injured victim.

The Discount Rate

If a person is successful in bringing a personal injury claim, they are awarded damages by the court. For serious injuries the award can be considerable as it will take into account, for example, loss of earnings (through inability to work for set periods) and any necessary care costs, which will have been assessed in the course of the proceedings. However, the discount rate is a deduction made from the sum awarded, on the basis that the successful claimant will invest their damages and increase the value of the original sum.

On 27 June 2001, the Lord Chancellor, Lord Irvine, exercised his power under section 1 of the Damages Act 1996 to prescribe the rate of return (also known as the discount rate) to be used in personal injury claims. In concluding that the discount rate should be set at 2.5%, the Lord Chancellor has applied the appropriate legal principle laid down

Ogden Tables

The Government's Actuarial Department (GAD) published the 6th edition of the Ogden tables in May 2007.

The tables are widely used in personal injury cases.

- The mortality rates used in calculating the Tables have been updated to those underlying the latest set of national population projections for the United Kingdom;
- A new methodology, based on the results of recent research from Cass Business School and Cardiff University, is put forward for assessing appropriate deductions to be made to the working life multiplier for dealing with contingencies other than mortality, including the assessment of a **claimant's residual** earning capacity after an accident;
- The Sixth Edition also provides guidance for dealing with variable future losses or expenses.

The new tables contains multipliers at rates of return from 0% up to 5% based on the projected mortality rates expected for each generation of people in the UK as assumed in the 2004-based official national population projections prepared by the GAD.

NOTE: the 7th edition of the Ogden Tables has now been published - see: http://www.gad.gov.uk/services/Other%20Services/Compensation_for_injury_and_death.html

authoritatively by the courts, and in particular by the House of Lords. He has also taken account of a wide range of information about the rates of return and degrees of risk associated with different types of investment. The 2.5% rate is calculated to avoid over- or under-compensation of claimants.

Using the Loss of Earnings Multiplier

The multiplier as applied to the net annual future loss of the plaintiff results in the computation of a lump sum intended to put the injured person back in the position he or she would have been in prior to sustaining the injury.

The distinctive feature of the loss of earnings multiplier is that, within limits, the retirement age is fixed so that any contingencies such as normal mortality, risk of disability, or adverse economic conditions can only operate to reduce the earning lost as a result of the injuries. It may then be appropriate to use actuarial tables such as the Ogden Tables to determine the effect of such factors on an average individual of the same age and sex as the victim at the time of the accident. Of course, the average life span and earnings of a similarly situated individual, not having suffered the injury is used for this calculation.

The Sixth Edition of the Ogden Tables was published on 3 May 2007 and includes a new methodology for dealing with contingencies other than mortality, factoring in changes to both the actual and potential earning capacity of an injured party.

Now, defendants and their insurers will need to obtain evidence detailing a claimant's disability (both before and after the accident) and 'educational attainment' in addition to their employment status. The calculations also take into account increased life expectancy.

The notes accompanying the tables recommend that type of employment and geographical situation are no longer considered when calculating multipliers.

Lawyers have predicted that as a result of the changes to the calculations insurers could face massive increases in pay-outs in personal injury cases.

Settling a Claim

A claim is valued (and usually settled) based upon an estimate of what a Court would likely regard as fair and reasonable compensation given the severity of the injury and the effects of the accident on your life. The Judge will usually compare your injuries with other cases which have come before the Court.

In addition to medical expense and loss of wages or other income from work, you are entitled to money damages for "personal injuries," including pain, suffering, and loss of enjoyment of life.

Severe injuries requiring substantial medical treatment, extended absences from work, and permanent physical or mental impairments may result in substantial compensation. Courts tend to believe that injuries that cannot be seen or demonstrated objectively are liable to some exaggeration by the party seeking money damages - insurers fully understand this and will use it to their advantage during the negotiations.

When it comes time to settle a claim, your solicitor should have painted a clear "before and after" picture of the injuries and how they have affected your life. The difference between the "before and after" is the value of your claim. For example, a previously healthy, productive, young worker injured severely by an obviously culpable defendant will demand substantial compensation, particularly if the victim has undergone substantial medical care, extended loss of earnings, and is facing a future of impaired earning capacity, disfigurement, pain, and suffering. Conversely, an older person making a claim for injuries suffered in questionable circumstances resulting in physical or mental complaints verifiable only by the word of the claimant may be substantially discounted by the Court.

If the injured person is found partially at fault for the accident causing the injury, then the amount of damages will be proportionately reduced on the basis of contributory negligence. If the person responsible for your injury has insurance, an insurance adjuster will gather and try to verify the necessary medical treatment records, medical expense, and wage-loss information and what permanent impairments have been caused by the accident. If the insurance company makes an offer that you (and your solicitor) find acceptable, then the claim process is over. If no acceptable offer is made, then you may

Consultation on Personal Injury Claims

The Department for Constitutional Affairs has consulted on case track limits and the claims process for personal injury claims.

The consultation recommends no increase to the small claims limits, including those for personal injury and housing disrepair claims. It does however recommend that the fast track limit should be raised to £25,000.

The consultation also considers ways to improve the claims process for personal injury cases to make it more efficient. It makes proposals for a new system built around the principles of early notification of claims, early admissions of liability and the removal of duplication of work from the process. It also provides for actions to be taken within fixed time periods and with fixed recoverable costs.

The consultation ran from 20 April 2007 to 13 July 2007 and the summary of responses had not been released at the time of publication.

The consultation can be viewed at:
www.dca.gov.uk/consult/case-track-limits/cp0807.pdf

have to go to Court - your solicitor will advise you accordingly.

Once you have cleared the hurdles of proving liability and proving your injuries, you must then prove those injuries kept you from earning your living and for how long. A statement from a medical specialist (your solicitor will help in selecting a specialist whose reputation and skill will make him/her a suitable expert witness if required) is usually sufficient to document your inability to work and for what period of time. After providing this evidence to the other party or their insurance adjuster, you would then be entitled to reimbursement of your lost wages. You would then have to prove how much income you have lost. A statement from your employer might be enough.

If you are self-employed, you may be required to submit documentation much the same as you would if you were applying for a loan. You are entitled to reimbursement of your net income (after taxes). An accountant specialising in loss of earning calculations should be engaged to help you to document the income you have lost.

Law Reforms

Civil Procedure Rules

On 26 April 1999, the Civil Procedure Rules came into force and introduced new ways in which personal injury claims are conducted. The judicial system has undergone a radical overhaul and has been replaced by a fairer, more balanced, more efficient form of justice. This has a significant impact on pre-litigation strategies and the way contentious matters are dealt with.

All personal injury claims are now controlled by legislation known as the 'Woolf Reforms'.

Woolf Reform Objectives

- (a) To ensure that the parties are on an equal footing;
- (b) To save expense;
- (c) To deal with the case in ways which are proportionate to the:
 - Amount of money involved;
 - Importance of the case;
 - Complexity of the issues;
 - Financial position of each party;
- (d) To ensure that the case is dealt with expeditiously and fairly; and
- (e) To allot to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The changes from the Woolf Reforms have led to a dramatic review of tactics on both sides of the divide (i.e. the Insurers and the Solicitors) and there is generally a new understanding and amicability that did not exist before the reforms came into operation on the 26th April 1999. In summary:

1. An Insurer must admit or deny liability within 3 months (any denial to be supported by a detailed witness statement).
2. Both parties must seek to agree a 'mutual' expert in any area necessitating expert advice – such as medical experts, vehicle examiners/engineers etc. One party must nominate preferably 3 suitable experts for agreement and allow the second party 14 days to agree or submit alternative nominees if they disagree.
3. Both parties can make offers to settle the claim. In other words once the claim is evidenced, a claimant or an Insurer can make a proposal at the level that they are willing to receive or pay at that stage. Known as a Part 36 offer. This mechanism is a major part of the reforms and is hugely successful in settling claims quickly and to the satisfaction of both parties.
4. If the claimant fails to achieve a better result than the defendant's offer (or payment), he will generally pay the defendant's costs incurred after the expiry of the time for acceptance of the offer.
5. A claimant can also make a "Part 36 offer" to settle at a particular sum. If he/she then recovers at trial at least what he offered to accept, the court will have a discretion to order interest on the amount awarded from the date when the offer should have been accepted at a rate of up to 10% over base rate. The court will also have discretion to award the claimant indemnity costs and interest at the same rate on those costs from the same date.
6. In order to protect a defendant as to costs under Part 36, any money offer that he makes after the commencement of proceedings must be accompanied by a payment into court, to be called a "Part 36 payment". Payments into court will no longer be confined to claims for "debt or damages".

Structured Settlements

On 10 December 2001, the Master of the Rolls, Lord Phillips of Worth Matravers, announced the establishment of a working party looking at Structured Settlements.

Structured settlements are designed to tackle the problems associated with a lump sum award (a one-off payment including compensation for future care costs and loss of earnings). Problems may arise where the cost of care changes over time, or the sum awarded by the court exceeds or falls short of the duration of the need for care.

The Working Party considered whether the prevailing rules and practice directions promoted the best interests of litigants in cases involving serious personal injury. In particular it assessed the desirability of a practice direction requiring the parties to demonstrate that a structured settlement had been considered.

In November 2002, the Working Party made a number of recommendations including:

- A change to the practice of awarding one lump sum where structuring damages may be more appropriate.
- The reasonable costs of obtaining appropriate financial advice should be regarded as a cost in the litigation.
- Where cases involve children or patients a court should not approve the settlement of a claim unless satisfied that a structured settlement has been considered.

The Courts Act 2003 included the power to "order periodical payments for future loss" without requiring the consent of both parties. The Act can be viewed at: www.legislation.hmso.gov.uk/acts/acts2003/20030039.htm

7. Where a defendant makes an offer not relating to a money claim it need not be backed by a Part 36 payment. Where the defendant makes an offer before proceedings are commenced he must make a Part 36 payment within 14 days after the proceedings are served on him to get protection on costs. Part 36 offers can also be made in relation to issues rather than money amounts: e.g. an offer to accept liability up to 25%. In that event a payment into court will not be required on the part of a defendant.

The Law on Damages

A consultation took place between 4 May 2007 and 27 July 2007 on the current Law on Damages. The consultation does not propose the creation of any new rights, but focuses on providing a fairer and more coherent system in relation to valid claims. In particular it looks at:

- **Wrongful death & bereavement damages**
The consultation considers issues arising from the Law Commission's report Claims for Wrongful Death, and make recommendations for change to the Fatal Accidents Act 1976 (FAA). The main proposals are to extend the statutory list of claimants able to make **a claim as dependants to include 'any person who was being wholly or partly maintained by the deceased immediately before the death'**; to extend the list of claimants able to claim bereavement damages to include children of the deceased who were under 18 at the time of the death, and any person who had been living with the deceased as husband and wife (or in an equivalent same sex relationship) for at least two years immediately prior to the accident; and to provide for a fixed sum of £5000 in bereavement damages for each eligible child of the deceased under the age of 18.
- **Psychiatric illness**
The Law Commission recommended introducing statutory provisions in relation to claims for psychiatric illness. The consultation document rejects that recommendation, and concludes that it is preferable to allow the courts to continue to develop the law on liability for psychiatric illness rather than attempt to impose a statutory solution.
- **Collateral benefits and gratuitous care**
The consultation discusses collateral benefits (payments or benefits in kind, other than the damages claimed, which a tort victim would not have received but for the tort). It puts forward a preferred approach which would treat collateral benefits in a way which would ensure that claimants get compensated

once at the full expense of the tortfeasor, and seeks views on whether this approach should apply to a range of different collateral benefits. It also **considers the Law Commission's** recommendations on gratuitous care. It recommends that the approach taken by the House of Lords in Hunt v Severs¹, which held that claimants are entitled to recover damages for gratuitous care but must hold the damages on trust for the carer, should be replaced by a personal obligation to account for the money to the carer. It also recommends that this should apply to future gratuitous care provided by the defendant.

- **Accommodation expenses**
The consultation discusses possible new methods to calculate accommodation expenses arising from the need to buy new accommodation or adapt existing accommodation because of the **claimant's injury. It seeks views on two possible options: moving to a method whereby the defendant would pay the extra capital cost of the property at the time of trial, and in return receive a charge over the property for the amount paid, repayable on the claimant's death or when the accommodation was otherwise not needed by the claimant; or simply awarding the appropriate extra capital cost to the claimant.**
- **Cost of private care**
In June 2003 the Chief Medical Officer (CMO) produced a report, *Making Amends* which recommended withdrawing scope for payment of private care costs in clinical negligence cases involving the NHS as defendant. This recommendation raises wider issues relating to damages for private care costs in other proceedings, which are discussed in the consultation. The interface between the public and private provision of care and accommodation services is also considered.

Fixed Success Fees to Lawyers in Employers' Liability Accident Cases

Further stability, certainty and transparency was brought to conditional fee agreements when fixed success fees were extended to the estimated 48,000 annual claims for accidents at work, from 1 October 2004.

The rules of court now fix the success fee paid by a defendant's insurer to the claimant's solicitor or barrister where they are funded by a conditional fee agreement.

The rules apply to a range of fixed success fees which solicitors and barristers can recover from the losing party in winning cases run under a conditional fee agreement (CFA). The level of the success fee is determined by when the case concludes:

- For solicitors, a fixed success fee of 25% will be recoverable, except in cases where a trial takes place that will attract a success fee of 100%.
- An additional uplift of 2.5% to the 25% will be provided for solicitors where the CFA claim is funded by a membership organisation (such as a Trade Union).
- In exceptional cases the success fees will be subject to assessment by the court. For barristers the fixed success fee will be 25% for issued cases except those that conclude at trial for which it will be 100%.
- For multi track cases which conclude within 21 days before trial the success fee will be 75% and for fast track cases that conclude within 14 days before trial it will be 50%.

- Aggravated, exemplary & restitutionary damages
The consultation reconsiders the Law Commission recommendations on aggravated and restitutionary damages in the light of case law which has clarified a number of issues since the Government's initial announcement in November 1999 to accept the recommendations. It concludes that no legislative change is necessary. It seeks views on a proposal to replace the term 'additional damages' with 'aggravated and restitutionary damages' in the Copyright Design and Patents Act 1988 and the Patents Act 1977, and confirms that the Government does not intend to extend the availability of exemplary damages in civil proceedings. It also seeks evidence in accordance with a recommendation of the Gowers Review of Intellectual Property on how the system of damages works in relation to patents designs; trade marks and passing off; and copyright and related rights.

Information is also sought on those areas involving potential costs to business, the insurance industry and the public sector.

The consultation document can be viewed at: www.dca.gov.uk/consult/damages/cp0907.pdf

The summary of responses to the consultation had not been released at the time of publication.

Specialist Associations

The Association of Personal Injury Lawyers

The Association of Personal Injury Lawyers is dedicated to improving the service provided to victims of accidents and clinical negligence. About 5,000 solicitors and barristers work with the association. Although the Association doesn't offer legal advice or guidance they may be able to point you in the right direction to a specialist lawyer. The Association may be contacted at:

33 Pitcher Gate
Nottingham, NG1 1QE
Tel: 0115 958 0585
Website: www.apil.com

Motor Accident Solicitors Society

The Motor Accident Solicitors Society (MASS) was formed in 1991 to promote the efficient and expert provision of legal advice for those involved in road traffic accidents and to represent the interests of road accident victims. MASS boasts a nationwide membership of solicitors all with substantial experience and expertise in the handling of motor accident claims. The Society has evolved into a proactive lobbying group considering all issues affecting the claims process and a victim's access to specialist support and advice. Their address is:

54 Baldwin Street
Bristol, BS1 1QW
Tel: 0117 929 2560
Fax: 0117 904 7220
Website: www.mass.org.uk

Further Information

If you're sure that your injury is a minor one that will not result in time lost from work or school/college or require substantial and prolonged medical care, then you might want to settle it yourself in small claims court. If you have been seriously injured or are unsure as to the outcome of your injury, then an experienced personal injury lawyer should always be consulted before you give any statements or sign papers of any kind and as soon after the injury as possible.

This guide is for general interest - it is always essential to take professional advice on specific issues.

We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

References

¹ If you are partly responsible for an accident, the principal of "contributory negligence" will apply and the extent you are at fault is taken into account in measuring damages.

² In many cases, statutes or regulations will state that a breach of them shall not give rise to civil liability for injury, damage or loss, but where such a statement is not made civil liability is implied.

³ Minors have until their 21st birthday to pursue a claim.

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