

At PCB we understand that recovering from an accident can be a difficult time for the injured person and their immediate family. As well as the recovery from the injury itself there can be financial difficulty if the injuries cause loss of earnings; and the time it takes to resolve the claim can be uncertain and worrying. We hope to make the litigation process as easy as possible for you to understand. We aim to deliver a modern approach with the highest level in professional standards. We pride ourselves on providing an understanding and compassionate service. We are here to help you through the claim process

The purpose of this guide is to provide some general advice about your claim for compensation and help you understand the procedure for recovering your financial losses from those responsible.

Liability – Whose fault is it?

The first point to note is that there is no general right to be compensated for any injury sustained, regardless of the circumstances. It is necessary to establish that some other person or organisation was to blame and is therefore liable for the consequences. The person or organisation against whom the claim is being made is referred to as “the Defendant”. The person making the claim is referred to as “the Claimant”. In many cases, prospective Defendants will carry insurance against liability for injury claims and, in practice, it will be the Defendant’s insurance company who will deal with the claim. In some cases it may be that more than one person (including perhaps the Claimant him or herself) may be partly to blame for the accident.

Quantum – How much may I receive?

Having established who is liable for the accident, the next major part of the process is to establish the amount (or “quantum”) of compensation which should be paid. The assessment of compensation (or “damages”) falls under two headings :

General damages i.e.: compensation for pain suffering and loss of amenity. The amount of compensation will depend on the nature and severity of the injury. The assessment of compensation in this area is not an exact science. Each case is different and has to be considered individually in the light of its own facts. However, the size of the award will usually be assessed by reference to other awards in previously decided cases where the injuries are similar.

We shall need to assemble evidence in support of the claim. Most importantly, this will take the form of medical evidence. We will commission a report from a medical expert. The type of medical expert to be instructed will of course depend on the nature of the injury. In some cases, where there are multiple injuries, it may be necessary to obtain reports from more than one medical expert. In general, the report will be commissioned from a medical expert who is independent i.e.: someone who has not had anything to do with the treatment of the patient. The medical expert must proceed in accordance with the rules of the court. Principally, he or she would be obliged to give an honest opinion based on their professional experience and judgment. Their primary duty is to the court, rather than to the party who has commissioned the report, or is responsible for paying their fees. In some cases it may be appropriate to appoint an expert jointly with the Defendant.

In addition to obtaining medical reports it can in some cases also be useful to obtain statements from the Claimant, or persons well acquainted with the Claimant to describe the ways in which the Claimant’s general life has been affected by the injury. For example, the ability to pursue sports or hobbies may have been restricted by the injury. It is a good idea to keep a diary to record the progress of the recovery from the injury, and the effects of the injury.

Special damages, i.e.: compensation for out of pocket losses and expenses which have arisen because of the injury. For example, these may include loss of earnings; repair or replacement of property or clothing damaged; medical expenses; the cost of providing care to a person who is disabled due to their injuries; additional travel expenses. We advise all Claimant's to keep a record or diary and assemble full details of any such items for which you wish to claim and supply us with any paperwork (eg: receipts for payments made) in support of these items. If in doubt as to whether a particular item might be claimable please let us have details and we will of course be pleased to advise further. In some cases (where liability is not in dispute) it may be possible to obtain an interim payment to cover losses and expenses incurred.

Procedure – What will happen?

The first step to be taken depends on the type of claim and estimated amount of damages.

There is a 'Pre-action Protocol' which claimants and their legal advisers must follow. This provides that if a claim is estimated to recover less than £25,000 then it must be submitted online via the 'Claims Portal' to the Defendant and/or their insurers. If the claim is estimated to recover over £25,000 then the first thing to do is to send a formal letter of claim to the proposed Defendant asking them to pass the details on to their insurers, if appropriate.

We hope that in most cases the proposed Defendants or their insurers will admit liability and be prepared to enter into negotiations for the settlement of the claim. If no admission of liability is forthcoming, the next stage would be to issue formal legal proceedings against the proposed Defendant. However, before doing so we would carry out a re-evaluation of the strengths and weaknesses of the case, taking into account, if appropriate, any matters raised by the Defendant, and any further information or evidence. In some cases it may be necessary to undertake further enquiries, interview witnesses, or obtain specialist reports. It is a requirement of the court rules that, on issuing formal legal proceedings in court, there must be also filed at court a copy of the medical report on which the Claimant relies together with a schedule of losses and expenses claimed.

Rehabilitation – What if I need rehabilitation now?

The parties should consider, at an early stage, whether you have reasonable needs which could be met by medical or other rehabilitation treatment. There is a Rehabilitation Code which can be helpful in considering how to identify your needs and the cost of addressing them. Rehabilitation options should be considered by all parties throughout the protocol period.

Often an insurer or Defendant will refer a claimant who has been identified as needing rehabilitation for an assessment. This is so that rehabilitation can be considered at an early stage, especially if the Defendant has accepted liability.

Part 36 – What if I or the Defendant wants to settle?

A Part 36 offer is a formal offer made under Part 36 of the Court Rules. Such an offer, unlike an informal offer of settlement, has very significant costs consequences. Either party is free to make a Part 36 offer at anytime as long as it is 21 days before any trial.

The offer is open for acceptance for at least 21 days. If a party accepts an offer then it would become a binding agreement to finalise the claim. The Defendant should pay your compensation within 14 days of your acceptance. If they did not do so, then you can ask the Court to give you a judgement for that sum and then enforce that judgement. The Defendant would also have to pay most, though probably not all, of the costs of the claim.

If you did not accept the offer, then:

- (i) the claim would continue, although the parties could still enter further negotiations, perhaps exchange further offers and reach agreement on any issue, or even outright settlement of the claim, on appropriate terms;
- (ii) meanwhile, and provided the Defendant did not withdraw the offer, you could decide to accept it after 21 days, but only if agreement could be reached on the costs incurred after the offer was made;
- (iii) if the matter had to be decided by the court and you did obtain a judgement that was more advantageous than the offer, then the offer would usually be irrelevant;
- (iv) if the matter had to be decided by the court and you did not obtain a judgment that was more advantageous than the offer (which would imply that you should have accepted the offer) then this is likely to have important costs consequences. These consequences are also likely to follow if you decided to accept the offer at a later stage but before any court hearing.

The consequences are that:

- (a) the Defendant would still have to pay most, though probably not all, of the costs of the claim up to the date of the offer;
- (b) the Defendant would not be required to pay any costs of the claim, or of the relevant issue, after that date; and
- (c) additionally, the court could make you pay the costs of the claim, being your own legal costs and disbursements for the work that we do for you and those incurred by the Defendant after the date of the offer.

Any insurance would only assist in so far as those costs exceed your compensation.

Limitation – When do I need to make a claim?

Please note that the right to pursue a claim for compensation for injuries will be lost if legal proceedings have not been commenced within the appropriate limitation period. This is generally the period of 3 years from the date when the injury occurred. In the case of an injury to a child aged under 18, the 3 year period does not begin to elapse until the child's 18th birthday. In most cases, it is to be hoped that a settlement will have been negotiated before the expiry of the limitation period. But this may not always have been possible.

Legal Proceedings – What if I need to go to Court?

If it does become necessary to issue legal proceedings in your case, the objective will be to prepare the case for hearing as soon as reasonably practical. The preparation of the case will include the preparation of formal written witness statements by yourself and any other witnesses. These will generally be disclosed to the Defendant in advance of the final hearing, on a reciprocal basis ie: the Defendant will also have to disclose statements of witnesses on whose evidence they propose to rely. It will also be necessary to disclose to the Defendant any documentation which is or has been in your possession relating to the case. You will have duty to preserve any such documentation or other evidence until the conclusion of the case. You will normally have to sign a declaration that you have produced all such documentation as you have.

What will I have to pay if I lose?

If your claim is not successful and we have agreed to work under a Conditional Fee Agreement ('no win – no fee') then if you lose, you do not pay any base costs or success fee but we will require you to pay our expenses and disbursements.

If you lose you may also be liable to pay some or all of your opponent's costs. However you will normally have the benefit of Qualified One-Way Cost Shifting so the court will not usually enforce an order for costs against you, unless:

- the proceedings have been struck out;
- the claim is fundamentally dishonest;
- the claim includes a claim for the financial benefit of someone else; or
- you have not accepted a Part 36 offer which you have then failed to beat.

ATE – How can I insure against paying money if I lose?

If you do not already have legal expenses cover for your claim under an existing insurance policy then you can take out an After the Event Insurance policy to cover your opponent's legal costs, your own disbursements and any Part 36 offer risks in the event that your claim is unsuccessful.

The policy premium will be variable, depending upon the stage that is reached in your claim.

If you would wish us to make enquiries as to ATE insurance then please notify us as soon as possible. The premiums will normally increase as the claim progresses.

Compensation Recovery Scheme – Will I have to pay back any state benefits?

In some cases, Claimants who have been injured may have received state benefits whilst off work due to the injury, or in the way of care allowances etc. before paying any compensation, the Defendant or insurer will have to obtain a certificate from the compensation recovery unit (which is a division of the benefits agency) showing the amount of benefits which have been paid. When making any compensation payment, the Defendant or insurer will then have to pay to the benefits agency the amount shown on a compensation recovery certificate. The amount repaid may be deducted from the compensation payable to the Claimant. Under the present rules this is done on a "like for like" basis e.g.: repayment of incapacity benefit may be deducted from compensation for loss of earnings. Normally, the general damages element is "ring fenced".

Damages – What will I receive at the end of my case?

If your claim is successful then you will receive your damages subject to any deductions which are required at the conclusion of your case. Under our Conditional Fee Agreement we will limit the total amount of charges, success fees, expenses and disbursements (inclusive of VAT) payable by you to a maximum of 25% of the damages you receive.

We hope this guide has answered any general queries you may have about your claim, but if there is anything you are unsure about then please do not hesitate to contact us.

PCB Solicitors LLP

October 2016

Note that this is intended as a general guide only. Specific advice on individual cases should always be sought, and we are not able to accept any liability for any action taken or not taken on the basis of this guide.