



PERSONAL INJURY CLAIMS

Frequently Asked Questions

1. Can I make a claim?

If you have been injured because of the fault of someone else, you can claim financial compensation through the courts.

2. Who can claim?

If **you** are the injured person, then you can claim on your own behalf. You would be identified as a "Claimant".

If the **injured person is under the age of 18** the Court will appoint someone to claim on their behalf called a "**litigation friend**" – this is usually a parent or close relative.

If the **injured person is incapacitated** and/or cannot make decisions for themselves the Court may appoint a "**litigation friend**". Again this is usually a close friend or relative. If a claim is made on behalf of **someone** who has **died** their **dependants** and/or **personal representatives** have the right to make a claim.



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The dependants and personal representatives (ie executor or administrator of estate) are sometimes, but not always the same person.

For example: a wife whose husband has died will usually be a financial dependant and able to make a claim for loss of dependency in her own right.

The personal representatives (or any one of them) can make a claim on behalf of the estate and the dependants. However, whilst the financial dependants have the right to claim on their own behalf, they cannot make a claim on behalf of the estate unless they are appointed personal representatives.



3. Is there a time limit for making a claim?

Yes – in most cases you have 3 years from the date of the accident to settle the matter or Court proceedings need to be issued. You can make a claim at any point during these 3 years, though generally speaking the earlier you consult a solicitor the better. However, if you do not settle the matter or issue Court proceedings within 3 years then you are too late to do so and your claim will become statute-barred. The statute in question is the Limitation Act 1980.

If there was no accident as such – **for example:** if you are suffering from an occupational illness such as stress at work, occupational dermatitis, deafness or asbestos related disease – then you have 3 years from the date you first knew (or should have known):

- a) that you are suffering from that illness, and
- b) that it is potentially compensatable. Usually this is 3 years from the date of diagnosis.

If someone has died their dependants or personal representatives have 3 years from the date of death to make a claim, if the 3 year period has not passed during the injured person's lifetime.

If the victim is under the age of 18, the 3 year period will not start to run until their 18th birthday.



4. What if the 3 years have passed?

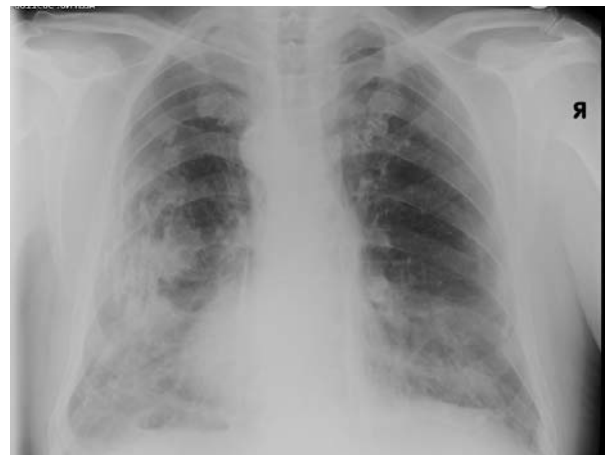
Occasionally if there is a very good reason for the delay the Court will allow a claim to be made "out of time". However these instances are rare and it is a matter for the Courts discretion. The safest course of action is to bring a claim within the 3 year limitation period.

5. What is an injury?

Even if someone admits they were at fault, you can only claim compensation if you have suffered an injury (or illness) because of their fault.

Injury means physical or psychological harm. The injury must be more than minimal and you must suffer actual symptoms. Your solicitor will need to get a medical report to confirm that you suffered an injury and to tell the Court:

- (a) what is the likely cause of the injury? and
- (b) what is the extent of the injury?



An example of a non-compensatable injury is pleural plaques which are scars to the lining of the lungs only visible on x-ray and which rarely cause actual symptoms.

6. What is fault?

You can only claim compensation if your injury was caused because of the fault of someone else. Someone is legally at fault (or liable) if they are negligent and/or if they break a law or regulation (known as “a breach of statutory duty”). Often the injured person (“the Claimant”) will allege that the person at fault (the “Defendant”) was both negligent and in breach of statutory duty.



7. What is negligence?

Negligence is usually defined as behaviour or conduct that is blameworthy because it falls short of what a reasonable person would do to protect another person from a foreseeable risk of harm. If an injured person proves that another person acted negligently and/or in breach of statutory duty to cause his injury, he can recover financial compensation (or damages) for his harm.

For example: an employer owes a duty of care to ensure he provides his employees with a safe place of work. If he fails to repair a ripped carpet and one of his employees trips on it and sprains their ankle, he would be negligent and liable to pay financial compensation. There is also a statutory duty on employers to keep walkways clear and in good repair so in the instance given the employer would probably be both negligent and in breach of statutory duty.

Sometimes a person can be injured by an accident that was not the fault of anyone and there is no claim to be made. An example of this might be a car skidding on black ice where none was forecast.

It can be difficult for the victim of an accident to come to terms with the knowledge that it was nobody's fault; this is particularly true if they have been very badly injured. It is not always possible for a claim to be made for injuries sustained in an accident.

8. What is financial compensation?

Financial compensation is money. Sometimes compensation is called “damages” and the amount of damages is called “quantum”. These are legal terms that you may hear.



Financial compensation comes in 2 parts:

(i) General Damages

This is the lump sum payable to compensate the Claimant for their pain, suffering and loss of amenity. The amount payable is dependant on the seriousness of the harm and the extent of the symptoms or disability. The general principle is, the more serious the injury the higher the award of general damages. Judges and solicitors refer to guidelines called “The Judicial Studies Board Guidelines” which are published annually and which classify awards for the most common injuries in a sliding scale of severity. To more precisely pin down the likely award of general damages, Judges and solicitors also refer to actual decided cases (known as case authorities or comparable authorities).

(ii) Special Damages

This refers to past and future financial losses that can be proved to be a consequence of the injury. The most common special damages claimed are lost earnings, cost of lost or damaged items, cost of medical treatment and drugs.

9. What is the process for making a claim?

If you wish to make a claim please call our helpline on 0808 129 3320 (if you are a CWU member please call: 0800 804 6674) alternatively you may fill in the online enquiry form. Your details will be processed and your enquiry will be allocated to one of our solicitors.

(<http://www.simpsonmillar.co.uk/ourfirm/contacts/enquiryform.aspx>).

Once you have asked us to act for you we will send you a Letter of Engagement. This is something all solicitors have to send to clients before carrying out any work for them. It summarises your instructions to us and the terms on which we will act.

The terms on which we will act will differ depending on whether you are a trade union member, eligible for public funding or looking to enter into a conditional fee agreement (also known as a “no win no fee” agreement).

10. What will we do when you instruct us?

We will take a statement from you as soon as possible. We may do this by telephone or arrange a face to face meeting.

Based on what you tell us, if we agree you have a claim, we will identify the likely Defendant (or Defendants) and send a Letter of Claim. The Letter of Claim is usually fairly detailed and its format and content must comply with the relevant “pre action protocol”.

A pre-action protocol is a framework set down by the Ministry of Justice governing the dealing between the parties (The Claimant and Defendant) up to the point of issue of proceedings.



Once a letter of claim has been sent the Defendant has 21 days to acknowledge receipt and a further 3 months to complete their liability investigations. When replying the Defendant must either admit or deny fault. If fault is admitted then you have effectively won your claim and we can go on and investigate how much compensation you are entitled to be paid.

If the Defendant denies fault or partially admits fault they must firstly give full reasons for their denial and secondly disclose any relevant documents.

Having considered the Defendants response and their documents we will either advise you to press on with your claim and we will carry on investigating liability and fault issues on your behalf, or we will advise you that your case is not likely to succeed and should be discontinued.

11. What is a partial admission? (Contributory Negligence)

Often a Defendant will admit they were at fault, but deny that the accident was wholly their fault. Instead they will allege that the Claimant was partly to blame for their injuries – this is known as an allegation of contributory negligence. It is a very common allegation for Defendants to make in personal injury cases and if upheld by the Judge will result in a reduction in the amount of compensation payable that is equivalent to the degree of fault attributed to the Claimant.

For example: if a Claimant is injured in a road accident caused by another driver driving into the back of his car (a rear end shunt), and he was not wearing a seatbelt at the time, the Defendant will allege and the Court will agree that there should be a 25% reduction in the compensation awarded. This is because it is accepted by Judges that the Claimants injuries would not have been so severe had he been wearing a seat belt.

12. What is expert evidence?

In personal injury cases it is always necessary to obtain an expert medical opinion to advise the court precisely what injury the accident caused, and what the long term effects are likely to be. The expert's duty is to the Court not to the party instructing him or her.

Where injuries are serious or complex more than one expert medical report will often be needed.



Sometimes medical evidence cannot be obtained immediately because treatment or recovery will be ongoing, or it may simply not be possible to give a long term prognosis until a certain amount of time has passed since the injury. It can be hard for Claimants to understand why their claim is being delayed; it can also be frustrating for the solicitors since often matters are out of their hands.



Occasionally a non-medical expert will be instructed to advise the Judge on a specialist area such as accident reconstruction. The principle is the same – the expert's duty is always to the Court.

Once final medical evidence is available and agreed it is usually possible to advise how much compensation is likely to be awarded and at this point an offer to settle can be made by either party.

Finally it is important to remember that in large or complex cases (typically where the value is over £15,000) both the Claimant and Defendant are entitled to obtain their own medical evidence. This means you may need to attend more than 1 appointment.

If the Defendant's expert evidence is not favourable to them, they do not have to send it to us and you may never see it.

13. What is an offer to settle?

Offers to settle are attempts to agree an amicable end to the claim without the need to go to Court. An offer to settle can be made at any stage in the claims process by either party.



A “part 36 offer” is an offer to settle made in accordance with Part 36 of the Civil Procedure Rules (The Regulations that relate to a Personal Injury Claim). If a part 36 offer made by a Defendant is not accepted by the claimant, and the Judge then goes on to award less than the part 36 offer, then the Claimant has to pay all of the Defendants costs from the expiry date of the offer to the date of the trial.

If a Claimant makes a part 36 offer which the Defendant does not accept, and the Claimant goes on to be awarded more by the Judge, then the Defendant has to pay additional costs to the Claimant from the expiry date of the offer to the date of the trial.

An offer to settle can relate to liability or to value.

14. What if the case does not settle?

If deadlock is reached or if the 3 year time period is about to expire, then we will recommend that Court proceedings are issued.

15. What does issue of court proceedings mean?

Issue of court proceedings simply means lodging the correct form (the Claim Form) with the correct fee at the Court office. The Claim form will be stamped with the Court seal and the Court will produce a form called "Notice of Issue of Court Proceedings". This document and the sealed Claim Form are called “Proceedings”. Issue of court proceedings does not necessarily mean that a case will go to trial, but it is the formal step that starts the legal process that ultimately ends with a trial before a Judge in Court.



As indicated above, you must issue court proceedings within 3 years of the date of accident (or date of knowledge if disease, or date of death if claiming on behalf of someone who has died or 18th birthday if victim is under 18).

16. What happens after court proceedings have been issued?

Once Court proceedings are issued they must be Served. This can either be done by the Court or by us. There are 4 months from the date of issue within which the Court proceedings must be Served.

The Court can grant an extension of time for service if there are very good reasons.

Proceedings are Served by sending, delivering or handing them to the Defendant at their home, place of business or registered head office.

Once served, the Defendant has 14 days to acknowledge receipt of the proceedings. This is done by posting the reply slip on the Notice of Issue back to the Court.

In a personal injury claim as well as the Claim Form, other documents must be served within 4 months of issue of proceedings. These are:

1) **Particulars of Claim.** A formal statement setting out the circumstances of the accident, the fault alleged, the injury suffered, the medical evidence relied upon and the consequential financial loss.

- 2) **Medical Report.** A formal report by a qualified medical practitioner setting out the circumstances of the accident, the injury suffered and the way in which the injury has or will affect the victim.
- 3) **A Schedule of Financial Loss.** Setting out the Special Damages.



If someone has died the Death Certificate and Grant of Probate should also be served.

If a Defendant fails to acknowledge service in time, the Claimant can apply to enter Judgement.

Having acknowledged service the Defendant must then file a Defence.

17. What is the Defence?

The Defence is the Defendants reply to the Particulars of Claim. They will either, admit liability, partially admit liability and allege contributory fault or wholly deny liability.

The Defence is due 14 days after acknowledgement of service is filed, however it is possible for the parties to agree an extension of time for the Defence to be filed of up to 1 month. Court permission will be needed for a longer extension of time.

18. What happens after the Defence?

The Court will invite the parties to submit a suggested timetable to trial. If the parties cannot agree the Judge will impose a timetable. This timetable is called the court "Directions".

The timetable will usually set out all the steps the parties need to take to prepare the case for trial and will allocate a "trial window" within which the trial date will eventually fall. The court will try to ensure the process is as fast as possible and that the issues in dispute are narrowed as far as possible.

The Directions will include a date for exchange of documents and for exchange of witness and expert statements and all other preparations needed to be ready for Trial.



19. What is a list of documents?

A list of all the documents that a party intends to rely on in support of his or her case.

20. What is Exchange of Witness and Expert Evidence?

Each party will send their witness and expert evidence to the other parties on a designated date set by the Court.

The parties will be able to put questions to each other's expert witnesses, again to try and narrow the issues in dispute.

21. What if the case still has not settled?

If amicable settlement is simply not possible then there will be a Trial in Court presided over by a Judge. You will probably need to attend and answer questions from the Defendant's barrister and the Judge. This is usually not as daunting as it sounds.

Only 5% of all claims end up in Court.

How do I make a Claim?

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(<http://www.simpsonmillar.co.uk/ourfirm/contacts/enquiryform.aspx>).

Please note – every case is different, this is intended as a general guide to the process of making a personal injury claim and is not intended as a substitute for consulting a solicitor.

This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:

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