



## Personal Injury

We frequently talk to callers who have suffered a personal injury as a result of an accident. Some callers ask for advice on bringing a claim for the injuries they have sustained.

In some cases, an accident can happen and be no-one's fault, meaning there is no action to take.

A personal injury claim can arise in a number of ways the most common being as a result of a traffic accident. The term also includes injury suffered at work, as the result of a medical procedure (referred to as medical negligence), accidents on holiday, tripping accidents and even some sports injuries. This factsheet looks at how a personal injury may be the subject of a claim and the most common circumstances when this can arise.

### What the law says

In order to make any personal injury claim in common law, a number of elements need to be established to prove the injury was caused by negligence. These are:

- that a duty of care exists between the person, or organisation, causing the injury
- and the person suffering the injury that the actions or omissions of the person, or organisation, causing the injury, are due to a breach of that duty
- that the injury has been caused as a result of the breach of the duty of care
- that the injury suffered was a reasonably foreseeable result of that breach of duty of care

### What is contributory negligence?

Contributory negligence is when a defendant (those accused of causing the injury) accepts responsibility for a claimant's (the person suffering the injury) accident but alleges that the claimant is partially responsible for their injuries.

Allegations of contributory negligence are quite common in personal injury claims and, if upheld in the courts, could result in a reduction in the amount of compensation a claimant ends up receiving - depending on the degree of fault attributed to them.

In a road traffic accident, for example, the injured party (claimant) may be partially responsible for their injuries if they were found to have not been wearing a seatbelt at the time of the accident. In these circumstances the amount of damages can be reduced by as much as 25 per cent to take this into account. This is because if the claimant had been wearing a seatbelt the injuries suffered may not have been as great.

### If I suffer an injury what can I claim for?

If you suffer a personal injury as the result of negligence, there are two types of damage which may form the basis of a claim. These are:

**General damages:** the amount paid as a lump sum to compensate the claimant for the pain, suffering and loss of amenity suffered as a direct result of the accident.

**Special damages:** any proven expenses that the claimant may have incurred as a direct consequence of the accident. This will include things such as loss of earnings, medical and rehabilitation treatment, care and medication costs, travel expenditure, vehicle repairs and damage to clothing or personal belongings. In other words, things you can prove to have lost or will lose, or expenses you may have incurred or are likely to incur.

The actual amount received is dependent on the medical evidence that is provided and how much of an impact the accident has had upon the person's life in terms of the severity of the injuries and the extent of the symptoms or disability.



## Is there a time limit for making a personal injury claim?

Generally, there is a three-year limitation period for a personal injury claim. This means you must lodge your claim with the court before that three-year period has expired.

It's often important to make a claim sooner rather than later, as it takes time for solicitors to prepare and initiate the process. Some solicitors may refuse to act on your behalf if there is less than six months left before the end of the three-year period.

If the injured party is under 18 at the time of the injury, the three-year period does not start until they are 18. This means any claim must therefore have been settled, or court proceedings must have been started, on or before the eve of the claimant's 21<sup>st</sup> birthday.

## Some of the most common types of personal injury claims

Here we look at the most common reasons a personal injury claim arises and how the legal framework operates.

### Road traffic accidents

If you are involved in a no-fault road traffic accident and suffer an injury, you are very likely to receive a number of calls from claims management companies offering you a service to recover compensation.

### Uninsured drivers

Drivers often presume that if the other party is uninsured or leaves the scene without providing their details, then they have no claim. The matter is more

about identifying the other driver and consequently the party responsible for damages and compensation.

If the other party fails to stop, does not provide any details, or you believe those details to be false, you should report the matter to the police within five days for damage to your vehicle and 14 days for any personal injury. Failure to do so may significantly affect any claim you may have to make to the Motor Insurers Bureau (MIB). The MIB is an industry funded organisation dealing with claims where there is no insured driver to make a claim against. See [here](#) for more information

If you are involved in an accident you should:

- obtain as many details as possible from the other driver and any witnesses
- take photographs of any damage to yours and the other vehicle
- keep record of any losses or expenses resulting from the accident
- always report it to your own insurance company immediately, even if you do not intend to claim from your own policy. Failure to report may invalidate your claim. Check your policy to see if there are any time limits for doing this. Both you and your insurer can check if the other driver is insured by searching the Motor Insurers Database [here](#).

In the event that the driver is not traced or is uninsured, a claim may be made to the MIB to cover your loss. Generally this will not be dealt with under a no-win, no-fee agreement as the relevant level of legal fees is not recoverable via that scheme.

Understandably, if your vehicle is damaged, you want it repaired/replaced as quickly as possible. Sometimes this does take longer if you are obliged, or decide, to

wait for the third-party insurers to settle the claim. If you have your own fully comprehensive insurance policy you may prefer to sort this part out directly with them. They will then seek to recover the cost of this from the third party.

To proceed with a claim for damages in relation to a personal injury suffered as result of a road traffic accident, you can instruct a specialist to do this on your behalf. You can:

- instruct a claims management company make a claim via your own insurers
- make a claim via a member of APIL - see [here](#)
- make a claim via a legal expenses insurance policy, which may be part of a motor or home insurance policy
- instruct your own solicitors

Whatever route you decide to take, there is a strict operational protocol for claims valued below £25,000. This limit generally covers the majority of claims but will not apply if:

- the other party is a pedestrian or other non-road user
- the claim is being brought by the estate of a person who has died
- the defendant is driving a vehicle registered outside the UK
- the matter is being dealt with through MIB

The use of the necessary protocol and the claims portal (see [here](#)) has generally streamlined road traffic personal injury claims to allow them to proceed more swiftly as certain time limits are built into the process.

Any claimant must register their claim on the Portal by completing a Claim Notification Form (CNF) and this will be done by your legal adviser. More than 70,000 CNF's are lodged via the Portal each month.

The other party then has 21 days to respond and if they admit the claim there is a further 35 days to negotiate any settlement. If the other party accepts and admits the claim it will remain in the Portal but it not it will proceed to court in the usual way.

Additionally, any legal team or insurance company which receives notice of a claim must also register that with the Compensation Recovery Unit (CRU) which works to recover social security benefits and NHS costs which have been paid as a result of the injury. You can find out more about this [here](#).

## Supermarket – slips and trips

Accidents occur in supermarkets regularly due to things being spilled or dropped on the floor by other customers or staff who may have not cleaned up appropriately or within a reasonable time.

Injuries can also occur with stock cages being pushed by staff themselves or customers tripping over empty basket holders.

The supermarkets owe a duty of care to visitors or customers under the Occupiers Liability Act 1957. As part of this duty of care, they are required to take reasonable steps to ensure customers and visitors are kept as safe as possible whilst on their premises.

If you visit a supermarket and are injured you should:

- report the incident in the accident book and take the names and addresses of any witnesses. You may also want to check if the shop has CCTV available of the incident
- get medical treatment from your GP or, if necessary, visit your A&E department. This medical evidence will be important in any claim

If you do decide to consult a lawyer about the issue they will make enquiries of the supermarket to see whether all reasonable steps were taken to prevent the accident. For this reason, the store's 'clean-as-you-go' policies will be inspected. It is important to remember that sometimes an accident is no-one's fault. If the supermarket has operated a 'clean-as-you-go' policy and it has been fully and reasonably utilised, it may be that the accident could not have been reasonably prevent and there will be no liability.

## Highway accidents

Whilst it is not necessarily the case that if you hit a pothole you will suffer personal injury, we have included this as it is common for callers to have experienced this problem and as a result have suffered damage to their vehicle.

Councils and their highway authorities have a duty to protect the public and "maintain the highway" ensuring they are clear of dangerous ice, snow or defects under the Highways Act 1980 (the "Act") and the common law.

The Act recognises that defects will arise on roads and footpaths and their appearance does not necessarily mean that Council may have breached it's statutory duty. If a defect has caused someone to suffer an injury



and/or damage to their property or vehicle then they are entitled to make a claim for compensation.

For damage or injury caused by pot holes, there is a code of practice found [here](#). Potholes are described as holes in the road or pavement that must be at least 40mm deep.

To claim for damage to your car you will need to show that the pothole caused the damage and the loss associated with the repairs were specifically caused by the impact with the pothole.

If you are considering a claim you should:

- take photographs of the pothole and where possible measure it
- record the exact location of the hole
- photograph the damage to your vehicle
- get a quote for the repairs

You can then report the location and nature of the pothole to your local authority via their website. Most local authorities have that function.

Whether you are able to make a claim for compensation may depend on whether there has been a previous report of the pothole and therefore whether your local authority had the opportunity to repair it.

If you want to find out more about how often the road is inspected and repaired you may wish to consider making a Freedom of Information Act request. You can find out how to do that [here](#).

Many councils have their own method of settling these types of claims without the need for court proceedings so it is always worth contacting them first.

## How can I get help to make a personal injury claim?

Making a personal injury claim is very process driven. This means there are certain strict procedures (known as protocols) which have to be used for a successful claim. For this reason using a legal representative is often the best course of action. You can:

- Check your house or car insurance to see if you have legal expenses insurance. This type of policy is often part of a larger policy and frequently covers personal injury claims. You will need to make a claim under that part of the policy, and if it is accepted, lawyers will be appointed on your behalf to pursue the claim and the only expense to you will be to pay any excess.
- Appoint a claims management company. These companies usually advertise heavily on the television and online. They are often part of large legal firms and operate a system of recovery based on volume.
- Appoint a lawyer directly. To find a suitable lawyer you can search for one on the Law Society website [here](#) or the Association of Personal Injury Lawyers (APIL) website [here](#).

## No-win no-fee agreements

If you are appointing a legal representative, either via a claims management company or directly, it is likely that the case will be funded with the assistance of a Conditional Fee Agreement (CFA) previously known as 'no-win no-fee' agreements. What this type of agreement means is that you will only pay for the legal work if you are successful with your claim.

So if you win your case, the losing party will pay your lawyer's fees and your disbursements (your lawyers out of pocket expenses) but you will have to pay a success

fee (and disbursements) from your damages. This success fee cannot be more than 25 per cent of the damages recovered.

In order for a lawyer to agree to work for you under a CFA they will want to assess the case before making that agreement. In other words, they will need to assess whether it is more likely than not that you will succeed. This is because if you lose your case you will not have to pay your lawyer's fees and they will receive nothing for their time spent.

You will, however, be responsible for their out-of-pocket expenses (known as disbursements) paid during the claim. This will include such things as court fees, experts and barrister's fees. To cover this, you may be advised to take out an insurance policy at the start of your case.

If you sign a CFA, away from your lawyer's place of business, which is often the case, you will have 14 days to cool off and cancel the agreement if you change your mind.

If you want to read more about CFA's you will find further guidance on the Law Society website [here](#).

## How is any compensation calculated?

The purpose of compensation is to put the injured party back in the position they would have been in if the accident had not happened. This sum is designed to cover specific losses such as loss of income and general damages for the pain and suffering caused by the injury itself. Suffering in this sense can also include mental/psychological suffering. Generally you will need to have a medical report to prove your injury and subsequent pain and suffering.

The amount recoverable for general damages will depend on the facts of each case and, in particular, the severity of the injury and the period of time taken to recover. There are compensation guidelines, often referred to by lawyers and insurers, which are known as JSB Guidelines and form a useful starting point. These figures will be taken into account with current case law.

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