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## Serious injury personal injury claims

If you have been injured as a result of an accident, whether it be an accident on the roads, at work, on holiday, in a public place or elsewhere, you may be entitled to make a claim for compensation.

If you have suffered a serious injury then there will be lots of issues that need to be considered in bringing a claim. For general information about bringing a claim, please see our factsheet **Personal injury claims**.

This information sheet aims to help you identify the issues that will need to be addressed and the assistance that the personal injury team at Penningtons Solicitors LLP can provide in bringing your claim.

### **Negligence and causation**

The tests for negligence and causation are the same regardless of the nature and severity of the injury suffered. Please see our **Personal injury claims** factsheet for the issues that need to be considered.

We are always happy to talk through on a no obligation basis whether you may have a claim, the likely prospects of success and what would be involved.

The first steps in your case will be to investigate liability for your accident and injuries, identify the defendant and ascertain whether or not liability is disputed. If there is a dispute then we will obtain further evidence and advise as appropriate and, should we feel that the prospects justify proceeding, we will issue court proceedings to determine liability.

In serious injury cases, due to the need to be able to assess long term prognosis and investigate a number of aspects of the claim in value terms, it

sometimes happens that liability is dealt with first and quantum (value of the claim) subsequently.

### **Damages (quantum)**

This is the legal term for the compensation you can recover. "General damages" can be claimed for pain and suffering caused by the accident and for the impact of the injury on your day to day life. The value of this aspect of the claim is assessed mainly on evidence obtained from an independent medical expert about the nature and impact of your injuries and your future prognosis, but also on your evidence.

"Special damages" can be claimed for out of pocket expenses incurred because of the accident - such as loss of earnings, the cost of care, travel expenses and medical expenses. Special damages cover the financial losses sustained already and also any likely future financial losses – and part of our role is to investigate any future losses which you may sustain so that you can be compensated for them. Again, this is largely based on expert evidence as to losses arising from your injuries.

It is of great assistance in ensuring that you recover the appropriate level of compensation if you keep a written record of how your injuries affect you and keep a note or documentary evidence of any related expenditure.

### **Expert evidence**

As above, the valuation of your claim is largely based on expert evidence as to past, current and future symptoms, needs and losses arising from your injuries. We will not advise you to settle your claim until it is possible to ascertain with a reasonable degree of certainty what your future prognosis and needs will be.

We have particular expertise in dealing with complex injury cases – brain and spinal injury and multiple injury cases and are familiar with the issues that need to be explored and use experts regarded as being at the top of their field in assessing these injuries and their impact. The sort of expert evidence that may be needed might include the following:-

- Neurologist – to assess the impact of any brain injury

- Spinal surgeon / neurosurgeon – to assess the effects of spinal injury
- Neuropsychologist / neuropsychiatrist - to assess impact of brain injury on day to day function and to provide guidance with regard to rehabilitation needs
- Care expert – to assess care provided and likely to be needed in the long term
- Occupational therapist – to assess current and future needs in therapy terms and in relation to items of aids and equipment to assist with day to day living
- Architect – to assess whether your existing home needs any alteration to enable you to use it more easily and to assess whether an alternative property may be needed
- IT specialist – to assess whether there is technology available to assist you with day to day living
- Physiotherapist / speech and language therapist - to assess current and future needs in these areas
- Employment consultant – to look at issues of employment / retraining options

We will also discuss whether you would benefit from a case manager.

### **Care packages and funding**

We have experience in advising on funding available from local authorities and in setting up private care packages in conjunction with our experts, case managers etc. In serious injury cases, assessing care needs and ensuring secure funding to have these properly met is one of the most important aspects.

### **Acting for children and those lacking capacity due to injury**

We are very used to working with families on behalf of those who are unable due to age or injury to conduct litigation for themselves and are familiar with the issues that need to be considered here. We have a specialist team who deal with the Court of Protection and can advise on this and long term security of damages obtained and can also advise on the use of trusts.

### **Limitation**

Any court proceedings for personal injury must be issued within 3 years of the accident (or the date on which you were aware that you had suffered a significant injury as a result of the accident if this is later). For children, the 3 year period does not start to run until their 18th birthday and for those lacking capacity, perhaps due to brain injury, the 3 year period does not start to run unless and until they recover capacity. . The court does have a discretion to allow proceedings to be issued after the 3 year period but it is only exercised on rare occasions.

### **Funding the claim**

There are several options available for pursuing a personal injury claim. Much will depend on the circumstances of the accident. We can advise in more detail, but here are the main ways of funding the claim:

- Legal expenses insurance. This may be provided as part of a motor or household contents insurance policy, or by a credit card company. It is always sensible to check to see if you have this insurance cover, or whether there is someone else such as a trade union who will fund the case.
- Conditional fee agreement. Sometimes called 'no win, no fee', this is an agreement by us not to charge you if you do not win your case. In return, you agree to pay us a 'success fee' if you do win the case. This arrangement is usually available from the outset of the case. It usually operates with an after the event insurance policy which protects you against any liability for things such as experts' fees and against any liability for the other side's costs. **(For more details see the information sheet on conditional fee agreements).**

Public funding (Legal Aid) is no longer available for most personal injury claims.

If you win your case, you will recover the majority, if not all of your costs from the other side. If you do not succeed for any reason then if you have the benefit of legal expense insurance or a conditional fee agreement and insurance then you will be protected against any liability for costs.

We can provide more detail of all of these options on request.

### **Expertise of Penningtons' personal injury / clinical negligence team**

We operate as a team across our Godalming and Basingstoke offices, but have clients all round the country. Philippa Luscombe and Tim Palmer head the teams in the Godalming and Basingstoke offices respectively. Members of the team are on the Law Society recommended personal injury solicitors panel and are Senior Accredited Litigators with the Association of Personal Injury Lawyers (APIL). The team is accredited by APIL.

We are on the recommended solicitors list for Headway and the Spinal Injuries Association and have particular expertise in brain and spinal injury cases. We are rated as specialists in personal injury work by the legal directories Chambers and The Legal 500.

We use a well regarded team of independent medical experts and specialist personal injury barristers so that you can be confident of an experienced team managing your claim.

#### **Initial advice**

In order to enable you and us to assess whether you have a claim with good prospects of succeeding and to discuss what would be involved, we usually offer an informal meeting or discussion / review of documents initially without charge and we are always happy to have an informal discussion in the first instance to discuss your options and how we may be able to help.

#### **Who to contact for further advice**

If you would like to discuss your potential claim with an experienced solicitor please contact:

**Tim Palmer in Basingstoke**

**01256 407100**

**Tim.Palmer@penningtons.co.uk**

**Philippa Luscombe in Godalming**

**01483 791800**

**Philippa.Luscombe@penningtons.co.uk**

Specialist advice should be obtained before taking or refraining from taking action based on comments in this handout which is only intended as a brief note.

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