



# PRODUCT LIABILITY

**How to bring a product liability claim if you have been injured as a result of a potentially defective medical or consumer product.**

## **PURSUING A PRODUCT LIABILITY CLAIM**

If you are seeking compensation as a result of an injury caused by a potentially defective product, you will need to pursue a civil claim using a lawyer who specialises in this field.

## **HOW DO I CHOOSE A LAWYER?**

It is important to choose a solicitor who:

- Is experienced in product liability work.
- Understands how these claims work and the broad range of issues that arise in such claims.
- Has access to equally competent experts.

When choosing a solicitor, you should also look for relevant credentials:

- You should find out whether the Law Society would recommend them.
- You can check online for details of their expertise.
- You should find a lawyer who will provide some initial advice without charge.
- You should be clear as to what costs you may have to pay if you bring a claim.
- Last but not least, you need to feel confident in and comfortable with your solicitor. Pursuing a claim can be a lengthy, difficult and stressful process for a claimant so it is important that you find your solicitor easy to talk to, approachable and supportive.

## **WHAT IS A PRODUCT LIABILITY CLAIM?**

A product liability claim may arise from any form or transaction relating to a product. It is generally associated with injuries which consumers of products have sustained as a result of a defect in a product and a subsequent claim is brought against the manufacturer of the product for compensation.

Some examples of potential claims include the following:

- Injuries caused by defective medical devices.
- Injuries caused by defective medical implants.
- Injuries caused by defective appliances or equipment.
- Burns from hairstyling products.
- Injuries from contaminated cosmetic products.
- Claims involving pharmaceutical drugs.
- Accident caused by a defective vehicle.

## **THE LAW RELATING TO PRODUCT LIABILITY CLAIMS**

Where an injury has been caused by a potentially defective product, it can be possible to pursue a claim against the manufacturer or supplier of that product pursuant to the Consumer Protection Act 1987.

Under section 3 of this Act, strict liability will be imposed on the manufacturer if the court is satisfied that the safety of the product was *"not such as persons generally were entitled to expect"*.

It follows that there are two broad issues to consider: (a) what standard of safety were you entitled to expect and (b) did the product fail to meet that standard?

## **WHAT DO YOU NEED TO PROVE FOR YOUR CLAIM TO SUCCEED?**

For your claim to be successful, it is necessary to establish that:

- You were injured or suffered losses.
- The product was defective in manufacture or design.
- It was the defect that caused the product to fail and cause the injury.
- You were using the product as it was intended.

The defendant (often the manufacturer or supplier of the product) will, therefore, be liable for damages



where it can be established that the product was defective and that the defect caused the injury, without having to establish fault, avoidability or negligence.

The defendant will, however, be able to successfully defend the claim if they can demonstrate that at the time the product was supplied, the defect was not discoverable by using all accessible knowledge. This is known as the “development risk/state of the art defence”.

### WHAT HAPPENS WHEN INVESTIGATING A CLAIM?

The first few steps in investigating a claim are usually:

- Take a detailed history of the events and decide if there are issues to be investigated.
- Set up funding.
- Obtain and review any relevant documentation, such as medical records or a manufacturer’s report.
- Obtain independent expert evidence on whether there was a defect in the product and this caused it to fail. This will involve the product being examined.
- Make a formal approach to the defendant and set out the basis of the claim against them.
- The defendant will then carry out their investigations and respond to say whether or not they admit what has happened.
- A review is then made at that stage to agree the way forward.

Often cases are settled by way of negotiation without ever needing to issue court proceedings. However, if the claim is disputed and the experts remain supportive, then court proceedings will be issued and the case proceeds through a court timetable towards a trial to determine the claim.

### HOW WILL I BE COMPENSATED IF I WIN MY CLAIM?

There are two forms of compensation:

- **General damages** can be claimed to reflect the pain, suffering and loss of amenity consequent upon the negligent treatment ie for the injury sustained.

- **Special damages** can be claimed for out-of-pocket expenses incurred as a result of the injury. These include loss of earnings, the costs of care, travel expenses and medical expenses. Special damages cover the financial losses sustained already and also any likely future losses.

One of the financial benefits of bringing a claim is the funding you could receive to help with further treatment and rehabilitation as part of your recovery. Interim funding may also be obtained to help with this while your case is ongoing.

### HOW LONG HAVE I GOT TO MAKE A CLAIM?

Court proceedings for product liability claims must be issued within three years of the date of injury. If the injury happened more than three years ago, it may still be possible to bring a claim if the claimant only found out that the injury was caused by a defective product within the last three years.

The Consumer Protection Act also provides a longstop period which requires that any claims brought under this act are brought within 10 years from the date that the specific product was put into market circulation. If the 10 years expires before the expiry of the three year statutory limitation period, then the earlier date will apply.

### FUNDING PRODUCT LIABILITY CLAIMS

Community Legal Services Public Funding (previously known as Legal Aid) is no longer available for product liability claims.

Some people have legal expenses insurance, for example as part of their household insurance policy, from membership of a union or associated with a credit card, which may be available to investigate and pursue a claim subject to the insurer’s approval.

Alternatively, you may be able to pursue a product liability claim on a conditional fee basis (no win no fee). This is where fees are only charged if you are successful in your claim and then most of those are recovered from the defendant in addition to your damages. You will usually have an insurance policy



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in place to protect you against any claim for costs from the defendant and arrangements with your solicitor to fund things such as court fees and expert fees so you do not have to pay anything as the case proceeds. You will not pay anything if you do not win your case but should expect to pay some costs out of your damages if you win.

## FIND OUT MORE

For further information or to discuss your potential claim with an experienced solicitor, please contact:

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