

Making a claim against someone else | frequently asked questions



Can I make a claim?

If you were injured because of the negligence or breach of legal duty of another person (or organisation) and you can show that they were in some way responsible for your injury, you may be able to make a claim against them. However, making a claim can be difficult to do on your own and it would be best to speak to a specialist personal injury solicitor.

Is there a time limit to when I must make my claim?

Claims must usually be made within three years of the accident/incident that caused the injury. In some specific circumstances it can be longer, for example if you were younger than 18 at the time of the injury, you can bring a claim up to the age of 21 regardless of your age at the time of the injury. And, different time limits may apply if you are brain injured and lack mental capacity.

Wherever possible, it's always best to seek legal advice as soon as possible to allow the solicitor time to investigate the potential claim, prepare the case, and ensure that it does not become time-barred.

How much will it cost to pursue my claim?

Most solicitors will not charge you for an initial conversation. If they agree that there is a potential claim, they will discuss the various funding options with you before proceeding.

Many buildings and contents or motor insurance policies include legal expenses which may cover the cost of your claim – your solicitor will check the details. Otherwise, 'no win, no fee' (formally known as a Conditional Fee Agreement) is the most common way of funding brain injury claims. Essentially it means that your solicitor will not charge you for their fees if your claim is unsuccessful, but may charge a 'success fee', which they will explain.

In some instances you could be liable for the Defendant's costs and the expenses incurred in your claim (eg. obtaining medical records), but it's possible to take out an insurance policy to cover these and your solicitor will go through the detail with you.

Will I be able to access rehabilitation and support whilst my claim is progressing?

Sourcing the right support for a brain injured person requires knowledge of statutory and local services, and a degree of tenacity to find your way around the system! It is possible to access health and social care support, but rehabilitation services vary across the country. If you pursue a claim through a specialist solicitor, they will have access to professional case managers and rehabilitation specialists who will be able to assess your needs and identify the services you can access locally.

How long will it take to resolve my claim?

Every injury is unique and it's just not possible to predict how long it may take to conclude a claim. That will depend on a number of factors such as whether the circumstances or responsibility for the accident are disputed, the nature and severity of the injury, whether the defendant is co-operative and whether court proceedings are required.

What are interim payments?

In some cases where liability for an injury is accepted, interim payments may be made – essentially you receive part of the damages that a defendant might be liable to pay at the end of the case during the course of the claim. These payments are intended to prevent the claimant suffering financial hardship before the case is resolved. Any interim payments will be deducted from the final award of damages.

How will my claim progress?

Your solicitor will run through the process with you but they will be looking to gather evidence about what caused your injury, obtain and review medical and possibly other expert reports, and considering your treatment and long-term prognosis to put together a case for compensation.

Will I have to go to Court?

Most personal injury claims are settled by negotiation or mediation without the need to go to Court.

How are damages calculated?

There are two elements to an award of damages:

- General damages – recognise the pain, suffering and loss of amenity caused by the injury
- Special damages – wholly related to the financial losses and extra expenses caused by the injury – for example, loss of income and the cost of future care

How much compensation can I expect to receive?

This is very difficult to predict. Your solicitor will do their best to suggest a realistic sum when they are fully aware of the case and will strive to achieve a fair settlement that reflects the severity of your injury, any financial losses suffered, and to ensure that you have funding for ongoing care and support if needed.

How will my compensation be paid?

Compensation will usually be paid as a one-off lump sum. However, brain injury claims can lead to significant settlements running into £millions for severely injured individuals and are often paid as an initial lump sum followed by periodic or annual payments for life to ensure that the injured person can be properly cared for throughout their life.

Will I be entitled to welfare benefits during and after my claim?

You may be entitled to a range of welfare benefits if an injury prevents you from working in the short or long term. The welfare benefits system can provide support in respect of care and mobility as well as income, and you should think about applying as soon as possible after your injury; the system is quite complex and benefits may not be backdated. Your solicitor should be able to introduce you to benefits experts to advise on your entitlements.

How can I best manage any financial award?

Your solicitor will be able to advise on this and will probably recommend that a significant award is paid into a Personal Injury Trust.

Compiled with the help of Francis Lacy Scott of asb aspire, a Brain Injury Group member firm.

This note is for information only and does not constitute legal advice.

The Brain Injury Group is a national network of legal and other professionals supporting individuals and families affected by brain injury. www.braininjurygroup.co.uk