

Personal Injury

Complaining and claiming compensation



*Community
Legal Service*



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0845 345 4 345 www.clsdirect.org.uk

If you are injured because someone was negligent (they did something they shouldn't, or didn't do something they should have done), you may be able to get compensation. This leaflet explains your legal rights, and how you should go about getting compensation if you've been injured in this way.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 15 for sources of information and advice.

What is a personal injury?

Any injury you suffer is of course 'personal', but you can claim compensation only if a person, company or some other organisation is at least partly to blame for your injuries. The person or organisation must have been careless about the way something was:

- done;
- not done, when it should have been; or
- made or repaired.

The person or organisation that was careless ('negligent') may have to pay you compensation for your injuries.

A personal injury can happen, for example:

- at work;
- in a road accident;
- because of a faulty product;
- because of a mistake during medical treatment; or
- because you tripped on a paving stone or slipped on a wet floor in a shop.

An injury may be psychological as well as physical, so you may be able to get compensation for distress or upset after an accident as well as for the physical injury.

You may have been injured during an assault (attack) – see 'What if I am a victim of a crime?' on page 13 for more about this.

What you should do first

If you have been hurt, you will first need to deal with the pain, shock and distress you may be feeling.

After that, you may want to think about claiming compensation and getting practical, personal or financial support to deal with the injury and its after-effects. Even if you haven't yet decided whether to claim compensation, you should collect evidence about the accident. For example, if you were injured after tripping on a damaged paving stone, you could take photos of the paving stone. Write down details of the accident as soon as you can, while they are still fresh in your mind. If anyone saw what happened to you, get their name and address.

If you visit a doctor for treatment, ask them to record the fact that you had an accident. Their records will be evidence that your injuries were caused by the accident, which will be helpful if you later decide to make a claim. For injuries that you can see, photographs of the injury will also be helpful. Make sure you have a note of the date when the photos were taken.

If your accident happened at work

You should tell your employer about the accident straight away. By law, your employer must keep a record of most types of accident. If you are self-employed, you must record the accident yourself. You or your employer should also report the accident to the Health and Safety Executive or the local authority environmental health department, if this is necessary. This is done through the Incident Contact Centre – see 'Further help' on page 15.

If you think your employer may not properly record the accident, write to them giving brief details of the accident, and keep a copy.

You may be able to receive certain types of benefit after an accident at work (for example, Industrial Injuries Disablement Benefit). To claim them, you must fill in a form from your local Jobcentre Plus.

If your accident was on the roads

If you are hurt in a road accident, you must tell the police and, if your car was involved, your insurance company. The insurance company may refuse to pay out if you don't report the accident.

If your accident was during medical treatment

If you were injured when being treated, for example by a doctor or in hospital, different rules apply. See the Community Legal Service Direct leaflet 'Medical Accidents'.

What action can I take?

There are several things you can do, depending on what you want.

- You may want someone to explain or apologise and try to ensure no-one else is hurt in the same way. See 'If you just want to make a complaint' on page 5 for more on this.
- You may want support or counselling to help you deal with what has happened to you (or to someone close to you). See 'Further help' on page 15 for organisations that can help you or put you in touch with support groups for your particular problem.
- You may need help with money problems resulting from the injury (for example, because you haven't been able to work). The Community Legal Service Direct leaflets 'Dealing with Debt' and 'Welfare Benefits' have more information about this. See also 'What can I claim compensation for?' on page 12.

- You may want compensation for money you've had to pay (or money you've lost) because of your injury, including any psychological injury (if you now suffer from depression, for example). Depending on your case, you may be able to get some money paid to you before your claim has been dealt with fully.

If you just want to make a complaint

If your injury was caused by a business or organisation (for example, a shop), but was a minor injury, you may not want to take legal action. You may be happy with:

- an apology;
- an explanation of what went wrong, so that it doesn't happen to someone else; and
- perhaps, a token 'goodwill' payment.

Depending on who was responsible for your injuries, you may be able to use an organisation's official complaints procedure. For example, if you suffered a minor injury when you tripped on an uneven pavement, you could use the complaints procedure of the council that maintains the pavement. Reporting accidents like this could stop another person being more seriously injured.

If you are unhappy with how your complaint was handled, you could still take legal action for compensation in the same way as if your injury had been more serious. However, organisations can take a long time to deal with official complaints, and there are time limits for starting legal action. So if you think you may want to take legal action, do not delay (see 'How long do I have to make a claim?' on page 9).

If you were injured because of medical treatment you were having under the NHS, you can use the NHS Complaints Procedure. See the Community Legal Service Direct leaflet 'Medical Accidents' for more on what to do.

If you were injured by a police officer and you want to make a complaint (or take other action), see the Community Legal Service Direct leaflet 'Dealing with the Police'.

If you want to claim compensation

If you want to claim compensation for a personal injury, you can:

- ask a solicitor to make your claim for you;
- use a claims assessor to negotiate compensation for you; or
- use a claims management company, which, for a fee, will arrange for a solicitor to deal with your case.

Consulting a solicitor does not necessarily mean you will be taking action in court. Most personal injury claims are settled through negotiation without a court hearing.

However, if you were injured because of a crime (for example, you were attacked), there are other options. See 'What if I am a victim of a crime?' on page 13.

Unlike other types of legal action, you cannot normally get public funding (legal aid) to help pay the legal costs of a personal injury case. However, there are other ways of helping to pay for your case. See 'What if I can't afford a solicitor?' on page 11.

How do I choose a solicitor?

If you want to consult a solicitor to claim compensation, you should get advice from one who specialises in personal injury cases. You can find specialist solicitors through:

- the Community Legal Service;
- the Association of Personal Injury Lawyers (APIL);
- the Law Society;
- a Citizens Advice Bureau or law centre;
- your trade union, if you have one.

See 'Further help' on page 15 for how to contact these organisations.

If you have legal expenses insurance, your insurers may want to appoint a solicitor to handle your case. If you want to use another solicitor, ask them to speak to the insurance company.

What are claims assessors and claims management companies?

There is no legal definition of a 'claims assessor' or a 'claims management company'. Different ones work in different ways. However, claims management companies normally use solicitors to help you with your case, while most claims assessors do not.

How much do they cost?

Claims assessors normally operate on a 'contingency fee' basis. This means that if you win compensation, the company will take a percentage of the amount you win as their fee. If you lose your case, they will usually get nothing. But you should check the terms offered carefully to make sure you understand what you would have to pay whether or not you win your case.

Claims management companies work in different ways, so how much you pay them (if anything) depends on how they work. You may have to pay a fee for the claims management company's work. But as well as or instead of this, the company may:

- make you take out an insurance policy to ensure you do not have to pay anything if you lose your case and are charged for the other side's costs. This type of insurance is expensive, so the claims management company may set up a loan for you to buy it; or
- simply refer you to a solicitor, in which case you will have to discuss with them how to pay for your case.

If you win your case, you may be able to get the other side to pay the cost of any insurance you've taken out, as well as paying you compensation.

However, there is no guarantee that you will get back all the cost of an insurance premium. And even if you win, you will probably still have to use part of your compensation to pay the interest charged on any loan you've taken out to cover the insurance.

Because there is no standard way that claims management companies work or charge you, before you agree to let one take your case you should be clear about what you will, or may, have to pay. See 'Things to check if you are considering using a claims assessor or claims management company' on page 8.

How is a claims management company or claims assessor different from a solicitor?

The main differences between using a claims management company that uses solicitors and employing a solicitor direct are:

- the way you may have to pay for your case (see 'How much do they cost?' on page 6);
- some claims management companies use a claims manager who acts as a go-between for you and the solicitor; and
- a claims management company may insist that you take out an insurance policy to cover your opponent's costs if you lose your case, and a loan to pay for the insurance policy premium. If you use a solicitor, you can arrange these things separately, if you feel you need it.

There are bigger differences if you use a claims assessor that doesn't use solicitors to put your case. First, claims assessors can negotiate directly only with the organisation you believe is responsible for your injury. They cannot take court action for you nor represent you in court. This means that if they cannot get the right compensation for you, you will then have to use a solicitor to start court action. This kind of delay may put you beyond the time limits for bringing a claim (see 'How long do I have to make a claim?' on page 9).

Claims management companies and claims assessors are not currently regulated (though the government is looking at doing so). All solicitors must follow the Law Society code of practice. Solicitors must have insurance against negligence, and they have their own complaints system, which you can use if you are not happy with how they handled your case. In this situation you can complain to the Law Society's Consumer Complaints Service. It can make solicitors pay you compensation if it finds they have not acted as they should.

Things to check if you are considering using a claims assessor or claims management company

There are no specific rules and regulations covering how claims assessors and claims management companies must work (for example, how they can charge you). So you should ask some questions before agreeing to let one take on your case. You should check:

- whether your case will be handled by a solicitor or by someone who isn't legally qualified;
- whether they have any particular experience in your type of claim;
- what you will have to pay for if you win your case (and when you will have to pay it);
- what you will have to pay for if you lose your case (and when you will have to pay it); and
- what you can do if you are not happy with how your case has been handled.

How long do I have to make a claim?

If you are thinking about making a claim for compensation, it is important to get legal advice as soon as you can. This is because there are time limits for starting a personal injury claim. The time limits are different for different types of claim:

- If your injury was caused by someone's negligence, you must start court proceedings within three years of when you were injured, or of when you first knew you were injured and believed it was due to someone's negligence (for example, if you are suffering from a disease caused by exposure to asbestos, you may not have become aware of your injury for years after you were exposed to it, so you can start proceedings within three years of finding out).
- If you were assaulted (attacked), you must start court proceedings within six years of the assault. But if you are applying for criminal injuries compensation (CIC) the period is two years – see 'What if I am a victim of crime?' on page 13.

- If you are claiming for an incident involving an aircraft or boat, there are special time limits, which are less than three years, and will depend on the circumstances of the incident. You will need to seek specialist advice if you are making this type of claim.
- If the case is about a child who has been injured, the time limit does not normally start until they turn 18 – see 'What if I am claiming for a child?' on page 13.

If you were injured abroad, the time limits may be different – see 'What if I was injured in an accident abroad?' on page 11.

You should get advice before:

- contacting the person or organisation you think caused the injury (though you should tell your employer at once if you were injured at work); or
- replying to any letters or offers to settle your claim.

If you are not sure about whether you want to make a claim, you could go to a law centre or Citizens Advice Bureau to get advice about your options. They will also be able to tell you what information to take when you first go to see a solicitor. Most personal injury solicitors will give free advice on the phone or at a first interview.

What if I was injured in a road accident?

If your injury was at least partly because of another driver's negligent driving, you can claim compensation. You can still claim compensation even if the other driver was not insured or if you think they don't have enough money to pay you compensation. The Motor Insurers' Bureau (MIB) may pay you compensation if the other driver:

- didn't have insurance; or
- cannot be found (for example, if you were injured in a hit-and-run accident).

See 'Further help' on page 15 for how to contact the MIB.

What if I was injured by a faulty product or service?

If a product (for example, a car or a power tool) was unsafe and injured you, you're protected by the Consumer Protection Act 1987. This law also covers you if you were made ill by contaminated food bought in a shop.

You do not have to prove that the company that made the product was negligent. But you have to prove in court that:

- the product was 'defective' (less safe than you are reasonably entitled to expect); and
- it caused your injury because of this.

You may need an expert witness to help you show the court that the product was less safe than you could reasonably expect.

You could also take action if you are injured by a service provider (for example, a hairdresser).

For a small injury, where you are not claiming a large amount of compensation, you could use the small claims procedure in court. This does not cost very much, and you can present your own case without using a solicitor. But the most you can claim for a personal injury using this procedure is £1,000.

You should also keep any evidence (such as the product you think caused the injury).

For more about this, see the Community Legal Service Direct leaflet 'Problems with Goods and Services'.

What if I was injured in an accident abroad?

If you were injured outside the UK, you usually have to make a claim under the law of the country where it happened. However, sometimes this isn't so, particularly if the person or organisation responsible is based in the UK. For example, if you had an accident while on a package holiday, you may have a claim against the tour operator who sold you the holiday.

Claiming under foreign law can be difficult and expensive and you will need to get expert legal advice. Some personal injury solicitors in this country specialise in claims for people injured abroad.

What if I can't afford a solicitor?

Taking legal action can be expensive. You can no longer get public funding (legal aid) for most personal injury cases. The only cases you can get public funding for are injuries because of:

- a medical accident;
- deliberate harm, such as child abuse; and
- an assault by the police.

However, if you can't afford to pay legal fees, there is nearly always a way to get help with the costs, as follows.

Trade union help

If you are a member of a trade union or similar type of organisation, it may be able to help you with legal costs and finding a solicitor.

Legal expenses insurance

Check your credit card conditions and house contents and car insurance policies to see if they include legal expenses cover for the type of personal injury claim you want to bring. However, you may need to consult a solicitor to find out whether the cover offered will be enough for your case.

'No-win, no-fee' agreements

These agreements, officially called 'conditional-fee agreements', are now very common. They mean that you do not have to pay your solicitor's fees if you lose your case. You will probably need to take out insurance (called 'after-the-event' insurance) to protect you against the possibility of having to pay the other side's costs if you lose. Your solicitor can help you with this. For more information, see the Community Legal Service Direct leaflet 'No-win, No-fee Actions'.

What can I claim compensation for?

There are two types of compensation you can claim.

General damages

General damages are for the pain and suffering you have had to cope with after an injury.

Special damages and future loss

Special damages are for money you've had to pay or earnings you have lost because of an accident.

You can also claim for loss of future earnings if, for example, your injury means you cannot carry on working in a job or profession you have been working in.

And if a member of your family has been killed, you may be able to claim compensation if they supported you.

Special damages compensation can also cover:

- damage to clothing or other belongings;
- the cost of medical treatment;
- travel costs to hospital for you and visiting relatives;
- ongoing care, therapy or counselling to help you recover from or cope with your injury; and

- the cost of hiring a car or repairing the one damaged in an accident.

If you need to spend money for things related to your accident or injury, try to keep all your receipts. This will make it easier to claim the money back as part of special damages.

What else affects how much compensation I could get?

If a court decides you were partly to blame for your injuries, it may reduce the amount of compensation you get (for example, if you were not wearing a seat belt when you had a car accident). This is called 'contributory negligence'.

You may also get less compensation if the other side can prove you did not 'mitigate' your losses (that is, you did not do what you could to keep them to a minimum).

If you have been getting some types of benefit payments because of a personal injury, you may have to repay them from any compensation you get. The rules are complicated, and you should get expert advice. For more on claiming benefits, see the Community Legal Service Direct leaflet 'Welfare Benefits'. You may be able to set up a trust to protect your benefits if you receive compensation. A specialist personal injury solicitor will be able to advise you about this.

What if I am claiming for someone who has died?

If the person who has been injured dies within the normal three-year limit for making a claim, you can take action for them. You must take action no more than three years after:

- the person died; or
- you knew (or could have discovered) what caused the injury (if this is later than three years).

What if I am claiming for a child?

If a child has been injured, the time limit for making a claim normally does not start until their 18th birthday – but you don't have to wait until then to start a claim. Someone under 18 cannot take legal action in their own right, but must have a 'litigation friend'. This could be:

- a close relative;
- an adult friend;
- a social worker; or
- someone else appointed by the court.

What if I am one of a group of people injured in the same way?

If other people have been injured in the same way as you (for example, in a plane crash or by taking an unsafe medicine), it may be better for you to join with them in taking legal action. You will need to get expert legal advice about doing this.

What if I am a victim of a crime?

If you have been injured by a criminal act (for example, you were attacked), you may be able to get compensation:

- by claiming from the Criminal Injuries Compensation Authority; or
- if the court orders the person who committed the crime to pay you.

You can claim compensation from the Criminal Injuries Compensation Authority if, for example, you were:

- the victim of an assault; or
- injured while trying to help the police after a crime was committed.

You can also make a claim if you are a close relative of someone who died in either of these ways.

You should report the incident to the police as soon as possible. You must normally apply to the Criminal Injuries Compensation Authority within two years of the incident. However, this time limit may be extended in a few cases (for example, if you are making a claim because you were abused when you were a child).

To apply, you need to fill in an application form which you can get from the Criminal Injuries Compensation Authority (see 'Further help' on page 15). You should get expert help with filling in the form.

A court may also order someone convicted of a crime to pay you compensation for your injury, loss or damage.

You cannot apply for this compensation yourself. You must give the prosecution as much information as you can about your injuries and losses (for example, lost earnings) so it can put them to the court. The amount of compensation will depend on what the offender can afford to pay. The most you will get is £5,000.

Further help

Community Legal Service Direct

Provides free information, help and advice direct to the public on a range of common legal issues.

Call 0845 345 4 345

Speak to a qualified legal adviser about benefits and tax credits, debt, education, housing or employment or find local advice services for other problems.

Click www.clsdirect.org.uk

Find a quality local legal adviser or solicitor and links to other sources of online information and help.

Incident Contact Centre

phone: 0845 300 9923

www.riddor.gov.uk

The Law Society

phone: 020 7242 1222

www.lawsociety.org.uk

Trades Union Congress (TUC)

phone: 020 7636 4030

www.tuc.org.uk

Association of Personal Injury Lawyers (APIL)

phone: 0870 609 1958

www.apil.com

Motor Accident Solicitors Society (MASS)

phone: 0117 929 2560

www.mass.org.uk

Motor Insurers' Bureau

phone: 01908 830001

www.mib.org.uk

Criminal Injuries Compensation Authority

phone: 0800 358 3601

www.cica.gov.uk

Disaster Action

Gives support to people involved in disasters and their relatives and friends. It can also make referrals to specialists.

phone: 01483 799066

www.disasteraction.org.uk

Victim Support

Offers information and support to most victims of crime.

phone: 0845 3030 900

www.victimsupport.org.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.clsdirect.org.uk

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The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

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The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCLeaflets@ecgroup.uk.com or Fax 020 8867 3225



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