

personal injury claim guide

The Personal Injury (PI) Department at Buckles Solicitors LLP has decades of experience helping clients seek compensation. This guide has been designed to provide an overview of the claims process.

Who can bring a Claim?

A claim may be brought by anyone who has sustained an injury, or on a child's behalf by a parent or legal guardian. Unfortunately, some accidents do result in death and in these cases the victim's dependants are usually able to start the claim process for the benefit of the deceased's estate.

When can you make a Claim?

There is a legal time limit of three years from the date of an accident to start a PI claim. For children, this time limit applies but does not start until their 18th birthday. The exceptions to the three year time limit are:

- If you were injured in a plane or at sea then a two year limit applies
- If you only become aware of an injury after the act of negligence (e.g. industrial disease cases such as asbestosis).

The Accident Claim Process:

1. Instructions

The initial stage of the claim process is to inform one of our team about your accident. We will arrange an appointment at one of our offices, or if you are unable to travel, we will come and see you. It is important that you provide as much information as you can at this stage, so that we can fully advise you as to the merits of bringing the claim.

2. Funding

The next step is to look at how your claim will be funded:

- **Insurance:** You may be covered for PI accidents under an insurance policy you have taken out, such as a motor or

house contents policy, so we will need to inspect these documents. If you have legal expenses cover, we will write to your insurers who may appoint us to act for you. Some insurers prefer to use their own panel solicitors and we will advise you as to the advantages and disadvantages of using their services

- **Conditional Fee Agreement (CFA):** If you do not have legal expenses cover or you choose not to use the insurer's panel solicitors, then a CFA may be appropriate for you. A CFA is more commonly known as a **no win, no fee agreement** and this will be fully explained by a member of our team.

We can also help you by arranging an after event insurance policy to protect you in respect of the other side's costs should the claim be unsuccessful.

3. Letter of Claim

A letter of claim is then sent to the potential defendants (person/company etc) you are claiming against. The defendants have 21 days from receipt of the letter to pass it on to their insurers. Once they have received the letter, the insurers have three months to gather evidence, investigate the claim and respond.

4. Medical Evidence

While the insurance company investigates the claim we may use the time to obtain medical evidence. With your permission, we will write to your GP/hospital and ask them for copies of your medical notes and records. We will then arrange for you to see a specialist medical expert who is able to provide a report commenting on your injuries, future care, treatment, and prognosis.

5. Witness Evidence

It is useful to gather evidence from any witnesses to your accident, including any helpful statements from family or friends regarding your injuries and the lifestyle limitations these may have imposed.

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How a Personal Injury Case Progresses

Instructions

Inform one of our team about the accident

Funding

We will advise you as to how the claim should be funded

Claim letter

A detailed letter of claim will be sent to the potential defendants

Medical Evidence

Hospital or GP's records and notes need to be obtained

Damages

From the medical evidence, it will become clearer as to the value of the claim

Pass on Medical Evidence

Medical evidence will be sent to the defendants

Evidence

Evidence needs to be obtained from any witnesses

Admission of blame

If the defendants admit liability then they normally settle out of Court

Court Proceedings

If the defendant does not accept liability or the value of the claim then the case is taken to Court

Outcome

A Judge will make a decision as to liability and the value of the claim based upon all the evidence provided

6. Admission of Liability/Negotiation of a Settlement

After investigating the claim, insurers may admit that their insured is to blame. If this is so, we will try and agree a sum to settle your claim, once your medical evidence has been compiled and a schedule of your past and future losses prepared.

7. Part 36 Offer

Either party can make a formal offer at any time under Part 36 of the Civil Procedure Rules. If an offer is made or received the implications of it will be explained at the time by our team member dealing with your claim.

8. Court Proceedings

If no agreement can be reached or there is no admission of liability, then the only way to resolve your claim is to begin Court proceedings. However, the vast majority of cases we deal with settle before going to Court.

9. Damages

Damages is the recognised term used for the compensation you will receive if your claim is successful. There are several different areas to consider when analysing the amount of damages available:

General Damages: General damages include compensation for the pain and suffering you have had to cope with after sustaining the injury, as well as your inability to carry out day to day tasks and loss of quality of life (e.g. if you are no longer able to carry out your usual sports or hobbies).

Special Damages: This may include compensation for money you have to pay out, or have lost because of the accident. It may cover areas such as:

- Loss of earnings due to enforced Statutory Sick Pay
- Loss of earnings due to having to take a lesser paid job as a result of your injury
- Loss of pension if you are unable to

return to work

- Travelling expenses
- Purchasing of prescriptions
- Cost of rehabilitation products for your injury
- Cost of a hire car.

You should keep receipts for any losses and expenses including any journeys made relating to your injury as this will make it easier to claim money back. Any future losses and expenses will be awarded for the likely period of loss.

Interim Damages: Claims can take many months to settle and in some cases interim payments may be paid to you. This award of damages takes into account your immediate financial outgoings if you are away from work and not being paid your full salary. Any interim damages awarded will be deducted from the final award.

Reduction in Damages: Even if you were partly to blame for your accident you may still be able to recover some compensation. However, there may be a reduction of the amount of damages awarded to take into account your contributory negligence (e.g. not wearing a seatbelt in a road traffic accident caused by another motorist).

10. Claiming State Benefits

You may be able to claim state benefits such as Incapacity Benefit. Once this money has been paid to you it is likely to be deducted from your final award for damages.

11. Mitigation

You have a duty to keep your losses to a minimum and if you do not do so you may be awarded less compensation; for example, if you do not return to work or do not seek alternative employment when you are well enough to do so.

12. Costs

How the costs are paid depends upon how the case is being funded. With most

successful cases the defendant's insurers agree to pay our legal costs. If we have entered into a CFA with you then we do not recover any costs from you.

Clinical Negligence

The UK has an outstanding reputation for the provision of quality healthcare services and it is widely accepted that our healthcare professionals are some of the best in the world. However, mistakes are occasionally made and the results can be severe. Often, clients are not interested in financial gain from taking legal action, but simply demand the knowledge of what happened to you or your loved ones and why it happened.

Time Limits

As with a normal accident claim you have three years from the date of the act of negligence to bring a claim or three years from the date you knew or should have known that you might have a claim (whichever is the later). In the case of children, the three year period runs from their 18th birthday.

A Successful Claim

To bring a clinical negligence claim you will need to show that:

- The medical practitioner owed you a duty of care
- He or she breached that duty
- Loss was suffered as a result of that breach of duty.

It can be difficult to show all three elements. Just because a medical practitioner may use a different method or procedure they may not necessarily be negligent. The Claimant must show that the medical practitioner has followed a course of action which is not supported by any reasonable body of medical opinion. The Claimant must then show that this breach of duty caused their injury.

The Clinical Negligence Claim Process:

The process for claiming in clinical negligence differs slightly from accident claims.

1. Instructions

Your first step is to inform one of our team about the facts of the case and upon that basis we will advise you as to the merits of bringing the claim. It is essential at this point to bring with you as much information and documentation as possible regarding your claim. One of our team members will also discuss with you the ways the claim can be funded should they feel you have a strong case.

2. Medical Evidence

With your permission we will obtain copies of your medical notes and records from your GP/hospital.

3. Witness Evidence

At this point, it would be useful to obtain statements from any witnesses to the alleged negligence.

4. Expert's Reports

Once we have your medical records we will instruct a medical expert to prepare a report providing their opinion about whether there has been negligence by the medical practitioner. We will then need to obtain a separate report dealing with the issue of whether the negligence caused injury.

5. Letter of Claim

Once we have received the expert's reports and, if they are helpful to your case, we will send a detailed letter of claim to the potential defendants. They will have three months to provide a response.

6. Settlement

Once the defendants have investigated the claim they will either admit or deny liability. If there is an admission of liability we will then take steps to put a value on your claim. We will need to obtain additional medical

How a Clinical Negligence Case Progresses

Instructions

inform one of our team about the alleged negligence

Funding

We will advise you as to how the claim should be funded

Medical Evidence

Hospital and GP's records need to be obtained

Witness Evidence

Evidence needs to be obtained from any witnesses

Expert's Reports

Obtain advice from an independent medical expert

Claim Letter

A detailed letter of claim will be sent to the potential defendants

Admission of blame

If the defendants admit liability then they normally settle out of Court

Court Proceedings

If the defendant does not accept liability or the value of the claim then the case is taken to Court

Outcome

A Judge will make a decision as to liability and the value of the claim based upon all the evidence provided

evidence dealing with the extent to which the negligence has caused you injury, namely the nature and duration of your injuries. If there is no admission of liability the only way to proceed may be to issue and serve Court proceedings against the defendant. However, the vast majority of cases settle before going to Court.

7. Part 36 Offers

Refer to step 7 of the accident claim process.

8. Damages

Refer to step 9 of the accident claim process.

9. Costs

Refer to step 12 of the accident claim process, although please note that Legal Aid is sometimes available in clinical negligence cases.

Personal Injury Trusts

At the end of a successful PI claim you will receive a compensation payment. Rather than putting the money into your bank account, an alternative is to set up a PI Trust. There are two key reasons why you may want to consider this:

- If you are receiving any means-tested

benefits, then a lump sum compensation payment may result in these benefits being reduced or withdrawn. Placing your payment into a Trust could enable you to continue receiving benefits and keep your lump sum

- A PI Trust could also protect your compensation from being swallowed up in later life to pay for long term care in a Care Home or your own home. Even a relatively small sum held in a PI Trust can be used to protect the entire value of your home from Care Home Fees; please ask for details.

Types of Claims we can help with

- Road traffic accidents
- Clinical negligence (claims against a hospital, your GP, dentist or other medical treatment provider)
- Work-related accidents
- Industrial diseases and work related disorders (such as Tinnitus)
- Pavement trips
- Slips
- Household accidents
- Travel and holiday claims
- Injuries sustained from faulty products
- Criminal injuries.

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