

Personal Injury

Making an accident claim



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?

An injury may be brought by anyone who has sustained an injury. For a child, it can be made on their 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 I make a claim?

There is a legal limit of three years from the date of an accident to the start of a PI claim. For children, this time limit applies but does not start until their 18th birthday. Exceptions to the three year limit are: if you were injured in a place or at sea then a two year limit applies; and 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

Instruction

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 it is more convenient, we can come to 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 a claim.

Funding

Insurance: you may be covered for PI accidents under an insurance policy you have taken out, such as motor or house contents policy. 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, and 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 paying for your own disbursement, should the claim be unsuccessful.

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 onto their insurers. Once they have received the letter, the insurers have three months to gather evidence, investigate the claim and respond.

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 for copies of your medical notes and records. We will arrange for you to see a specialist medical expert who will provide a report commenting on your injuries, future care, treatment and prognosis.

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.

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.

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.

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.

Damages

Damages are 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: this includes compensation for the pain and suffering you have had after sustaining the injury as well as your inability to carry out day-to-day tasks and loss of quality of life.

Special damages: this may include compensation for money you have to pay out or have lost because of the accident:

- ▶ 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 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 in 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).

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.

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 e.g. if you do not return to work or do not seek alternative employment when you are well enough to do so.

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 there may be a deduction from your damages but this can be no more than 25% of the compensation agreed and awarded.

Personal injury Trusts

At the end of a successful PI claim you will receive a compensation payment. An alternative to putting your money in a bank account is to set up a PI Trust. There are two key reasons why: if you are receiving means-tested benefits, then a lump sum payment may result in these benefits being reduced or withdrawn; and it can also protect your compensation being swallowed up later in life when paying for Care Home Fees or your own home.

Key contact



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