

A guide to

Personal Injury



Your guide to Personal Injury

There is never a good time to have an accident, when you do, your life and finances can be severely impacted. Pengillys are here to guide you through the claims process, and assist you with a successful claim.

We cannot of course put you back into the exact same position as you were before the accident, especially if you have suffered significant life changing injuries. The aim of personal injury law is to return you as near as possible to the position you would have been in 'but for' the accident, by way of monetary compensation.

Types of claim

We specialise in all types of personal injury claims including:-

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|--------------------------|---------------------|-----------------|
| ▪ Accidents at Work | ▪ Public Liability | ▪ Noise Induced |
| ▪ Road Traffic Accidents | ▪ Product Liability | Hearing Loss |

Claims process

All claims are governed by the Pre-Action Protocol for Personal Injury claims. The Protocol's objectives are to:-

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| (a) encourage the exchange of early and full information about the dispute; | (d) support the just, proportionate and efficient management of proceedings where litigation cannot be avoided; and |
| (b) encourage better and earlier pre-action investigation by all parties; | (e) promote the provision of medical or rehabilitation treatment (not just in high value cases) to address the needs of the Claimant at the earliest possible opportunity. |
| (c) enable the parties to avoid litigation by agreeing a settlement of the dispute before proceedings are commenced; | |

We do not have a no-fault system so the person bringing the claim (**the Claimant**), is required to prove the accident and injuries were caused by the other party's (**the Defendant's**) negligent actions, and there are three elements to this:-

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| 1. Did the Defendant owe you a duty of care? | 3. Did you suffer injuries and losses as a result of the breached duty of care? |
| 2. Was the duty of care breached? | |

Claims with a likely value of up to £25,000 are brought via the Ministry of Justice online claims portal. We will draft a Claims Notification Form and submit it onto the Portal. This is sent straight to the Defendant's insurers. **Claims valued in excess of £25,000** will be brought by way of sending the Defendant or their insurers a Letter of Claim setting out all relevant details.

You will need an independent medical expert who is specifically qualified to report on the injuries you have suffered. We can assist you with this.

Rehabilitation

Most insurers are party to, or adhere to, The 2015 Rehabilitation Code. Under the code, the Defendant insurers collaborate with Pengillys to allow for early rehabilitative intervention within the claim process. The Code's purpose is to help "Claimants make the best and quickest possible, medical, social, vocational and psychological recovery".

If necessary, you will be assessed to ascertain any rehabilitation needs, and appropriate treatment will be arranged on a private basis, bypassing the long NHS waiting lists.

If you have suffered severe injuries, Pengillys will liaise with the Defendant insurers to instruct a specific rehabilitation company, who will carry out an initial needs assessment, and work closely with you to ensure your rehabilitative needs are being met.

Compensation

There are two parts to compensation. These are for pain, suffering and loss of amenity (general damages), and out of pocket expenses (special damages).

General damages will be valued based on the injuries suffered, timescale for recovery, and if recovery

is not possible, how the injury will affect you in the future on a day to day basis (i.e. at work, socially, hobbies).

Special damages cover expenses incurred as a result of the accident both past and future. These include loss of earnings, the cost of care provided by trained carers or family and friends, travel (i.e. to medical appointments), medical expenses and miscellaneous expenses. Past losses will be calculated up to the date of settlement and added to your general damages. Future losses will be calculated from the date of settlement until such time as agreed.

Funding

There are a number of ways in which your liability for legal costs may be met:-

i) It is not uncommon for people to have legal expenses insurance either as an extension to a motor insurance policy, a home contents policy or specialist legal expenses insurance. We will ask you to check all of your policies of insurance to enable us to ascertain whether you have legal expenses insurance. If you have insurance of that nature your legal expenses insurers may agree to our being instructed on your behalf but that is not always the case. We shall be pleased to negotiate with your legal expenses insurers on your behalf. On occasions insurers will only allow us to act for you once proceedings have been issued. In that instance we would be willing to pursue other funding options until such time as insurance is available.

(ii) Legal Aid (more properly known as Community Legal Service Funding) is not normally available for accident compensation claims. We will consider your possible eligibility for such funding before entering into any other funding agreement.

(iii) If you are a member of a trade union you may be entitled to free legal advice. Some employers provide legal costs insurance cover for employees.

(iv) You may of course choose to be personally responsible for our charges and expenses in which event we would submit an interim bill on

a quarterly basis or, if you wish, more frequently. Clients often find that monthly payments of legal fees enable them to keep a close track on their spending.

(v) From 1 April 2013 Solicitors are now able to offer "Damages-based Agreements" (**DBA's**). This means that we receive a proportion of your damages. We would agree a percentage with you, up to 25% (including VAT). If you were successful we would claim costs from the other side in the usual way and give credit for any monies received. Any shortfall would be paid from your damages under the DBA. This may be a funding option which you wish to consider further and may be offered by other firms

(vi) You will, no doubt, have heard of "no win, no fee agreements". The correct term for these agreements is "Conditional Fee Agreements" (**CFA's**). Under the terms of the CFA, you would be liable for our basic costs, disbursements and expenses. In addition, we will charge a success fee, which is calculated on the basis of 25% of your general damages and past loss special damages, or 100% of our costs, whichever is the lesser amount.

If your claim is brought via the Ministry of Justice Claims Portal, costs are fixed depending on what type of accident you have had.

We would be pleased to meet with you to discuss any questions that you may have.

Please call us on **01305 768888**

We will then put you in touch with a member of our experienced Personal Injury Team.

Please visit www.pengillys.co.uk where full details of our Personal Injury Team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.



PENGILLYS

SOLICITORS • MEDIATORS

Looking after you



Call us for professional help and advice on

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We can also advise on:

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