

# The UK Limb Loss Information Centre Fact Sheet

## Legal Claims Following an injury

### **Introduction**

Choosing a solicitor when you or a loved one has been injured is a crucial stage in bringing a successful claim for compensation. In many cases the decision is made at a difficult and emotional time. This fact sheet aims to remove some of the hurdles involved in the process, so you can be confident your claim is in the right hands.

Apart from rare exceptions, you only get one opportunity to bring a claim for compensation: so it is vital that you work with a qualified, specialist solicitor with experience of catastrophic injury claims. He / she will use their skill and judgment to ensure you receive the maximum amount of compensation that you are entitled to.

The Douglas Bader Foundation are working with five specialist law firms who have formed themselves together under the title 'The Limb Loss Legal Panel'. We have included basic advice about the claims process, legal time limits, how your lawyer's fees are paid and covering the risk of having to pay the other side's fees if the claim does not succeed.

### **What type of legal firm should I be looking for ?**

It is imperative that specialist legal advice is obtained from a qualified solicitor who is a member of one or more of the following:

- Law Society's Personal Injury / Clinical Negligence Panels;
- Panel member of AVMA (Action for Victims of Medical Accidents);
- Accredited Member of APIL (Association of Personal Injury Lawyers);

These are recognised quality kite marks guaranteeing experienced legal advice from a specialist in their field. In relation to c), in serious injury cases such as amputation, we recommend that you should instruct a lawyer at the level of Senior Litigator or Fellow.

The level of injury sustained as an amputee has life long consequences, particularly in terms of prosthetic needs and employment prospects. Return to a previous job or career is not always possible and part-time rather than full-time work may be more realistic.

Most lawyers are aware of the term "rehabilitation", but effective lawyers make real use of interim or stage payments to create opportunities to assist with: meeting the inevitable financial shortfall when a breadwinner is no longer able to work; getting back to driving; getting back to work (previous job or learning a new skill); improving quality of life through better prosthetics, and other equipment, and adapting accommodation to suit the altered needs of an amputee.

All Panel Members will work towards a) an early interim payment of damages b) early, appropriate rehabilitation within a timescale that is suitable to an individual's condition and progress.

### **What is 'medical' or 'clinical negligence'?**

Doctors want the best outcome for their patients. They are human and can make mistakes. In medicine, the consequences of making a mistake can be extremely serious. If medical staff are 'negligent' (the standard of care falls below that of a reasonable body of doctors practising in the same field) and a patient suffers avoidable illness, injuries or death as a result, a legal claim may be appropriate.

'Clinical' or 'medical negligence' is a complex and highly specialist field of law. It involves the legal and forensic process of investigating a claim in order to decide whether there are grounds for a successful legal claim and, where such grounds exist, pursuing a claim with a view to maximising appropriate levels of compensation.

Each case is different, but a thorough examination of all medical records, scans, X rays and test results is required in order to come to a preliminary view on the merits of a case. It is then usual for a number of experts to be instructed who will comment on treatment and issues of negligence and causation (whether the negligence caused the injury) and for other experts then to be instructed in areas such as care and accommodation needs as each individual case demands.

### **What is 'personal injury'?**

If an individual has an accident and is injured in circumstances where another person is at fault, they may be able to make a legal claim for compensation for 'personal injury'. The other party may be an individual, company or local authority, for example. Like clinical negligence, the compensation claim can include not only damages for the injury itself, but also for the financial consequences of the accident, including loss of earnings, medical expenses, care, equipment (such as prosthetics) and accommodation. It is usual to obtain medical records and instruct a number of experts from different fields to write reports; it is these reports that form the basis of your lawyers' valuation of the claim and which comprise the evidence relied upon if the case goes to court.

If an injured person believes they may also be partly to blame for an accident, this does not necessarily mean that they do not have a claim, but the entitlement to compensation will be reduced to reflect their contribution to the accident. It is important therefore to seek advice from a qualified, specialist solicitor at an early stage, especially in serious injury cases, where even a relatively high reduction in damages can still result in a substantial award.

### **Legal Time Limits**

Important legal time limits apply. The general rule is that a claim for compensation must be commenced (issued in court) within three 3 years from the date of an accident or incident that caused injury. In some circumstances the time limits are shorter (see, for example, criminal injuries claims below) and so it is absolutely vital that legal advice is obtained at an early stage. The court may be able to exercise its discretion to extend the time limit beyond 3 years but this is rare and will only apply if certain criteria are satisfied. Different time limits may apply if your accident was abroad.

### **What are criminal injuries ?**

#### **The Criminal Injuries Compensation Scheme – 'CICA'**

If you have been injured as a result of the criminal actions of someone else, you may be entitled to compensation under the CICA. The time limits are different from a civil claim for personal injuries or medical negligence -usually, but not always, 2 years from the date of an assault. For further details see the section on Compensating Victims of Crime at [www.limblosslegalpanel.co.uk](http://www.limblosslegalpanel.co.uk) or [www.limblossinformationcentre.com](http://www.limblossinformationcentre.com)

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### Costs

Most personal injury claims are now funded through conditional fee agreements (CFA) also known as 'no win, no fee' so you don't have to pay 'up front' for a solicitor. When you first contact a solicitor they should tell you whether your case will qualify for a no win, no fee agreement. To do so they will need to make enquiries about: the circumstances of your accident / injury; whether you have legal expense insurance or any other method of funding your case (such as Trade Union membership), and whether you are eligible for public funding (which is still available in clinical negligence cases).

Some solicitors may request that a client fund a certain level of investigation before they agree to accept the case on a 'no win, no fee' basis. The law firms on the Limb Loss Legal Panel will not do so. The position may be different in the case of foreign or clinical negligence claims where the merits of the case, and the work required in order to assess the merits of the case, can be considerable.

In many cases the firm of solicitors will be in a position to agree a CFA or 'no win, no fee' agreement at the outset, without any expense being incurred by the client. All the Panel firms on the Limb Loss Legal Panel may agree to meet the initial cost of expenses, such as expert medical reports, on the basis that the expense is repaid on conclusion of the case. This is not to be dismissed lightly as expert reports and fees for attending court or meetings in a catastrophic injury case can easily cost £20,000 or more in total.

The basic rule about legal costs is 'loser pays'. If your case is running under a CFA you should be protected against any liability for costs as a result of the fact that a) your lawyer has agreed not to charge if the case is lost b) an insurance policy is taken out by your lawyers to protect you against having to pay the other side's fees if your case is lost. There is a 'success fee' payable if you win (a bonus to reflect the risk of losing, plus the fact that your lawyer might end up with nothing in terms of fees), but this is paid by the other side's insurer and does not come out of your compensation.

The vast majority of legal claims accepted by law firms settle out of court, with costs being paid by the other side in addition to the compensation or 'damages' obtained for you as the injured party. All Limb Loss Legal Panel solicitors guarantee that 100% of damages are retained by clients instructed through the Panel on a CFA or 'no win, no fee' basis. The situation may be different if a contingency fee agreement has been entered into (see below), otherwise there is no provision for the lawyer to be paid, and the only way that the case can be run is for costs to be paid out of damages.

### Legal Expense Insurance

Many people now benefit from legal expense insurance, which you will find either on your home insurance or travel insurance. If this is the case the policy will cover, up to its limit (usually between £5,000 and £50,000) a) your liability for the other side's fees in the event that the claim is lost b) expenses incurred, such as medical report fees c) your lawyer's legal fees.

It is important to check at the outset whether you have legal expense insurance. If you do, your insurer may direct you to one of their so-

licitors. You are not obliged to instruct one of these firms. The best advice is to choose the firm you would like to represent you; your lawyer can then liaise with your insurers about the funding of your case, as it may be possible for the firm that you have selected, rather than the firm offered to you, to act for you under the policy.

### Contingency Fee Arrangements

A contingency fee arrangement is different from a 'no win, no fee' agreement. It is appropriate for applications to the CICA or in 'hit and run' cases where the Motor Insurer's Bureau administer the claim, and where there is no liability for them to pay costs, even when the application is successful. If an award of compensation is made, the solicitors are paid an agreed percentage of the award at the end, or an amount of costs in accordance with an hourly rate agreed in advance. They finance the case throughout although may ask you to fund expenses such as the cost of expert reports. Members of the Limb Loss Legal Panel will generally agree to fund expenses as well as fees where appropriate on the basis that costs and fees are deducted from damages.

### How lawyers assess the value of a legal claim

This is a complex, forensic exercise about which it is impossible to generalise. Each case is different, which is why it is so impossible to compare the award that you receive, with the one that you read about in the newspaper. Essentially, each case is valued using a combination of expert evidence, witness testimony and documentary evidence to support a) an award for pain, suffering and loss of amenity as a result of the injuries sustained b) the financial losses incurred since the date of the injury, and c) financial losses that are expected to be incurred in the future. The losses claimed must have been caused by the accident.

The types or 'heads' of loss for cases involving amputation would include prosthetics and other medical expenses (physiotherapy, counselling, future surgery for example), loss of earnings, care and other services (either provided by family and friends or paid for), accommodation and adaptations to housing, equipment (such as wheelchairs) and travelling expenses, including adaptations to vehicles. These would all be costed using expert and other witness testimony, and included in the claim in addition to the claim for the actual injuries sustained.

The fundamental principle behind compensation is to attempt to put you back in the position, as far as money can do, that you were in at the time of the accident or injury. It sounds straightforward, but in serious injury cases the issues raised can be extremely complex which is why advice from a qualified, specialist solicitor is crucial.

If you would like more advice on pursuing a compensation claim please contact the Limb Loss Legal Panel's Legal Helpline on: 0207 650 1305 or email: [dsymms-fahey@leighday.co.uk](mailto:dsymms-fahey@leighday.co.uk).

The Douglas Bader Foundation have entered into a relationship with the solicitors firms on the Limb Loss Legal Panel whereby they advertise their services through its various outlets and in return the firms pay to these charities an annual, sizeable donation, which is helping to ensure that they can provide a good quality service to all their members. This arrangement between The Douglas Bader Foundation and the Panel is operated in accordance with the Solicitors Introduction and Referral Code 1990.