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## **L.E. LAW INFORMATION SHEET NO. 11**

### **GUIDE TO PERSONAL INJURY CLAIMS**

#### **1. Introduction**

This Guide is intended to be a brief introduction to the subject of personal injury claims, i.e. claims for compensation following an accident or injury. The Guide will hopefully help to answer some of the questions which are frequently asked by those considering a claim, but it is not a substitute for taking professional advice on the circumstances of a particular claim from a qualified solicitor specialising in such claims.

#### **2. Do I have a claim?**

Injuries can arise in a whole number of different situations. The law does not automatically give a right to compensation just because you have suffered an injury. Generally speaking, you have to show that somebody was to blame for the accident, either because they were negligent, or because they were in breach of some particular rule or regulation.

Some of the most common types of accident claims are as follows:-

1. Road Traffic Accidents – If the driver of a car or any other road user (cyclist, pedestrian) causes an accident because of their negligence, they will be liable to pay compensation to those suffering injury or damage to property as a result. Claims against pedestrians and cyclists are relatively rare, partly because they are not obliged to have compulsory insurance, whereas motorists are. If a motorist is uninsured, or untraced (e.g. in a hit and run case) the claim will be dealt with by the Motor Insurers' Bureau.
2. Accidents in the Workplace – Employers have a general duty to provide a safe system of work, and there are also a whole range of different regulations which impose legal duties on them, e.g. in relation to manual handling (i.e. lifting of weights) use of computer screens and so on. An employer can be liable to compensate both for an accident from a particular event, and from a

condition which can develop over a long period of time (e.g. asbestosis or repetitive strain injuries).

3. Pavement Trips – Local Authorities have a statutory duty to maintain the highway and the pavements to a reasonable standard and so as to avoid danger. Contrary to popular belief, authorities are not liable for every accident as a result of a trip on an uneven pavement. As a rough rule of thumb, if there is a difference of one inch or more in the level of adjacent paving stones, it is likely the Local Authority will be liable to pay compensation to those tripping on the pavement. However, this is only a guideline. The Authority will furthermore have a defence if it can show it operated a reasonable inspection system to check for defects in the pavement.

You may still be able to pursue a claim even if you were partly to blame yourself for the accident. This is known in law as “contributory negligence”. For example, if you are involved in a road traffic accident between two drivers who were both 50% to blame, you will still be entitled to pursue a claim for compensation. The level of compensation you recover will be 50% of what you would have got if the other driver had been completely to blame.

### 3. **What is my claim worth?**

There will generally be three elements to the value of your claim:-

- (a) General Damages
- (b) Special Damages
- (c) Interest

#### **(a) General Damages**

This is what the court awards for the injury itself, the pain and suffering caused and the loss of any amenity (i.e. ability to carry out normal day to day tasks). The Judges have in recent years been issued with guidelines as to the value of particular injuries. For example, a simple fracture of the leg is likely to attract an award in the region of £4,000/5,000. Multiple injuries are harder to value, and there will often be cases of injuries, which are on the borderline between one category and another, but by and large valuing the general damages element is reasonably predictable.

#### **(b) Special Damages**

These are awarded for your out of pocket expenses, both past and future, caused by the accident.

Loss of earnings will often be the biggest element of your compensation if the accident has caused you to take time off work, or in more serious cases to give up work altogether. In such cases you will be compensated not only for loss of take home pay, but loss of pension rights and other fringe benefits.

You could also get compensation for such things as private health care treatment, travelling expenses, medicines and medical appliances, damage to your motor vehicle, and so forth.

We would always strongly recommend you keep a careful record of all costs and expenses that you incur following an accident, and retain receipts and bills to prove your loss if the case goes to court.

**(c) Interest**

The court will award you interest on your General Damages (from the date the court proceedings were issued) and on your Special Damages (from the date the loss in question was incurred).

**4. Am I too late to make a claim?**

Lawyers refer to the time within which a claim must be brought as a “limitation period”. For most types of personal injury claim, court proceedings must be commenced within 3 years of the date of the accident. The courts do have powers to extend the 3 year time limit in suitable cases.

In certain types of accident claim, the relevant time limit may be longer or shorter than the normal 3 years.

Taking professional advice at the earliest opportunity is essential to protect your position.

**5. How do I make a claim?**

In recent years, a number of protocols have been issued, including one for personal injury claims. These are designed to ensure the parties attempt to settle their claims out of court, and do not commence court proceedings unless necessary.

Under the personal injury protocol, the first stage is for a letter of claim to be sent on behalf of the Claimant. This will summarise why it is said the Defendant is liable, summarise the injuries suffered, and give a preliminary indication of what losses are being claimed for.

The letter of claim should be acknowledged within 2 weeks, and the proposed Defendant has up to 3 months to give a substantive reply, indicating whether liability to pay compensation is admitted or denied, and if denied the reasons why.

Medical evidence will have to be obtained, and the parties are encouraged to jointly instruct doctors in the appropriate discipline. For complex injuries more than one medical report may well be necessary.

The Claimant will be expected to disclose documents supporting his claim before any court proceedings are begun, and likewise the Defendant will be expected to disclose any relevant documents as well.

Once the Claimant has produced all the information and documents expected under the protocol, then he may start court proceedings if no satisfactory offer of settlement has been made in the meantime.

It may well take 6 months or more to go through the steps required under the protocol, and if court proceedings are required these could take an additional 12 months or more.

For the various stages in a court action see our Information Sheet No. 1, L E Law Guide to Litigation.

## **6. How much will it cost to pursue the claim?**

There are a number of different ways of funding personal injury claims, and it is important to establish at the outset which method is to be used.

Many accident victims will have the benefit of legal expenses insurance which will pay their costs of pursuing the claim. Such insurance is often included within other insurance policies e.g. motor, household contents or travel insurance. If you are not sure whether you have such insurance, it is important that you show your policies to us so that we can contact the insurers if necessary.

If you do not have insurance, then we may be willing to offer you a Conditional Fee Agreement (so called “no win no fee”). If we are satisfied that your claim has sufficient prospects of success, we will act for you without charge. If your case succeeds we will recover our costs from the Defendant. If your case fails, we will not charge you for our services. We would almost always recommend that you take out an insurance policy in conjunction with a CFA so that you are covered against any risk of having to pay your opponent’s costs if you lose, and any expenses such as court fees or experts reports.

We will always offer a free initial interview to discuss a personal injury claim, and will give you an indication of your funding options in the course of that meeting.

## **Disclaimer**

This information sheet is for guidance only and does not remove the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

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