

## **CLAIMING COMPENSATION**

### **THE IMPORTANCE OF SEEING THE RIGHT SOLICITOR**

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**&**  
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Taken from the text of a talk given at the NAIDEX Conference (Birmingham NEC) May 2000, this presentation is entitled "CLAIMING COMPENSATION (THE IMPORTANCE OF SEEING THE RIGHT SOLICITOR)". However, I do not feel it would be at all right or complete without an introduction from myself, and how I became involved with the work of the Spinal Injuries Association.

I am now a trustee of the Spinal Injuries Association and a practising solicitor at Pannone & Partners Solicitors, Manchester.

In 1988, aged fourteen, I was instructed to dive into the shallow end of my school's swimming-pool by my then school P.E. instructor. I did as he said, and hit my head on the bottom of the swimming-pool. I broke my neck at C.5/6. I suffered a complete break in my neck, and my spinal cord was severed beyond repair. I am now a C.5/6 tetraplegic. I am paralysed from the chest down, with partial paralysis in my hands and my arms. From the moment of my accident, I knew I was paralysed. I have now been in a wheelchair for just over twelve years. In spite of Christopher Reeve's opinions on the future possibility of a cure for paralysis caused by a spinal cord injury, I firmly believe I will spend the rest of my life in a wheelchair.

The day after my accident I was transferred to the Southport Spinal Injuries Unit. I remained there for eight months, during which time I underwent intensive nursing, followed by a long period of rehabilitation.

I was eventually discharged in September 1988. I immediately returned to school, where I completed my G.C.S.E. examinations and my 'A' Levels.

I left school in the summer of 1991, and began studying at the University of Warwick for a History Degree in the autumn. I graduated from the University of Warwick in July 1994. In September 1995, after a twelve month break from university life, I started studying law at the Nottingham Law School. I completed the law conversion course and the Law Society Finals in Nottingham, and in so doing, completed the academic stage of training to become a solicitor.

I began work as a trainee solicitor in September 1997 and in September 1999 I qualified as a solicitor. I now work full time dealing with only personal injury claims, arising mostly out of road traffic accidents. I only ever act on behalf of Claimants.

The firm that I work for undertakes head injury claims, spinal cord injury claims, industrial disease claims, claims arising out of accidents at work, and also claims which may occur as a result of people being injured in accidents abroad.

I became involved with the work of the Spinal Injuries Association in September 1998. I was elected as a member of the Governing Council of the Spinal Injuries Association at that time. I first joined the Spinal Injuries Association as an inpatient at the Southport Spinal Injuries Unit. As time

went on, following my accident, I realised that I wanted to have more input into the national charity for those with a spinal cord injury, so I decided to put myself forward for election to the Governing Council.

For those of you who are unaware, the Spinal Injuries Association is the only national organisation for spinal cord injured people and their families in the U.K. The Spinal Injuries Association is controlled and run by people who are themselves paralysed through spinal cord injuries. Founded in 1974, the Spinal Injuries Association provides specialist information for people with spinal cord injuries on topics such as legal rights, physical access to buildings and cities and holiday accommodation. As a Governing Council member of the Spinal Injuries Association, myself and fourteen fellow-trustees decide the direction in which the Spinal Injuries Association should be heading, and where the Spinal Injuries Association should be targeting its resources. It is also part of my role to attend functions organised by and on behalf of the Spinal Injuries Association.

My interest in law as a career began when I pursued my own claim for compensation after my accident. Being only fourteen at the time, I have my parents to thank for making initial inquiries of a solicitor, only a few days after my injury. I remember to this day, my first meeting with my solicitor. It was the start of a four-year legal claim. I eventually settled my case out of Court in February 1992, ten days before I was due to take the stand in the Witness Box in Manchester's High Court.

I was lucky. My parents chose a more than reputable firm of solicitors to handle my claim. I was represented by an excellent barrister, and at the end of my own case I settled for a sum of money which will never ease the pain and suffering of paralysis (no sum of money ever can), or mean I will never have to work again, but which has financed my way through university life, and helped me into

a position where I can enjoy full-time employment, and more importantly, earn a living and support myself financially. My financial settlement has also enabled me to lead an independent and active lifestyle since my accident, and, to coin a phrase, "got me back on my feet again".

To me, and I'm sure you will agree, that is the purpose of claiming compensation.

Compensation is there not just to reflect the pain and suffering that an individual has been through. In fact, if one was to look at the amount a Court of Law would award purely for the pain and suffering, an individual goes through after injury, I am sure you would be very surprised to learn how low such sums actually are. The majority of a compensation settlement is there to provide funds for such things as: -

1. Adaptations to housing and cars,
2. Provision of necessary equipment,
3. A suitable care regime, and
4. Where applicable, if an individual is so severely injured that they are unable to work again, a replacement source of income.

All these are designed to help an injured person regain control of their own life, and once again become an independent, active and important member of the society in which they live.

So why should a claimant pursue a compensation claim, and why is it important that they see the right solicitor to conduct that claim?

I should add at this point that I am now talking more about serious injuries such as spinal cord injury and head injury, rather than less serious injury. I do that not to minimise the seriousness of other injuries in any way, but merely to highlight the importance of choosing the right solicitor to conduct maximum severity claims. To answer the first question therefore, I refer you back to my own scenario. It is vitally important, that if a claimant is able to make a claim for compensation following an accident, that they are advised to do so. Compensation can run into hundreds of thousands of pounds, sometimes millions of pounds for the most serious of injuries. A large compensation award can make a vital difference, not only to a claimant's standard of living, but also to that of their family and dependants. As mentioned earlier, it will also enable a claimant to pay for home improvements, equipment and medical and nursing care, if needed.

So why is it important for a claimant to see the right solicitor?

Put simply, the right solicitor handling, for example, a spinal cord injury claim, will be aware of all the necessary steps to take to achieve a settlement which will truly reflect the needs of the claimant. That settlement will also be obtained within the shortest possible time, will be conducted throughout to a high standard, and will at all times make appropriate use of experts to support the claimant's case.

So what will the right solicitor have over other solicitor?

Firstly, EXPERIENCE - only experienced solicitors can tell a claimant whether or not they have a claim. In so advising, the solicitor must consider all the evidence available. It is, of course, important that a claimant sees an experienced solicitor, even if they think they do not have a case.

Someone else may be at least partly to blame. In this scenario, the claimant would still be entitled to compensation, although the damages eventually received would be reduced, to take account of any contributory negligence of the claimant bringing the claim.

I refer to a compensation claim which the firm of solicitors I work for pursued recently. The claimant was an adult enjoying a summer holiday. One day during his holiday, the claimant dived into the swimming pool and broke his neck. He suffered a severe spinal cord injury and was left tetraplegic. The claimant had been swimming in the pool the day before the accident occurred, there were clear markings on the side of and around the swimming pool and the claimant was an adult. One would be entitled therefore, to think that this particular claimant would be unable to pursue a successful compensation claim. In spite of these facts, the claimant recovered £500,000.00. As the total value of his compensation claim would have been somewhere in the region of £3 million, if the accident had in no way been his fault, the settlement that was eventually achieved on his behalf represented a finding of some 80% contributory negligence against him. In spite of this, the claimant was still able to recover a large lump sum which enabled him to purchase a suitable property, a suitable vehicle and implement a more suitable care regime. I also refer to the example of an individual who may suffer injury in a road traffic accident and who was not wearing a seatbelt. It is commonly held that there is a finding of around 25% contributory negligence on the part of a claimant who fails to wear their seatbelt in order to protect themselves from injury. It is important therefore, that even if a claimant considers themselves or is considered by a Court of Law, to be partly to blame for their injury, a compensation claim is still pursued as they may have a very good chance of securing some financial compensation for injury sustained.

An experienced solicitor should also be aware of the existence of the Motor Insurers' Bureau, (M.I.B.). The M.I.B. is responsible for compensating those individuals injured by either untraced or uninsured drivers of vehicles which cause injury to others.

In addition, there is the Criminal Injuries Compensation Authority, (C.I.C.A.). The C.I.C.A makes compensation payments to victims who suffer personal injuries because of a criminal activity against them.

Compensation payments from both the M.I.B. and C.I.C.A. are never as large as those obtained in the Courts or against insurance companies, but it is important to be aware of and pursue claims through these organisations nevertheless.

An experienced solicitor will, also, be aware of all the tactics available to pursue a claim as quickly as possible. For example, it is always open for a solicitor to make an application at any stage during the claim for an interim payment (on behalf of the claimant); if liability for an accident has been established. Interim payments are often applied for in order to ease severe financial problems, or to purchase specific items of equipment, for example an adapted car, or alterations to a property. Again, it is only with experience of dealing with severe claims that a solicitor will have the knowledge and expertise to apply for interim payments. Interim payments are always deducted from the eventual settlement figure reached on behalf of a claimant and it is important to explain this. Despite this, interim payments are often vital for enabling claimants to move on personally while the compensation claim progresses. A good solicitor by pursuing an application for an interim payment, is therefore helping the claimant through what can often be difficult personal and financial circumstances.

An experienced solicitor would also be aware of the possibility of obtaining a structured settlement on behalf of a claimant. Structured settlements exist instead of a one-off compensation payment. An individual is advanced a smaller lump sum of money, instead of a large settlement and then a larger sum of money is invested in order to produce an annual income, for life. Structured settlements are not always ideal, and their suitability depends very much upon an individual's circumstances. Structured settlements can be very inflexible and once the sum of money has been invested in order to produce an annual income for life, it is difficult to get this money back or have access to the capital invested. Structured settlements are often used where there may be a dispute between solicitors on the life expectancy of a claimant. A structured settlement is a way of resolving discrepancies between solicitors and will provide an annual income for as long as the claimant survives.

Solicitors should also be aware, and advise the claimant, that certain Social Security Benefits, which may have been received as a result of an accident, are repayable to the Department of Social Security out of a successful compensation settlement. A solicitor should always be aware of the amount of the claimant's Social Security Benefits being received. Claimant's can obtain large sums in D.S.S. Benefits, and on settlement of their case, may find that a large percentage of their final compensation settlement is then repayable to the D.S.S. A solicitor should always have an up-to-date note of the amount repayable to the D.S.S., so that when negotiating a compensation settlement, the solicitor is aware of the net figure his or her client would obtain at the end of the day.

Experienced solicitors should always be aware of the advantages of a split trial. A split trial is where arguments take place on the issue of liability for the accident first, followed by arguments over the value of the case at a later date. There are three advantages in a solicitor pursuing a split trial:-

One - the issue of liability can be resolved early in the claim and the claimant's solicitors may then request an interim payment on behalf of the claimant with all the advantages that can bring. In resolving the issue of liability it is also decided very early on in the case whether in fact the claimant has a claim or not.

Two - a split trail is cheaper and quicker. Split trails are often used by solicitors, and claimants, who favour the - "if we are going to loose, lets loose quickly and cheaply!" - way of thinking. Nowadays more so than ever before, there is an emphasise on saving costs at all stages of a compensation claim. Therefore, if there is no case on liability, there is little point in a solicitor spending time and money and investigating the value of a claim which will undoubtedly involve obtaining medical and other experts reports along the way. The cost of the claim is reduced substantially by purely focusing the solicitors mind on investigating liability for the accident only and then when liability has been resolved the solicitor can then turn attention to valuing the claim at a later date.

Three - solicitors favour split trails as, a claim may brought to an end before figures are mentioned and the claimant has in their own mind an idea of the amount of compensation they may eventually receive. Solicitors understand only too well that it is difficult enough when a claim is lost which may in some cases be years after the accident. It is bad enough to lose a claim at any stage but to lose a claim knowing that it was worth potentially in excess of £3 million, makes the result even more devastating.

There is really no substitute for experience when handling large compensation claims.

**INVESTIGATING THE CLAIM** - the right solicitor will begin investigating the accident circumstances of a compensation claim at the earliest opportunity. It is therefore important that the right solicitor is instructed as soon as possible following the accident. Not only is this important for the claimant in knowing whether they have a compensation claim or not, but it is also crucial for the case that the solicitor begins investigation into the accident circumstances as quickly as possible. The solicitor will need to interview and take statements from witnesses who saw the accident. In some situations witnesses may have come forward immediately after the accident, and it is vital that these witnesses are interviewed as quickly as possible. If there is a long time span between the accident and a witness statement being obtained, recollection of the accident events can deteriorate. It is also quite possible that witnesses may, after a period of time, refuse to come forward to help. Either that, or witnesses may be lost, or become untraceable. The right solicitor, therefore, will begin investigations into the existence of any witnesses and their usefulness to the claimant's claim as soon as possible. A witness statement taken from somebody who saw an accident happen a week after the event is always much more use, and looked more favourably upon by a Court of Law, than one taken a year after the event.

**LIMITATION PERIODS** - solicitors should also be aware of the time limit for making a claim. In this country, the basic rule is that a claimant has three years from the date of an injury to bring a claim in the Courts against the party responsible for that injury. There are, however, exceptions to this, and if, for example, an accident happens abroad, a claimant's claim would be the subject of that country's jurisdiction. Another example, frequently quoted is Aviation Law, where the limitation

period is two years. In this modern era when we can be taken for a hot air balloon ride perhaps for a special occasion or a celebration, accidents will nevertheless still occur. Should an individual be injured whilst enjoying their hot air balloon ride, their claim is covered by Aviation Law and they only have two years from the date of injury to pursue a compensation claim, as opposed to the basic rule of a three year limitation period.

QUANTIFYING THE CLAIM - quantifying a claim such as a spinal cord injury claim is not easy, and is yet another reason why it is so important for individuals to see the correct solicitor. There are two sides to a compensation claim: Special Damages and General Damages. Special Damages are those losses incurred up to the date of Trial or date of settlement. These losses include such things as loss of earnings, out-of-pocket expenses, and the cost of purchasing necessary aids and equipment. General Damages includes compensation for pain, suffering and loss of amenity as a result of the injury sustained. Also included are such things as future loss of earnings, future cost of personal help and assistance, the future cost of ongoing treatment and equipment, and other future additional costs, such as transportation, holidays, etc., etc. It is important that each and every one of these areas is looked into, to ensure that a claimant's claim is quantified precisely. If, for example, a claimant is so severely injured that they are unlikely to ever work again, a future loss of earnings claim represents their future income, and it is therefore vital that the sum reflects what they would have earned, but for their injury.

Associated to the importance of quantifying a claim is the complexity of a claim such as a spinal cord injury claim, and the necessary use of experts. A spinal cord injury, resulting in paralysis, will reflect a claimant's whole way of life, from their housing, their transport, their ability to earn a living, and their domestic and social circumstances. In order for a compensation claim to be substantiated,

experts will have to be instructed in each area of the claimant's claim. Often, with a claim such as a spinal cord injury claim, a solicitor will instruct many experts, covering such things as employment, past care and future care, physiotherapy, occupational therapy, housing, transport, and in addition, of course, medical evidence which will document the individual's injury, their treatment, their injuries sustained, and a prognosis for future recovery. It is essential for a successful claim that the right experts are used and experienced solicitors will be aware of the experts to use in each discipline.

**BARRISTERS** - solicitors will also often make use of barristers at appropriate stages throughout a claim. Barristers are not just used in Court. Barristers are there to give advice at all stages of a compensation claim, from issues such as advising on liability through to advising on the value of a claim, and should an offer be received to settle a claim, whether that offer is realistic, or whether it is worth continuing the claim in the hope of securing a higher offer, or securing higher damages, should the matter proceed to a Court Hearing. Whilst there are solicitors around the U.K. who specialise in serious injury work, so there are barristers who will specialise also. The experienced solicitors will use the experienced barristers. The partnership between the solicitor and the barrister is important to the conduct and eventual outcome of the claimant's claim.

**COST** - The most important aspect of pursuing a claim to some clients is, quite rightly, how much it will cost them. It is essential for a claimant to know at the outset of the claim exactly how their claim will be funded, and any costs for which they will be liable at the end of the case. This includes advice on costs for which they are liable should they win, and should they lose their case. Legal Aid has now been abolished for nearly all personal injury cases. The vast majority of personal injury cases are now funded through the No Win, No Fee Agreements. Under the No Win, No Fee, or, as solicitors like to call it, the Conditional Fee Agreement, the claimant takes out an Insurance Policy

at the beginning of the claim which will cover them from the risk of being personally liable for their own and the defendant's legal fees in the event of their claim being unsuccessful. If their claim is successful, their legal costs will be paid by the Defendant or the Defendant's insurance company. In addition, if a claimant's claim is successful, the solicitors are then entitled to charge a percentage success fee on top of their own legal costs. The percentage success fee is set at the beginning of the claim, and the client has to be notified of the percentage success fee applied to his or her case. The Defendant or the Defendant's insurance company will also pay the success fee.

It is important that as much information as possible is divulged to the client about the costs of the case. A client should always be updated about their case as often as is appropriate. Regular contact between a solicitor and his client enables a relationship to be built up, and it is vital that the solicitor never loses sight of the fact that though this may, for them, be just another claim, for the claimant it is crucial to the quality of the rest of their life.

**SEEING THE BIGGER PICTURE** - very often, what is more important to some claimant's is not the amount of compensation they will recover at the end of their claim, but the knowledge of being told that the accident in which they were involved was not their fault. It is an important part of the process of adjusting to one's new life following a serious injury, such as a spinal cord injury, to know that you were not responsible for your own injury. I can fully sympathise with those clients who now say to me that it is not the money that counts, but the principle which is important. It is important that a solicitor never loses sight of this fact. At the same time, the opposite is true, and there are times when a client will not be happy with any offers proposed by the defendant, thinking they know the value of their claim better than their solicitor. It is vital in these cases that a solicitor provides advice on the consequences of turning down good offers made by a Defendant in a claim and points out the risk and expense of pursuing their case to court.

**SPEED** - It is important that compensation claims are always dealt with as quickly as possible. Our legal system is not famous for its speed and flexibility, and in compensation claims, the time taken to achieve a settlement can often exceed five years. There are reasons for this, such as it being prudent not to settle cases too early for fear of undervaluing them.

An individual's ability to adapt to life after, for example, paralysis or a brain injury may only become apparent after a few years. Their ability, or inability, as the case may be, to work may only become apparent after a few years, and so, for the sake of the claimant, compensation claims should never be settled without full investigation, and this will inevitably, take time.

**GETTING INVOLVED** – Solicitors no longer just do legal work, trip to and from Court and get paid! Good solicitors pursuing for example a complicated spinal cord injury compensation claim are increasingly becoming more and more involved with the day to day problems being encountered by the claimant. Solicitors nowadays are becoming involved in such things as solving housing difficulties, liaising with social services and attempting to implement care regimes on behalf of their client.

Solicitors may well use a case manager to advise on all aspects of a claimant's claim, for example, employment, housing and transport. In addition, solicitors can refer those clients who pursue a successful claim for compensation to financial advisors who can assist in investing money in order to maximise savings and ensure that the compensation received is adequate to continue to provide financial support for the rest of a claimant's life. Very often the contact and relationship that has developed between a solicitor and client results in the client requesting more than legal advice from the solicitor. For example a solicitor may obtain an interim payment on behalf of the client for a more suitable vehicle. Once that vehicle has been obtained, the client may then ask the solicitor where to go to have the car suitably adapted. Alternatively, those, for example with a spinal cord

injury, may feel lonely on moving into their own home or on leaving hospital. More and more solicitors are asked advice on places to go and activities to pursue by clients who have frequent contact with, and are supported by, a good solicitor.

IMPACT OF LITIGATION ON CLIENT - the psychological impact of a compensation claim on a newly-injured individual should never be underestimated. There is a great feeling, whilst a compensation claim is being pursued, that your life is on hold, and that only when the claim has finished can an individual pursue their life fully in the way they want to. Very often the claimant will continue to have medical problems and difficulties during the period of litigation which may follow their injury. The conclusion of the compensation claim will often mark an end to these illnesses, something we call "functional overload". It is, of course, understandable. The pressure of litigation is stressful, and as outlined earlier, the difference which a successful claim can make on an individual's life cannot be stressed enough. There are then the practical issues which follow the conclusion of a successful personal injury claim. Having succeeded in their personal injury claim, an individual will, in all probability, be able to move into more suitable housing, be able to purchase adapted means of travel, and perhaps most importantly, implement a suitable care regime which is tailored to their needs. Hopefully this may result in a claimant becoming less reliant on other family members, and lead to them pursuing more of an independent life. Good solicitors should however always remember that no two individuals are alike. For every claimant with a spinal cord injury who wants to establish his own care regime in his own home, there are those who are content to continue living with family members who are also happy to continue to provide personal care and support. What works for one client will not be reciprocated in another... even more so in spinal cord injury claims.

From the points I have raised, you will see that it is the complexity of serious injury claims which make the instruction of the right solicitor, to handle them, so important.

If the wrong solicitor is instructed, or an inexperienced solicitor is instructed, not only will time go by which will only do harm to the prospects of pursuing a successful claim, but the quality of life of the injured individual will suffer. If a claim does go wrong because of handling by a solicitor, it is always open for a client to terminate the retainer with that solicitor, and transfer his or her claim to another firm.

It was because of the number of cases which were being handled by inappropriate solicitors, and being subsequently transferred to the right solicitors, that the Spinal Injuries Association launched their Directory of Personal Injury Solicitors. The Directory covers the entire United Kingdom, and contains information on firms of solicitors approved by the Spinal Injuries Association for conducting spinal cord injury compensation claims.

The Spinal Injuries Association no longer recommends individual firms of solicitors. If a spinal cord-injured individual approaches the Spinal Injuries Association for information on pursuing a compensation claim, the Spinal Injuries Association will send to that individual a copy of the Directory. The individual can then make an informed choice from the information contained within the Directory.

The Directory contains details of each firm of solicitors, and the experience that firm of solicitors has with types of personal injury work. Firms who wish to be in the Directory are obliged to complete a detailed questionnaire, which contains such information as: -



1. The number of spinal cord injury claims the firm has conducted;
2. The number of spinal cord injury claims the firm has taken to Trial, and won and lost.
3. The level of experience a solicitor has to have reached before they are allowed to conduct a spinal cord injury claim, and the type of work with which the firm of solicitors is experienced, for example sporting accidents, road traffic accidents, accidents at work, and accidents caused by defective products.

The Solicitors' Directory has gone a long way to ensuring that those who have suffered a spinal cord injury, and wish to claim compensation, have not only gone on to make successful claim, but have done so using an approved and competent solicitor.

Having pursued a successful compensation claim myself between 1988 and 1992 I have tried both sides of the fence. I am in that unique capacity of being a client turned solicitor and, I do feel qualified to comment on the importance of the solicitor/client relationship and the importance of seeing the right solicitor.

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