

Claiming compensation for personal injury - no win, no fee agreements

If you have suffered an injury for which someone else was to blame, you might be thinking about claiming compensation.

You might want to claim compensation because:

- of an accident at work
- of a traffic accident
- of a mistake during medical treatment
- you have had an accident in the street, in a shop, or in some other public place.

Time limits for making a personal injury claim

The most common claim in a personal injury case is negligence and the time limit for this is three years. This means that court proceedings must be issued within three years of you first being aware that you have suffered an injury.

No win, no fee agreements

In many cases you cannot get financial help (**legal aid**) to claim compensation for a personal injury, and you will need to pay expensive legal fees upfront which you are unlikely to get back if you lose your case.

If you are unable to get legal aid, or do not have an insurance policy to cover your claim, one option is to enter into a '**conditional fee**' or '**no win, no fee**' agreement with a solicitor.

If you enter a 'no win, no fee' agreement, you won't have to pay your solicitors' fees if you lose (although you may still have to pay some expenses). If you win, you will have to pay your solicitors' fees and these will be much higher than if you lost your case. However, you should get back most of these from the other side and still be left with most of the compensation you have been awarded.

You should think very carefully before entering a 'no win, no fee' agreement as, win or lose, you may still have something to pay, and this can often be much higher than you might expect.

Paying the other side's costs

Under a 'no win, no fee' agreement, you will have to pay the other side's costs if you lose your case. To cover these costs, which can be very high, it is advisable to take out an insurance policy. This is known as **'after-the-event' insurance**. Many solicitors will ask you to take this out before they start your case.

Not everyone is able to take out after-the-event insurance. Insurance companies will be less willing to insure you if they think your chances of winning are too low. If you can't get after-the-event insurance, you should think very carefully about whether you still want to go ahead with your claim.

Taking out after-the-event insurance can be very expensive. You will not get the cost of this back if you lose. If you win, you may get most of it back from the other side, but you might still have to pay some of it yourself.

For example, the court may decide that the cost of the insurance policy is too high and that the other side does not have to pay the full amount. If this happens, you would have to pay the difference out of your compensation.

If you can't afford to pay for the insurance upfront, you should discuss this with your solicitor. Your solicitor might offer to pay for it. However, if this isn't possible, you may be able to put off payment until your case has been decided. Alternatively, you will have to take out a loan. If you put off payment or take out a loan, you may be charged interest which you will not be able to get back, even if you win your case.

Paying your solicitor's costs

Your solicitor's costs can include:

Basic fees

You won't have to pay these if you lose your case. If you win, they should be paid by the other side. However, if the other side thinks they are too high, the court can decide that they do not have to pay the full amount. If this happens, you might have to pay the difference out of your compensation.

Sometimes, a solicitor may agree only to charge you whatever you are able to get back from the other side. If this is the case, it must be written in the conditional fee agreement.

Success fee

The **success fee** is an extra amount you pay your solicitor if you win your case. Success fees in 'no win, no fee' cases are often quite high, and can be as much as double the amount charged in other types of legal case. You may not get all of this back from the other side and, if you don't get it all back, you'll have to pay the rest out of your compensation.

Before you enter into a 'no win, no fee' agreement, check with your solicitor how much of your compensation you will have to pay towards the success fee, and how much will be paid by the other side. If the amount seems too high when compared with the amount of compensation you are likely to get, you might want to think carefully about whether to go ahead with your claim. Alternatively, you might want to think about choosing another solicitor who charges a lower fee.

Barristers' fees

If your case has to go to court, you might need a **barrister** to represent you, as well as a solicitor.

Barristers' fees are usually not included in 'no win, no fee' agreements, so if you do need a barrister, you may have to pay them regardless of whether you win or lose, and this could be very expensive. However, your solicitor may be able to persuade your barrister to charge on a 'no win, no fee' basis.

Other expenses

You may have to pay other expenses for things like experts' fees, accident report fees, official searches, court fees, and travelling expenses. These expenses may not be included in the 'no win, no fee' agreement, and they can be very high.

Hidden costs

Before you enter into a 'no win, no fee' agreement, check the terms very carefully for hidden costs. Depending on the circumstances, and the agreement you have with your solicitor, you might have costs to pay if:

- your solicitor advises you to drop your case
- you refuse to settle out of court when your solicitor advises you to
- you agree to settle out of court against the advice of your solicitor
- you refuse to co-operate with your solicitor in some other way
- the other side is ordered to pay costs but can't afford to.

You might also have costs to pay if your solicitor advises you to drop your case, but you carry on with a different solicitor. If you then went on to win your case, you might still have to pay a success fee to your original solicitor. This would be on top of any costs you have to pay to the new solicitor.

Claims management companies

Claims management companies (sometimes called claims managers, claims handlers or claims assessors) can offer to take on your compensation claim on a 'no win, no fee' basis. Claims managers may handle your case themselves, or they may use a solicitor and act as a go-between.

All claims managers must be authorised by the government to carry out business. They must stick to a strict set of rules which cover how they advertise, take on business, deal with and represent clients. If you aren't

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happy with the service you get from a claims manager, you can make a complaint. They must have an internal complaints procedure which they must tell you about.

Before you use a claims manager, you should check that they are authorised. You can report a claims manager who isn't authorised to the Claims Management Regulation Monitoring and Compliance Unit by phone on: 0845 450 6858 or 01283 233309, or by email at: info@claimsregulation.gov.uk. To check whether a claims manager is authorised, go to: www.claimsregulation.gov.uk/search.aspx.

You should be very wary about using a claim management company to handle your case. Claims managers are not legally trained. Unless they are using a solicitor to handle your claim, they will not be able to claim compensation through the courts. This may mean that they will try and persuade you to settle out of court, and could result in you getting a lower amount of compensation.

The company may charge you a lot of money for their services. This may include very high expenses which do not come under the 'no win, no fee' agreement. Claims management companies normally charge a **contingency fee**. This means that you will be asked to pay a percentage of your compensation to the claims management company if you win your case, and nothing if you lose. The amount you might be asked to pay the company could be extremely high. In some cases, you could be left with little or nothing of your compensation. If you are in this position, you might be able to go to court to argue that the agreement was unfair and may not have to pay the company so much. You will need to get advice to do this.

Claims management companies don't have to have professional insurance. As a result, if a claims management company does not deal with your claim properly or is negligent, you may not be able to get any compensation for any loss you have suffered.

Before you enter into an agreement with a claims management company, you should think about consulting a specialist solicitor.

Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB, including those that give advice by e-mail, click on [nearest CAB](#), or look under C in your phone book.

www.adviceguide.org.uk

Other information on Adviceguide which might help

- Personal injuries
- Small claims
- Using a solicitor
- Help with legal costs

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