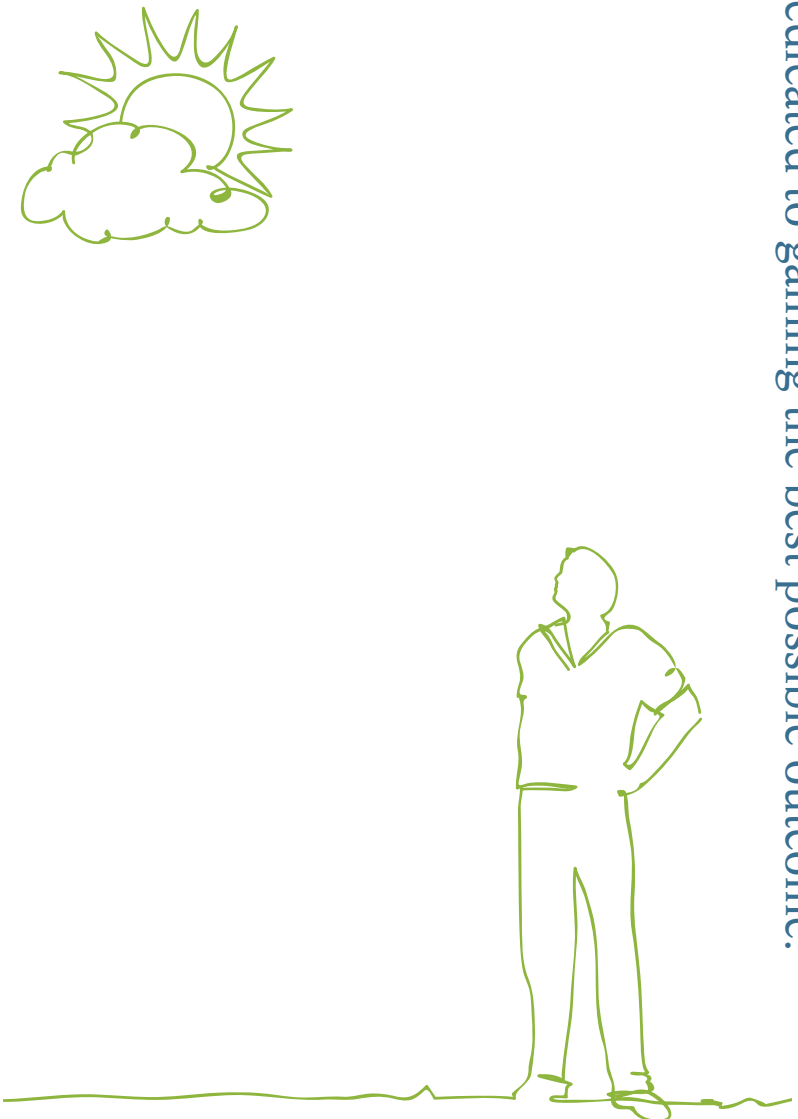


Our specialist team has the depth and range of experience to support you in your **personal injury** claim. We work in a practical, supportive & clear way, treating each client as an individual and are dedicated to gaining the best possible outcome.



Practical, supportive & clear

“Superb service. Nothing but praise.”

Client

“Many thanks for all your support and hard work through a torrid 2½ years. We both appreciate it could have ended very differently without your dedication and attention to detail.”

Client



Your legal case explained

About us

Thomson Snell & Passmore's Personal Injury team is one of the leading personal injury departments in the South East. We are proud to have a very strong reputation for accident claims and the depth and range of experience to provide you with an excellent service, whatever the nature of your claim.

The team pride themselves on their independence, devoting time and attention to understanding your needs and objectives. We draw upon our experience to provide practical insight and relevant advice, all delivered in a straightforward way.

The law has expanded greatly in recent years, allowing individuals who have been injured to claim compensation in circumstances that would not have been considered just a few years ago. This has led to a growth in the number of organisations providing personal injury compensation services. However, it is vital that you place your case in the hands of an experienced team who will put your interests first and strive for only the best results.

We are publishing this booklet to provide information for those who have suffered injury and who wish to claim compensation. Unfortunately, we cannot cover everything in this booklet and if you require more information or if you have decided to pursue your claim, please do not hesitate to contact us.

When can I make a claim?

The circumstances giving rise to a claim for compensation (damages) are varied but generally, in any circumstances where it is possible to show that a third party has been blameworthy (i.e. has been negligent or has breached a statutory duty) and that negligence or breach has caused an injury, a claim will arise. In layman's terms this is probably best thought of in terms of establishing 'fault'.

One Judge in a well-known case stated that "the categories of negligence are never closed" and this is true in that whilst there are well-established situations where negligence can arise, i.e. on the road and at work, new situations are always being litigated.

Some of the most common types of claims are explained briefly below:

Road traffic accident

Any person injured as a result of a driver's negligence has a right to claim against the driver. This includes not only a person injured in any other vehicle involved but also pedestrians or passengers travelling in the driver's vehicle. It does not matter whether the passengers are related to the driver so, for example, a wife may sue a husband and vice versa. The law states that anyone driving a vehicle on the highway should have insurance to cover injury or death to other people. Unfortunately, not everyone complies with this law but if you are injured as a result of the negligence of a driver who is uninsured you can still claim compensation. An organisation called The Motor Insurers' Bureau (MIB) will pay compensation where the driver is uninsured and, in some circumstances, even if the driver is unknown.

Slipping, tripping or falling accidents

Many thousands of people are injured each year by tripping on defective pavements, roads or other obstacles. Many others are injured by slipping on surfaces which are not clean or on debris which should not be there. When individuals are injured on a public pavement or road, a claim can be brought against the local Highway Authority (usually the local council) and where the accident occurs, for example, in a shop or another privately-owned property, an action can be brought against the owner or occupier under the Occupier's Liability Act 1957.

It is important to note that not every defect will give rise to a claim and the responsible party will be able to avoid liability if they can show that they have taken all reasonable steps to inspect the area, to prevent the defect, or to repair the defect.

It is always difficult to say at the outset whether or not such a case will be successful and if you have been injured in an accident of this nature you should arrange to take photographs of the area where you fell or slipped as soon as practically possible. In addition, measurements should be taken of the size of the defect, e.g. the discrepancy in height between one paving slab and the next.

Accidents at work

All employers have a duty to ensure that their employees are as safe as possible at work. The law states that employers must provide employees with a safe place of work, safe equipment and safe systems of work. There are numerous laws designed to protect employees in the workplace and where these have not been complied with an employee will be entitled to pursue a claim if the failure to comply has led to an injury. The most common types of industrial accident are injuries caused by defective equipment, unsafe systems of work and inadequate training and instruction. Industrial injuries also include claims involving upper limb disorders and stress at work.

Defective goods

If an injury arises because a product is defective, there are various rights of action available to the injured person. Since 1987 it has been possible to sue under the Consumer Protection Act 1987 and this will give a right of action against the manufacturer and the supplier, as well as other individuals through whom transactions have passed.

What if I was partly to blame?

Many people are reluctant to start a claim because they feel that the accident was their fault when in strict legal terms the accident was in fact caused wholly, or partly, by the fault of someone else.

Where two or more people are to blame for an accident the law does not prevent an injured party from claiming compensation but will apportion blame between the parties and reduce the injured person's damages accordingly. So, for example, someone who is injured in a road traffic accident who was not wearing a seat belt would still be able to claim damages however the compensation may be reduced if the evidence shows that had they worn a seat belt the injuries suffered would have been less.

This concept is called 'contributory negligence' and it is particularly important to bear this in mind when children are injured. It is very common for children to be injured when they run out into the road and are struck by an oncoming car. Most people assume that in these circumstances the child has no claim but this is not necessarily so. In many cases it is possible to establish that the driver was in some way to blame, i.e. by not slowing down or tooting their horn, and hence compensation can be recovered for the child. This is especially the case where the child is very young.

It is also important to bear this concept in mind where an adult has suffered severe injuries in an accident which is initially considered their fault. Again, often it is possible to prove that another party was in some way to blame and in these circumstances the injured person would recover a percentage of what can be substantial damages.

If you have been injured in circumstances where you do feel you are partly to blame always contact a lawyer before ruling out the possibility of claiming damages.

When should I see a specialist personal injury lawyer?

The general rule is that you have three years from the date of the accident to commence legal proceedings against your opponent (the defendant).

However it is always best to visit a lawyer as soon as possible after the accident. In many cases it is necessary for the lawyer to interview witnesses, to take photographs and instruct experts quickly and particularly whilst events are still fresh in everyone's mind. The main exceptions to the three year rule are for children and protected persons (someone who is unable to look after their own financial affairs).

A child's claim will not be time-barred until they are twenty-one years old and time does not start to run in respect of a protected person unless and until they do become capable of managing their own affairs (provided they were already a protected person at the time of the accident or have been so ever since the accident).

What will I receive from a personal injury claim?

The purpose of a personal injury claim is to claim damages, i.e. a lump sum of money, which in theory should put the injured person as far as possible back into the position they would have been in had the accident not occurred.

In practice this is virtually impossible as unfortunately money never repairs brain injury or broken bones but the Courts try as far as possible to achieve this objective by awarding damages of three different types:

General damages

This is the name given to the lump sum of money that is paid to an individual to compensate them for the actual injury and the pain, suffering and loss of comfort, convenience or the enjoyment of life caused by it. A Judge will decide or a lawyer will advise on an appropriate amount by referring to awards that the Courts have made for similar injuries in the past and to a set of guidelines called 'The Judicial Studies Board Guidelines'. It is only possible to carry out this exercise once it is known whether or not the injured person will make a full recovery or whether they are likely to have residual problems, or deterioration in the future. Damages can never be assessed until a medical report has been obtained and in cases of serious injury it may be necessary for a number of reports from a variety of doctors to be obtained before the prognosis can be certain.

When assessing general damages the Court and the lawyer will look not only at the injury itself but also at all the injured person's circumstances. For instance, the loss of ability to bear further children will be considered much less devastating to a forty-three year old divorcee who has three children and a demanding career than it would be to a newly married twenty-four year old. The Court may also have to take into account the fact that the injured person already had a relevant medical condition before the accident occurred. For example, if someone sustains a back injury but their back was already in a condition which meant that they would have had problems at some point in the future in any event, their damages would be less than those paid to someone whose back was perfectly fit and healthy before the accident.

Special damages

This is money to compensate the injured person for all items of financial loss and expense which arise as a direct result of the accident. This will include, for example, loss of earnings, the cost of care and nursing, travelling expenses, the cost of purchasing special equipment, private medical treatment and compensation for items damaged or lost in the accident. An injured person is under a duty to mitigate or minimise their loss. For example, if they lost their job because of an illness or disability then once they have recovered sufficiently to return to work they have to do whatever they can to try and obtain a new job.

If you have been injured and wish to pursue a claim for compensation it is a very good idea to begin to keep a record of all your losses and expenses, together with any invoices and receipts, as soon as practically possible after the accident. It is for the claimant to prove their loss and obviously the more documentation available the more likely the loss will be recovered.

Future losses

These are monies to compensate the injured person for loss and expense that it is anticipated they will suffer in the future because of their injuries. Needless to say, this involves a certain amount of 'crystal ball gazing' and it is a very difficult part of any claim. Because the Court does wish to bring litigation claims to an end as soon as practically possible, the Court will usually award a one-off lump sum payment to cover anticipated future loss and expense. The Court will therefore assess what the likely costs per annum are going to be and will then multiply that figure by a number known as a 'multiplier'. This number will always be less than the injured person's remaining life expectancy because it takes into account matters which may have arisen even had the accident not happened, for example, sickness and periods of unemployment. In addition the multiplier takes into account the fact that the claimant will receive the money by way of a lump sum and can invest the money and earn interest on it at a rate greater than inflation. In appropriate cases an order can be made by the Court that the defendant pay an annual amount (a 'Periodical Payment') for certain parts of the claim, for example care costs.

How long will it take?

This depends on many factors but one of the most important of these is the injured person's medical prognosis.

General damages are paid to compensate the injured person for pain, suffering and loss of amenity and it is vital, before settling the claim, that the prognosis is as certain as it can be. Obviously if the claimant will be left with permanent disabilities, these have to be taken into account in the final award, but in many cases it is some months after the accident before the medical experts can advise with any degree of certainty what the final position (prognosis) will be. In many cases it is not therefore advisable to try and bring a claim to an early end because to do so could mean that the claimant does not receive the amount of damages that they should.

It is true that some personal injury cases can continue for several years but that does not always mean that the claimant will have to wait until the end of the case before they receive any money from the claim. In order to avoid financial difficulties and/or to pay for equipment, treatment or care which is necessary whilst waiting for the injuries to stabilise, it may be possible to obtain an interim payment, or a payment on account.

It is however important to note that this is not possible in every case. In a case where the defendant does not accept that they are liable to pay the claimant damages they will not agree to make an interim payment until the question of their liability has been decided. That could be at the very end of the case, or the lawyer could ask the Court to deal with the liability matters as soon as possible by way of a procedure called 'a split trial'.

Brain injury litigation

Thousands of adults and children suffer brain injuries every year in accidents on the roads, at work and at play.

Frequently the brain injury causes significant disabilities although often these are not immediately obvious to others. This is because injury to the brain causes not only physical disabilities but also difficulties which cannot be seen, such as memory problems, fatigue, personality changes and difficulties planning and making decisions. These problems can have a devastating effect on normal life, not only for the injured person but for their whole family.

Following an accident involving a brain injury it is vital to choose a lawyer who understands brain injury and has expertise in this area of litigation. Thomson Snell & Passmore has years of experience in acting for brain injured clients and this is an area which continues to expand. Our lawyers appreciate the complexities involved in this litigation and will offer a sympathetic service dedicated to mitigating the effects of the injury and establishing appropriate support as soon as practically possible.

We actively support Headway and The Children's Brain Injury Trust and continue to develop our skills and knowledge by our involvement with these organisations.

The Court of Protection

In cases involving severe injuries, where the injured person lacks capacity to make decisions for themselves, the law provides that their affairs must be supervised by the Court of Protection and their day-to-day affairs have to be handled by a 'Deputy'.

Some families like a family member to act as the Deputy but most find this a daunting experience, particularly if that family member is also the injured person's carer. We have a specialist Court of Protection team with lawyers who can be appointed to act as the injured person's Deputy, safeguarding the injured person's affairs and managing them efficiently and sensitively to support their long-term welfare.

Fatal accidents

Sadly, all too often individuals are killed in an accident. It is possible for members of the deceased's family to claim compensation and they should not hesitate to seek advice as soon as possible.

The law relating to fatal accidents is very complex but essentially the family may be able to claim for:

- funeral expenses
- bereavement damages – a sum, fixed by law, paid to a husband/wife of the deceased and any parent of an unmarried child under the age of 18
- dependency damages – this is compensation to reflect income and services the deceased would have provided to the family for the rest of their life.

What will it cost me?

Recently the law regarding the funding of personal injury cases changed substantially.

It is now the case that public funding (legal aid) is not available for the majority of personal injury claims but there are several ways in which a personal injury claim can be funded with little financial risk to the injured claimant.

The costs rules are very complicated and will be explained in detail by your lawyer but, briefly, the following are now the most common methods of funding:

Legal expense insurance

Many insurance companies offer insurance policies which will cover legal costs in the event that the policyholder wishes to bring a claim. It is common for these policies to be added to building insurance policies, home contents insurance policies, motor vehicle insurance policies, credit cards and as part of roadside breakdown policies. If you do have a legal expenses insurance policy the insurance company will indemnify you for legal costs incurred provided the claim falls within the terms of the policy and provided the lawyer acts according to their terms and conditions. More often than not the insurance policy will place a limit on the amount of cover but usually the limit will be more than sufficient to cover a personal injury claim.

Frequently insurance companies will try to insist that you use the services of their panel lawyer, but it is always worth speaking to your chosen lawyer before agreeing to use a panel lawyer. In many cases the panel lawyer will not be local to you and will not be familiar with the local services which you may need to use.

A conditional fee agreement ('no win, no fee') complemented by an after-the-event insurance policy

Claimants can now pursue their cases safe in the knowledge that, if they lose, they will not have to pay any legal costs. A conditional fee agreement is complicated and your lawyer would explain it to you in detail at the start of the case. Put very simply, protection is given to you, the client, by entering into a 'no win, no fee' agreement with the lawyer and taking out an after-the-event insurance policy to cover the expenses of the case, i.e. the cost of medical reports etc, and the other side's costs if the case is lost.

Do not be afraid to contact us for fear of having to pay legal costs. We recognise that you need advice before you can commit to a case and we offer a free initial consultation.

“I would like to take this opportunity of offering my most sincere thanks to you and your team for handling my personal injury claim. The outcome was very satisfactory and way beyond my expectations which I can only attribute to your expertise and knowledge in these matters. I will have no hesitation in recommending you.”

Client

What will I need to do if I decide to bring a claim?

At the outset of the claim it will be necessary for you to meet with your lawyer to provide him/her with all the information you have regarding the circumstances of the accident, the injuries you have sustained and the treatment you have received.

It will also be necessary for you to keep a record of all of your losses and expenses and to supply all invoices and receipts and any other documentation to prove these losses to your lawyer. In order to substantiate the injuries suffered, it will be necessary for your lawyer to obtain copies of all of your medical notes and records and thereafter to instruct a doctor to prepare a report. The doctor instructed will be an independent consultant in a particular field, i.e. an Orthopaedic Consultant, a Neurologist, or a Maxillo-Facial surgeon. The doctor will be supplied with all your medical notes and records and will meet with you before preparing the report.

It may be necessary for you to see the same doctor more than once if you have sustained fairly serious injuries and it may also be necessary for you to see doctors on behalf of your opponent. Your expenses for attending these appointments will be paid by the defendant and can sometimes be paid in advance.

The vast majority of personal injury cases are settled out of court and in those circumstances it is never necessary for the claimant to give evidence in court. It should, however, be realised that this is always a possibility and if the parties cannot agree liability or a suitable settlement figure it will be necessary to take the case to trial for a Judge to decide the issues.

A Civil Court is not like a Criminal Court but the claimant and his/her witnesses and experts would have to give evidence under oath to a Judge. Nowadays most of the evidence is provided by way of witness statements and once that evidence has been admitted it is open to the other side to question the claimant and his/her witnesses. Once the Judge has heard all the evidence he/she will make a final decision.

I want to see a lawyer, what shall I do now?

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Clients also benefit from the support and collective experience of the firm. As well as personal injury claims, we offer a strong network of lawyers to provide a comprehensive service, including the provision of wills, trusts and tax planning plus buying or selling a home and all aspects of family law.

We regularly publish information sheets covering all aspects of law to help guide you through what can be a stressful process. Please visit our website, www.ts-p.co.uk, or make direct contact with specialist lawyers on 01892 510000.



Thomson Snell & Passmore is a law firm with a reputation for providing high quality, intelligent advice. We provide a comprehensive legal service and build long-term relationships by encouraging a culture of respect, understanding and excellence. **It's a common sense approach that's surprisingly uncommon.**

Member of the Law Society Personal Injury Panel
Association of Personal Injury Lawyers Accredited Firm
Member of the Headway Personal Injury Solicitors List
Member of the Child Brain Injury Trust (CBIT)
Member of the United Kingdom Acquired Brain Injury Forum
Member of the Law Society Clinical Negligence Panel
Member of AvMA (Action Against Medical Accidents)

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