

## Do I have a claim for personal injury?

### When can I make a claim?

The circumstances giving rise to a claim for compensation 'damages' are varied but 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 their negligence or breach has caused an injury, a claim will arise.

Assessing whether a third party has broken the law, such as an employer not complying with Health and Safety Legislation, can be more straightforward than deciding whether they have been negligent.

To establish someone is negligent you have to prove that they owed you a duty of care, that they breached that duty and as a result you were injured.

For example, it is well established that a road user owes a duty to other road users not to drive in a way that would put them in danger. If someone drives into the back of a vehicle which is stationary at a red traffic light, they have breached that duty. The next step is to prove what injuries occurred as a result of that particular breach of duty.

This is best thought of as establishing fault. One famous 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:

#### 1 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, for example to a victim of a 'hit and run'.

#### 2 Slipping or tripping 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). 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 Occupiers' 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.

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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, i.e. the discrepancy in height between one paving slab and the next.

### 3 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.

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 claims.

### 4 Defective products

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.

This concept is called "contributory negligence", but it is particularly important to bear this in mind when children are injured.

It is 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 sounding a horn, and hence compensation can be recovered for the child. This is especially the case where the child is very young.

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 lawyer?

It is always best to contact 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 general rule is that you have three years from the date of the accident to

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commence legal proceedings against your opponent (the defendant).

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 21 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).

To find out more information about anything detailed above, or to discuss if you have a claim, please contact Oliver Chapman, partner, on 01892 701234 or [oliver.chapman@ts-p.co.uk](mailto:oliver.chapman@ts-p.co.uk).

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