



EWART PRICE SOLICITORS

ROAD TRAFFIC ACCIDENTS -

NOTES FOR CLAIMING FOR PERSONAL INJURY AND OTHER UNINSURED LOSSES

If you have been involved in a Road Traffic Accident as a driver or passenger we hope that you will find that these notes helpful to you if you are considering making a claim. Please contact our specialist Personal Injury Team for further advice and assistance.

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LEGAL BASIS OF CIVIL CLAIMS

All road users have a legal duty to exercise proper care so as to avoid causing injury to others or damage to their property. Failure to exercise the proper degree of care constitutes negligence and creates a liability in law to pay damages in compensation for any injury or loss which was directly caused by the accident.

If a claimant (the person pursuing a claim) is held partly to blame for the accident (contributory negligence) any compensation received will be reduced in proportion to the share of blame. Thus, if a claimant is held to have been 25% to blame only 75% of the compensation agreed or awarded will be paid. The claimant will also be responsible for paying 25% of any compensation claimed by the third party. However this aspect will be dealt with by their own motor insurers, who cover such liability.

Civil claims are intended to provide compensation for injury or loss that has been suffered. They are not meant as a punishment of the responsible party. Offences such as driving without due care and attention would be the subject of a separate prosecution by the police. Conviction of such offence does not automatically create civil liability but can be used as evidence in support of a claim for compensation and it is still open to a third party to argue that there was contributory negligence.

Civil claims are made against the driver or other party who is being held responsible for causing the accident or their Insurance Company.

In cases where the responsible party is not properly insured or was not traced, it is possible to pursue the claim via the Motor Insurers Bureau (MIB) which is an organisation set up to protect victims of "Hit and Run" accidents and claims against uninsured drivers. As a rule, claims against the MIB do take longer to settle. If you believe that this may be relevant to your claim, please contact us to discuss this in more detail.

HOW QUICKLY WILL MY CLAIM BE DEALT WITH?

Much will depend on the complexity of the claim and whether liability is disputed.

If your claim is limited to property damage and a very minor injury and if liability is not in dispute then the claim could be resolved within 6 months of us receiving your instructions to proceed with the case.

If on the other hand, your claim involves contested liability, problems with evidence or serious injury, then it will be impossible to advise you as to the likely duration of the claim.

If the Police have investigated the accident and if liability is in dispute we will usually need to obtain the Police Report, which can take some time. A Police Report will not be released until after any criminal prosecutions have concluded.

If it will speed up a slow moving claim we will always consider commencing Court proceedings against the other side. However, the Rules of Court governing the conduct of your claim contain specific provision for penalising Claimants on costs if, in the opinion of the Court, proceedings are issued too soon. You will be advised if we are intending to commence proceedings on your behalf.

If you are claiming compensation for personal injury, we cannot commence Court proceedings until we have full medical evidence to attach to the Court Claim Form and, in the case of injuries that take a long time to resolve or stabilise, this may mean waiting several months for a medical report and additional months should a subsequent report, or reports, be required.

If the identity of the third party representatives is already known we will be contacting them and requesting an early interim payment in respect of out-of-pocket expenses, such as your insurance policy excess. Arrangements will then be made for the preparation of a medico-legal report, following an appointment with a specialist, to enable us to assess appropriate compensation for your injury, with the third party's representatives. If the medical report shows that there are potential long-term complications we would then usually recommend that settlement of your claim be deferred until a firm prognosis can be provided by an examining doctor. If responsibility for the accident is not admitted by the third party then settlement of your claim may be further deferred while investigations into liability are carried out.

To ensure that your claim is monitored a computer system provides for regular diarised review. Typically your claim will be reviewed at least once every calendar month. Progress reports will be supplied when necessary.

CLAIMING FOR PERSONAL INJURIES

If you have suffered personal injury as a driver or a passenger in a vehicle, it is possible to claim compensation from the third party.

The conduct of any personal injury claim is governed by Rules of Court and the majority of claims by a Personal Injury Protocol created by Statute. The overriding objective behind the Rules is to enable the Court to deal with cases justly.

We will arrange for a medical report to be prepared by an independent medical expert in order to assess appropriate compensation for the injuries.

Subject to liability, our aim is to negotiate settlement of your claim in line with current Court awards, which form the basis upon which appropriate compensation is assessed.

CLAIMING FOR OTHER UNINSURED LOSSES

A. COMPREHENSIVE COVER

If you benefit from comprehensive insurance cover your own insurers will deal with your own claim for vehicle damage.

If your car is repairable you may be responsible for the first £50, £100, £200 etc. (i.e. the policy excess). When your car is repaired the garage will only release the car to you when you have paid the policy excess. You will need to forward the receipt to us to support your claim for the policy excess.

Your other losses and out-of-pocket expenses arising out of this accident are what are referred to as “uninsured losses”.

If your vehicle is unfortunately written-off (uneconomical to repair) your own insurers will arrange for it to be inspected and then will offer you the pre-accident market value less the excess, if applicable. If you are claiming for the policy excess you will need to provide us with a copy of the letter from your insurers or brokers to show that the excess was deducted from the pre-accident value of the vehicle.

B. THIRD PARTY AND THIRD PARTY FIRE AND THEFT COVER

If you are covered for third party fire and theft or third party benefits only it means that your insurance does not cover your claim for vehicle damage. It further means that the onus is initially upon you to pay for repairs, hire fees, storage and towing fees (until/unless recovery is made from the third party’s insurers). These costs can be incorporated into your claim, subject to liability, and your duty to mitigate loss (see paragraph YOUR DUTY TO MINIMISE OR “MITIGATE” YOUR LOSSES below).

WHAT HAPPENS IF I CANNOT AFFORD TO PAY REPAIR COSTS OR CONTINUING STORAGE CHARGES?

If repair costs or the pre-accident value of your vehicle has been agreed, or the third party or his/her insurer has inspected the vehicle (whichever happens sooner), further storage charges are not normally successfully claimed. The Court will expect you to pay for storage charges and vehicle repairs after this happens. If you cannot afford to do this, unfortunately any additional expenses arising as a result will not normally be recovered for you.

REPAIR COSTS

The reasonable costs of repairing your damaged vehicle can be claimed for from the negligent party or his/her insurance company. You should obtain at least two competitive estimates. If your vehicle cannot be driven however, one estimate should be sufficient. In cases where the figure is over £1,000 the third party or his/her insurance company may wish to inspect your vehicle to agree the repair costs – this is often done without any admission as to liability. We will put them on notice to inspect as soon as possible but please check with us before you authorise the repairs to proceed.

If more than one estimate has been obtained you should have the work done by the garage with the lowest estimate. You will need to pay for the repairs and supply us with the receipted final invoice. If you are unable to meet such repair costs, you must obtain a pro-forma invoice from the garage. This should show the estimated cost of repairs including parts. If the garage discovers that further work is required over and above what they have estimated you will be able to claim for this.

WHAT HAPPENS IF MY VEHICLE IS A WRITE-OFF?

Generally, the third party or his/her insurance company will have been given the opportunity to inspect your vehicle if it is damaged beyond economical repair. After the vehicle has been inspected you must arrange for it to be removed to a place of free storage. You are only entitled to the pre-accident value of your vehicle less salvage value (“scrap value”). You should obtain offers for the salvage (in writing if possible) from local dealers. The vehicle will be assessed on its pre-accident market value which may be lower than the amount for which your vehicle is insured. If the value of your vehicle is in dispute, we will advise you regarding your options.

TOWING CHARGES

If your vehicle is incapable of being driven after a collision, the reasonable cost of towing it to the nearest competent repairer or, in the case of a write-off, to a safe storage place, can be claimed.

STORAGE CHARGES

If it is impossible to keep the vehicle in free storage you are entitled to claim reasonable storage charges, although only for a very short period of time. If your vehicle is no longer on a public road then, if applicable, pre-paid Road Tax should be recovered direct from the DVLA. A form can be obtained at main Post Offices.

YOUR DUTY TO MINIMISE OR “MITIGATE” YOUR LOSSES

The Courts firmly apply a long established legal principle whereby everyone who wishes to make a claim against another party must keep all losses and expenses resulting from the accident to a minimum. However, provided you have done this, you should not be afraid to claim for all reasonable losses and expenses sustained.

WHILE YOUR VEHICLE IS OFF THE ROAD

Hiring of Alternative Transport

If you need to hire an alternative car whilst yours is unusable, you are entitled to do so for a reasonable period provided it is necessary and the cheapest way of solving your travel problem. If the period exceeds about five weeks it may be disputed. You should contact at least two hire firms for quotations and hire from the cheapest company, keeping a note of the other quotation. If there is going to be a delay it may well be cheaper for you to purchase an older vehicle to tide you over. Initially you will have to pay hire bills. These and any hire agreements should then be sent to us. We emphasise that full recovery of all the hire charges can never be guaranteed. You are very unlikely to recover them where the hire charges equal or exceed the value of your damaged vehicle.

After an accident in which your vehicle has been damaged beyond economical repair, you will only be entitled to recover the cost of hiring an alternative vehicle for a very short period while you find a replacement. You are not entitled to hire a car from the date of the accident all the way to settlement of your claim. Payment for additional benefits (e.g. personal accident insurance) may not be recoverable. We strongly recommend payment of any vehicle hire charges within 12 months, failing which the operation of Consumer Credit Legislation can prevent recovery.

Generally, you are only entitled to claim for benefits under the hire contract that you usually enjoy when your own vehicle is being used. This means that there may be certain items of hire charges that you will not get back, such as fuel.

Loss of Use and Inconvenience

You may be entitled to recover compensation for inconvenience caused by the accident and also in respect of the period whilst you were deprived of the use of your vehicle, (i.e. when it was off the road) normally only if you have not hired an alternative vehicle.

Additional Travelling Expenses

These additional costs should be recovered providing they are caused by the accident. You will need to retain any bus, rail or taxi receipts and send these to us, together with your calculation of the claim you are making.. Credit must be given if you would have incurred part of the expense in any event.

LOSS OF BUSINESS PROFITS

This head of damage can be claimed where you have been unable to carry out your business or employment, as a result of damage to your vehicle. The actual loss to the business must be capable of proof, usually by documentary evidence and will be subject to close scrutiny by the third party's insurance company. If it is necessary to obtain an accountant's report, we will advise you. Please note that you cannot recover loss of profits as a result of an injury to a partner or employee. They can pursue a claim for their loss of income as detailed below, but a company has no right of recovery.

LOSS OF EARNINGS

This head of damage can be claimed where you have been unable to carry out your business or employment. The actual loss to you or the business must be capable of proof, usually by documentary evidence and will be subject to close scrutiny by the third party's insurance company. If it is necessary to obtain an accountant's report, we will advise you.

If you are not self-employed, your loss of earnings can be proved by a letter from your employer. This must state the net loss to you after deductions for Income Tax and National Insurance. Supporting documentation may well be required from you and/or your employers. If your employers have paid you whilst you have been unable to work, you can only recover this on their behalf, if your contract of employment expressly states that you must do so.

CLOTHING, CONTENTS OF CAR

If these were damaged, you should supply us with a receipt for repair or evidence of value if beyond repair. If you do not have receipts we will need to know the approximate purchase date and purchase price of each item damaged. If original receipts are not available you can visit a specialist retailer and request a written receipt/estimate for the replacement cost, to provide a starting point from which to negotiate appropriate compensation, subject to reduction for, e.g. age, wear and tear. Usually, if satisfied that the item was damaged, between 1/3rd to 50% of the value of the item will be deducted for "wear and tear". Unless brand-new, it will not be possible to recover the actual replacement cost of each item damaged as the insurers are not responsible for "betterment" (except for a crash helmet). You should retain any items for possible inspection. If it is impossible to retain any item then take photographs illustrating the damage prior to disposal. Any motorcycle helmet which came into contact with the ground should be replaced and the costs of replacement claimed.

COMPENSATION AND STATE BENEFITS

The law places a duty on an insurance company who compensates a person for personal injury to register the claim with the State Department for Work and Pensions (DWP) who will deduct from the compensation an amount equal to certain state benefits received by the injured person as a result of the accident, including Statutory Sick Pay, Sickness Benefit, Income Support or Family Credit. The compensating insurers also need to reimburse the cost of NHS treatment and will need to obtain this information from the hospital.

If you believe that you may be entitled to state benefits, we recommend that you contact your local office of the Department for Work and Pensions

The third party insurers have a legal obligation not to pay out any compensation until an appropriate Certificate has been received from the Compensation Recovery Unit (CRU) of the DWP, confirming either that no benefits have been paid or alternatively quantifying the sum of any benefits.

With the exception of compensation which is directly attributable to the actual pain and suffering caused by the injuries any payment you ultimately receive will be minus any applicable state benefits already paid as a result of the accident, for a period of up to 5 years. For example this will apply to sums attributable to compensation for loss of earnings.

Certain social security and local authority benefits are means tested and therefore can be influenced by receipt of compensation. For example, a compensation payment would be treated as a capital receipt for the purposes of assessing eligibility for income support, housing benefit, Council Tax benefit etc.

It might be possible to continue to receive means tested benefits despite being entitled to a compensation payment. This could typically be achieved by creating a personal injury trust. You will need to ask us to refer you for independent financial advice before we send you your compensation, or seek this advice direct, should this apply to your personal circumstances.

THESE NOTES FOR GUIDANCE ARE DESIGNED TO ADDRESS TYPICAL QUERIES AND PROBLEMS. WE WOULD BE PLEASED TO DISCUSS YOUR SPECIFIC CIRCUMSTANCES WITH YOU. PLEASE CONTACT OUR PERSONAL INJURY TEAM FOR FURTHER ADVICE.



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