

Claiming

Compensation

“I ended up owing them money”

Margarita had been told she could receive compensation for her accident – but she ended up in debt.

“ I’d only popped out to get some milk. I was half way across the pedestrian crossing when I was knocked down. The next thing I remember I was lying on the road unable to move. I heard people shouting and eventually an ambulance came and took me to hospital. I’d broken my right leg very badly.

My friend told me I should make a claim and gave me a number to call. The man I spoke to said he would make sure my case got passed to a solicitor quickly and that it wouldn’t cost me anything. ‘No win no fee’ he called it. He came to see me and I signed the papers he gave me. He said the solicitors would be in touch.

It turned out that the solicitors were in another part of the country, and I never met the person dealing with my case. I had letters from him but whenever I phoned I wasn’t able to speak to him. I left messages but he never called back. Then I got a letter saying the firm wasn’t able to do anything more for me.

I found another solicitor, this time someone whose office was near my home, which meant I could actually talk to her about what happened. I took all the papers I’d been sent by my previous

solicitors with me. I couldn’t believe it when she told me I’d taken out a loan to buy insurance which was to pay the driver’s legal costs if I lost my case. I was in debt and the debt was getting bigger all the time. I felt sick – there was no way I could repay it. No one had explained this to me before. I had been told there was a good chance I would be receiving money not end up owing it!

My new solicitor was great. She spoke to the first firm of solicitors and told them that I hadn’t understood the papers I’d signed and she managed to persuade them that I owed them nothing. I can see why it is so important that people asking you to sign things should explain them properly and I’m not signing anything I don’t understand in the future.

Margarita could have complained about the poor service she received from her first solicitor. The Legal Complaints Service may be able to help people wanting to complain to their solicitor (see ‘Useful contacts’ on page 10).



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Introduction

Making a claim for compensation may not be the first thing on your mind immediately after an accident or if you are trying to persuade your landlord to mend your roof. If you are injured you will be concentrating on getting better, and on practical things like who is going to collect the children from school. But if you think what has happened wasn't your fault and was caused by someone else, you may want to find out what chance you have of claiming compensation.

Most compensation claims are for 'negligence', which is when a person or organisation has not taken reasonable care when they should have done. For example, drivers have a duty to drive carefully. If you are injured because someone hasn't driven carefully, you will be able to claim compensation.

To get compensation you have to show that somebody has not taken the care they should have. Just being injured, even if it is serious, doesn't mean that you will be able to claim compensation, because sometimes there is no one, apart from yourself, to blame (see 'Matt's story', right).

Negligence

Negligence is when a person or organisation doesn't take reasonable care over something where they have a duty to do so, for example, failing to drive carefully. If you are injured because someone was negligent (they did something they shouldn't, or didn't do something they should), you may be able to claim compensation.



Matt's story: "It was my own fault"

"It was only supposed to be a bit of fun. I'd been out with my mates and we were on our way home. I'd had a drink, but I wasn't drunk. As we walked past the college, somebody said 'let's have a swim'. We were laughing and messing around. A few of the boys said 'yeah, come on', though others said that we were stupid and it was too cold.

The pool was all locked up. It's walled and fenced off and the gates were locked at that time of night. But a few of us managed to climb over. I took a running dive into the shallow end and hurt myself very badly. I'm now paralysed from the neck down and will never recover.

My claim for compensation was turned down. The court said there was no-one else I could blame other than myself. My Mum had to give up her job and doesn't have much of a life other than caring for me. We can't afford to pay for anyone to help her or adapt the house to make it easier for me to get round."

What is compensation?

Compensation is a financial award and can be paid for all sorts of reasons including:

- to recognise the injuries, physical and mental, caused by someone's negligence or as a result of a violent crime
- in certain circumstances, for past or future lost earnings or other expenses
- for losses you have suffered because a person or organisation has broken a contract they have made with you
- to recognise the fact that someone has ruined the enjoyment of your property by behaving in an unreasonable way e.g. a tree root from a neighbour's garden has damaged your house or the owners of a neighbouring factory allow noisy machinery to interfere with your sleep.

When can I claim compensation?

There are many problems for which you might be able to claim compensation. A 'personal injury' is the most likely one for which you might feel you need compensation. You could be compensated if you were injured (or suffer some other loss):

- because of an accident at work
- in a traffic accident
- when using a product that turned out to be faulty
- because of a mistake during medical treatment
- because you were a victim of a crime
- because you tripped on a paving stone or slipped on a wet floor in a shop
- because a gas or electrical appliance wasn't properly serviced
- when hit by a falling roof tile.

Not all claims for compensation are because you have been injured. You may be able to claim compensation because, for example:

- your holiday did not live up to what was promised by your tour operator
- you were mis-sold an insurance or pension policy
- your landlord failed to carry out a repair to your home.

However, to win your claim, you will have to prove that the person or organisation you are claiming from:

- was 'negligent', which means they did not take reasonable care when they should have done, or
- breached a contract they have with you, which means that they have broken their side of a legally enforceable contract that you made with them, or
- did not do something the law says they should (for example, if your employer did not provide you with certain health and safety equipment you need to do your job safely), or

If you were injured during a crime

There are special procedures for claiming compensation if you were:

- an innocent victim of a violent crime
- injured trying to apprehend a criminal or stop a crime.

These sorts of compensation claims are dealt with by an organisation called the Criminal Injuries Compensation Authority (CICA). For information about making a claim, visit www.cica.gov.uk, or phone 0800 358 3601.

- has ruined the enjoyment of your property by behaving in an unreasonable way (for example, if they allowed a tree root from their garden to damage your home or if their noisy machinery stops you sleeping).

At other times, claiming compensation might seem like the only way to make sure that what happened to you doesn't happen to anyone else.

But when thinking about whether to claim compensation, remember that compensation claims are not always quick or easy. You may lose your case after having spent time and money on it. You may find being involved in a legal case very stressful. There are lots of uncertainties and the person or organisation you are claiming from may challenge your view of what happened. Think about whether or not you'd be satisfied if the situation was resolved differently – by the person responsible apologising, perhaps, or offering to put things right in some other way.

Is it always worth claiming compensation?

In some situations, you may have little choice but to claim compensation. For example, you may have been seriously injured and:

- be unable to return to work or to the job you were doing before you were injured
- need expensive care and rehabilitation treatment
- need money to pay for adaptations to your home so you can live there as independently as possible.



“YOU HAVE TO SHOW THAT SOMEBODY HAS NOT TAKEN THE CARE THEY SHOULD HAVE”

How can I make a claim?

You normally need expert help to make a claim, and your claim may have to be decided by a court. You should normally ask a solicitor who specialises in your sort of claim: see 'How to find a solicitor' on page 9.

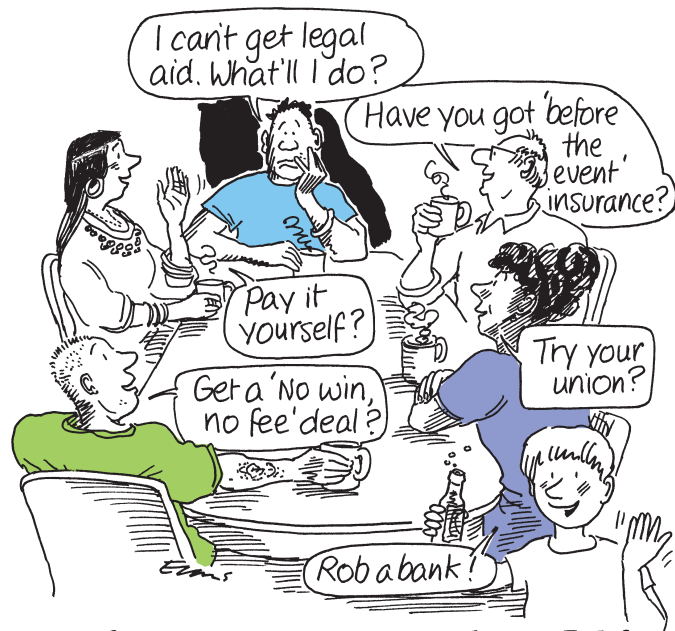
Many solicitors who specialise in compensation claims will give you free initial advice about your chances of receiving compensation for your injury or loss. Ask your solicitor about this when you first contact them. If they advise you that it is worth making a claim, they should talk to you about the costs of making a claim, and your options for paying them. If the solicitor you see does not do this or explain it clearly enough to you, consider finding another solicitor.

How do I pay for my case?

Any legal case can be expensive. You must pay for your solicitor's fees and other expenses (called 'disbursements'). But if you lose your case, you may also have to pay the costs of the person or organisation you have claimed against. You must therefore think carefully about how you will pay for your case. If you don't, instead of receiving compensation, you might end up with a big bill.

If you only have a small claim, for example, for £1,000 or less for a personal injury and some housing disrepair claims, no costs will be awarded and so even if you win you will have to pay your own costs. You could end up paying more in legal costs than you receive in compensation (see 'Jed's story', page 8).

You can get legal aid (financial help) for some compensation claims. But you can't get legal aid for most personal injury claims, which are the most common type of compensation claims. However, ask your solicitor whether you can apply for legal aid before considering other options.



CONSIDER MONEY OPTIONS CAREFULLY...

If you can't get legal aid, there are four main ways to pay for your case:

- pay yourself out of your own money
- through legal expenses insurance (called before-the-event insurance), if you have it
- with help from your trade union
- under a 'no win, no fee' agreement (officially called a 'conditional fee agreement' or CFA).

Pay yourself

You may be able to pay for your case out of your own money. You will need enough money to pay your solicitor's costs and 'disbursements' while the case progresses and before you receive any compensation. If you win your case, you should get most of this money back from your opponent. But if you lose your case, you will have to pay your opponent's costs as well as your own. This could run into many thousands of pounds which makes it too risky an option for most people.

Legal expenses insurance

You may already have insurance that could be used to pay the cost of a compensation claim. Before-the-event insurance (also known as legal

expenses insurance) is often added to car insurance and household contents insurance at little or no cost. It is worth checking your policies to find out whether they include any legal expenses cover. Your employer, trade union, credit card company or other organisation you belong to (such as a sports club) may also have an insurance policy that will cover you.

If you are seeing a solicitor about a compensation claim, take these insurance documents with you to your first meeting, so the solicitor can see whether the insurance will cover you for the type of claim you want to make.

If you are able to use your before-the-event insurance, the insurance company will normally choose a solicitor for you. If you would prefer to use another solicitor, talk to the insurance company about this. If your case is going to end up going to court, your insurance company should allow you to use a solicitor of your choice from when court proceedings start.

Trade union help

You may not know that many trade unions offer either an in-house claims service or will refer members to specialist compensation solicitors. If you're a member of a trade union see if they can help you with a claim before trying other options.

'No win, no fee'

'No win, no fee' agreements (the correct term is 'conditional fee agreement') have mostly replaced legal aid as a way of paying for compensation claims. The principle is that if you do not win your case, you do not have to pay your solicitor's fees. But many people wrongly believe that, win or lose, they will have nothing to pay. This isn't true. If you lose, you won't have to pay your solicitor's fees – but you will usually have to pay your opponent's costs.

Insuring against losing your claim

If you decide to claim compensation under a 'no win, no fee' agreement you must make sure that you won't face a huge bill for your opponent's legal costs if you lose your case. Most people take out insurance, called after-the-event (ATE) insurance, to cover them for this.

However, just because you have decided to claim compensation, does not mean you will automatically be able to buy after-the-event insurance. An insurance company will consider your chances of winning before deciding whether to offer you insurance.

If you do go ahead with a claim and you win your case, you should be able to get back most of the insurance premium and your legal costs from the other side.

ATE insurance

ATE is short for 'after-the-event' insurance. This is an insurance policy you can take out after an accident has happened and you have decided to make a claim. If you lose your claim the insurance company will pay your opponent's legal costs and expenses.

Some forms of after-the-event insurance give the insurer the right to:

- force you to accept an offer of settlement from your opponent (even if it is less than you would like)
- use a medical expert they choose to prepare an expert report on your injury or condition
- stop you from beginning court proceedings.

Under other after-the-event policies, your solicitor makes these decisions with you. Your solicitor should explain all this to you.

How much you will pay for after-the-event insurance can vary considerably and will depend on several factors, including:

- the amount you are claiming
- your chances of winning
- how soon after the event you are making your claim
- whether you are paying the premium upfront (i.e. at the start of your case) or deferring (putting off) payment until the end.

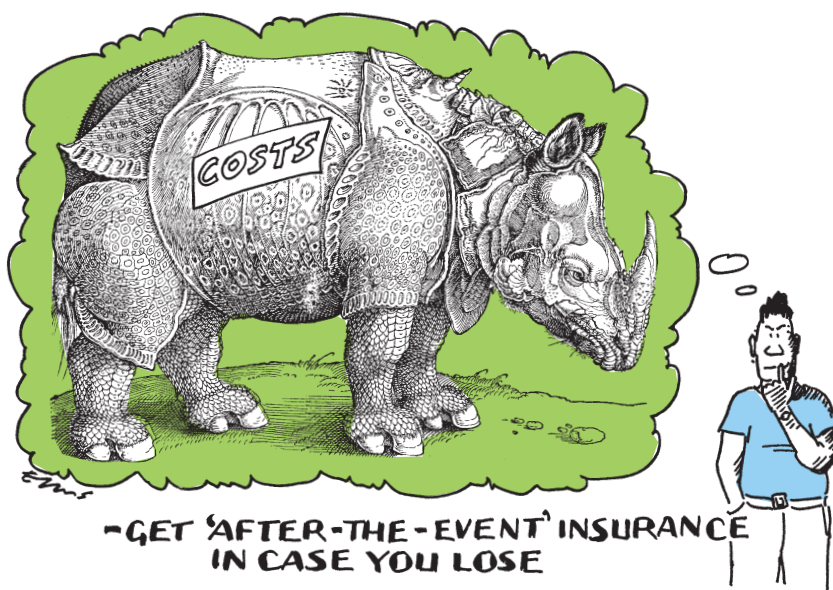
You may have to pay a few hundred or several thousand pounds for insurance. Claims after road traffic accidents are generally cheaper to insure than, for example, claims for

medical accidents or arising from a work-related disease. You should discuss any quotation you get and how to pay the premium with your solicitor.

As well as the initial premium some insurance companies also charge a 'renewal' premium on the anniversary of the insurance. This means that if your case takes a long time, perhaps because it is complex, you will have to pay a percentage of the original premium on each anniversary of the insurance until the claim has been dealt with. Other companies charge an additional premium when your case gets to court if it is complicated or may involve large sums of money.

If you can't afford to pay the insurance premium upfront, your solicitor may pay this (and any other expenses relating to your case) for you, as long as you keep to the terms of the conditional fee agreement. In these circumstances the premium will be paid by your opponent if you win your case or may be paid by the insurance company if you lose. If your solicitor won't do this for you, you may want to arrange a loan to enable you to pay the insurance premium and expenses. Claims management companies and some solicitors may be able to arrange a loan for you, but they will charge you for doing this.

IF YOU GO FOR A 'NO WIN, NO FEE' DEAL -



What might I have to pay under a conditional fee agreement?

Working out what you could receive or pay under a conditional fee agreement is complicated – and certainly not as straightforward as the expression ‘no win, no fee’ suggests.

Here, we’ll look at the example of Betty, who broke her arm badly resulting in a permanent disability and what would happen if she lost her claim or if she won it. In Betty’s case, she took out a loan to pay for the after-the-event insurance and other expenses.

BETTY WAS INJURED –



– AND WENT FOR COMPENSATION.



SHE TOOK ADVICE ABOUT PAYING FOR HER CLAIM –



– AND WON!



BUT IF BETTY HAD LOST...

– WHICHEVER WAY SHE PURSUED HER CLAIM, IT COULD HAVE COST HER A GREAT DEAL OF MONEY.



If Betty wins her claim

The loser will pay:

- Betty’s compensation **£25,000**
- The insurance premium and the cost of the medical report and other expenses. However, the court can choose to reduce the amount her opponents will have to pay towards these expenses; if it does Betty may have to pay the difference out of her compensation.

ATE insurance **£450**
 Medical reports and other expenses (‘disbursements’) **£1,000**

- Betty’s solicitors’ basic charges. However, if Betty’s opponent thinks these are too high, the court can decide how much they should pay. If it is not the full amount, Betty may have to pay the difference out of her compensation.

Solicitor’s basic charges **£10,000**

- Part of the success fee, which is the extra the solicitor charges you if you win your case. Betty should have been told at the outset by her solicitors how much of the success fee she can expect to get from the loser if she wins and how much she will have to pay out of her compensation.

Success fee is 20% of basic charges = £2,000

Losers pay 90% of this **£1,800**

Betty will pay:

- the interest on the loan Betty took out to pay the insurance premium and the expenses **£250**
- that part of the success fee the loser does not pay 10% of £2,000 **£200**

So Betty will receive her compensation less the two amounts above, giving her £24,550 in total.

If Betty loses her claim

Betty’s opponent will pay:

- nothing to Betty or her solicitors

Betty will pay:

- nothing to her own solicitors **£0**
- nothing towards her opponent’s legal costs and expenses, because these are covered by the ATE insurance policy **£0**
- interest on the loan for the insurance and disbursements **£250**

Betty may also have to pay:

- for her own medical report and disbursements **£1,000**
- the After-the-event insurance premium **£450**

This will depend on the terms and conditions of Betty’s after-the-event insurance policy. In many policies the disbursements (often including the insurance premium) are refunded if the case is unsuccessful but sometimes only if a letter of claim has been sent or if court proceedings have been started.

So Betty will have to pay at least £250 and possibly even as much as £1,700, depending on the terms of her policy.

Claims management companies

Claims management companies often advertise on TV, local radio, in Yellow Pages, outside supermarkets or in local markets, offering to take on compensation claims. What they offer varies, but it usually includes one or more of the following:

- arranging after-the-event insurance (for which they get paid a commission, taken from what you pay for the insurance)
- referring people with a claim to a solicitor (for which the solicitor pays them an 'introduction' or 'referral' fee)
- handling a claim themselves (for which they get paid out of your compensation)
- investigating or arranging for a claim to be investigated, for example, by taking statements from you and any witnesses or taking photographs and assessing your chances of success.

These companies have been criticised by Citizens Advice for some of their sales practices and the quality of advice they give. But, from April 2007, a new law protects the public. Now, many more businesses providing advice or other services (like the ones listed above) to someone with a possible compensation claim have to be authorised to do so. This applies to claims for:

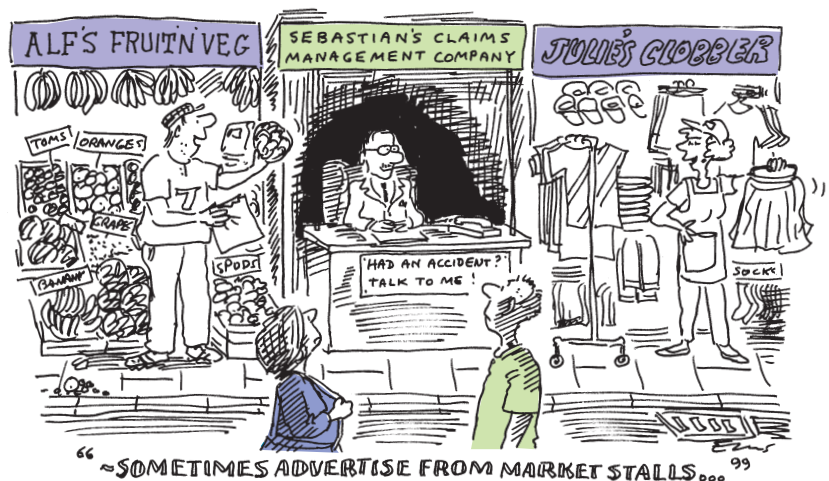
- personal injury
- criminal injury
- industrial injury disablement benefit
- employment matters
- housing disrepair
- financial products and services.

If they are authorised, their services must meet certain standards. If they provide these services without being authorised, they will be committing a criminal offence. It is also a criminal

Maria's story:

"I was putting the rubbish out for collection the next day when I stumbled and fell outside my front door. My neighbour helped me get up. I wasn't hurt, just a bit shocked. Nothing that a cup of tea didn't sort out. Some days later, a man knocked on my door asking if I'd had any accidents recently. I told him about my fall and he tried to persuade me to make a claim. All in all, he came round to my house four times. My English isn't very good but I kept trying to tell him that although I did fall over I wasn't hurt. He just went on and on about claiming compensation and promised that the arrangement he was offering me was 'no win, no fee'. In the end I signed the papers he gave me. I felt harassed by him and just wanted him to stop coming round. I was really shocked when I later got a solicitor's bill for £670."

Maria didn't ask the man from the claims management company to call round. Turning up at the front door like this without an invitation from Maria is now banned. Maria can complain to the DCA's Claims Management Regulation Monitoring and Compliance Unit. If she does, the company risks being penalised. For details about how to contact the Unit please see page 10.



offence for businesses to pretend to be authorised to provide these services when they are not. You can check if a business is authorised by carrying out a search at: www.claimsregulation.gov.uk/search.aspx.

Authorisation and regulation is carried out by the Department for Constitutional Affairs (DCA).

Some organisations, such as firms of solicitors, charities and most trades unions, don't have to be authorised.

There are some things you need to think about before you allow a claims management company to handle your claim:

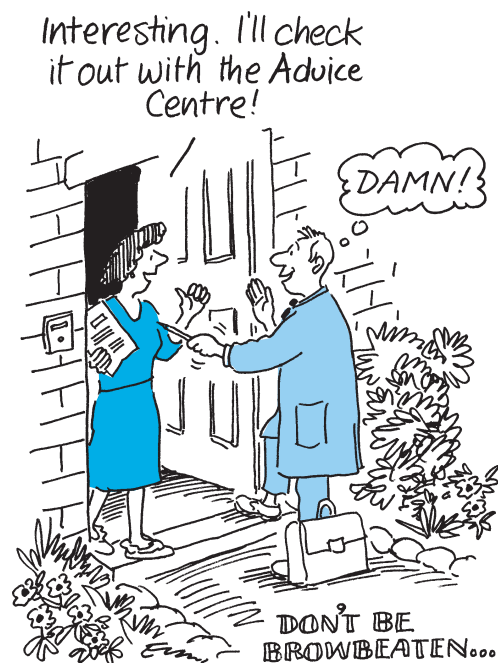
- The company's staff may have no formal legal training or qualification, which would mean they can't start legal action on your behalf and take your case through the courts – they can only negotiate with the organisation you are claiming from. This may weaken your position, because your opponent will know they can take your case only so far. It could also delay your case if you get to the point where legal proceedings need to be started and your case has to be transferred to a solicitor.

- The company may charge you a lot of money for their services. They sometimes charge a 'contingency fee' which means they will take a proportion of the compensation you win.
- You have 14 days after you sign a contract with an authorised claims management company in which to cancel it. This is known as a 'cooling off' period. The idea is to give you some time to think about whether you really want to go ahead. If you cancel, you may be charged a cancellation fee but the fee must be reasonable.
- tries pestering you into making a claim
- offers you a cash advance on your compensation or something else to persuade you to make a claim
- asks you to sign a contract or, for example, a loan agreement for after-the-event insurance, on your doorstep or in your home without giving you time to get advice on the content. Ask to look at it for a while before you sign. Show it to your local law centre, Citizens Advice Bureau or other advice agency and ask them to explain exactly what it's for and what costs it will and won't cover.
- seems reluctant for you to delay signing a contract so you can get legal advice on the contents.

You should be wary of dealing with anyone who:

- uninvited, calls at your door, comes up to you in the street or visits you in hospital, trying to persuade you to make a claim. This is called 'cold calling in person' and is banned under the new rules

You can complain about anyone who does any of these things by contacting the DCA's Claims Management Regulation Monitoring and Compliance Unit on: 0845 450 6858.



Jed's story: "I won my claim – but ended up owing money"

"I saw something about problems with housing repairs outside our local supermarket. I stopped to pick up a leaflet and mentioned to the man behind the stall that we were having a bit of a job getting the council round to mend the back door.

He sounded pretty confident that he could help get it sorted and promised we would get compensation. He talked about our claim being worth several thousand pounds. He seemed OK and it didn't sound as if we had anything to lose. So I agreed to him coming round the next day. He made a note of what was wrong with our house. I signed some papers that he said would mean the claim wouldn't cost me anything. He also arranged a loan for me to pay the insurance premium for the after-the-event insurance. I couldn't afford to pay this up front.

He sent my case to solicitors he knew. At first it all seemed fine, particularly as the door got mended quickly. Then I got a letter from the solicitors saying that I should accept £300 compensation. This was much lower than what the man outside the supermarket said I should get. I still owed £1,500 to the loan company including interest. I later found out the case had not been worth enough to bother making a claim and I should have been told this by the solicitors. The final insult was getting a bill from my solicitors for £550."

Although Jed 'won' and the losers will pay his compensation, they will not have to pay any legal costs or expenses of any kind other than court fees because neither the estimated cost of the repairs that needed doing nor the compensation is more than £1,000. This means the court will treat his case as a 'small claim' and special rules apply.

Jed will have to repay the loan he took out to pay the insurance premium and disbursements as well as any interest; and pay his own solicitor's fees. This amounts to a massive £1,750.

Other options: Alternative Dispute Resolution or 'ADR'

Alternative dispute resolution is the term used to describe a number of different ways of sorting out complaints and legal problems without going to court. Few options are available for personal injury cases and none of them are a substitute for getting legal advice. Increasingly Courts encourage people claiming compensation and their lawyers to negotiate a settlement **before** starting court proceedings which are seen as a last resort.

For a summary of the ADR methods available in personal injury claims please see: www.adrnow.org.uk/go/SubSection_22.html

How to find a solicitor

It is important that you choose a solicitor who has experience in your type of compensation claim, whether you were injured in a road traffic accident, at work, or due to clinical negligence (when you were injured in a medical accident, for example, when something went wrong during an operation). Don't just go to the solicitor who, for example, did your house purchase or made your will without first checking how good they are at personal injury law or other compensation claims similar to your own.

There are a number of ways to find experienced solicitors in your area:

- **Community Legal Service Direct** You can search a directory of approved solicitors at www.clsdirect.org.uk
- **The Law Society** You can also search for a solicitor by area of law at www.solicitors-online.com or phone 0870 606 2555. If your case involves an injury, ask for a solicitor on the Personal Injury Panel
- **Association of Personal Injury Lawyers (APIL)** visit www.apil.com or phone 0870 609 1958

For solicitors specialising in medical accident cases:

- **Action against Medical Accidents (AvMA)** visit www.avma.org.uk or phone 0845 123 23 52

Choosing the right solicitor

Once you've found solicitors in your area who deal with your kind of compensation claim, don't just agree to let the first one you visit take your case. Most solicitors will offer you a first meeting (of at least half an hour) free. You should ask them the following questions before agreeing to let them take your case.

About the solicitors

- How much time will you provide free so you can assess my case?
- How many claims similar to mine have you handled in the past 12 months?
- What is the biggest claim of this type you have ever settled?
- What were the results?
- Is there any urgency about my case? If so are you able to deal with it urgently, and will this make it more expensive?

If you are claiming for a personal injury, also ask:

- Is the person who is going to handle or supervise my claim a member of the Law Society's Personal Injury Panel or an accredited member of the Association of Personal Injury Lawyers?
- Will I will be able to speak to this solicitor?
- How much of the work is delegated to other, more junior staff?

About your case

Before you decide to go ahead with a claim, get clear answers in writing to the following questions:

- How much is my claim really worth? (Be careful about involving yourself with anyone who makes easy promises about how much money you are going to get. These can sometimes turn out to be misleading. Assessing the value of a claim is a professional judgement that can be reached only after information, such as accident and medical reports, has been collected and considered.)
- How do you rate my chances of making a successful claim?
- What are the risks involved?
- How much is it going to cost me to make this claim?
- Do the likely benefits to me outweigh the costs? (The amount of compensation you can realistically expect to get needs to be enough to be worth the legal costs, time and stress involved.)
- How long do you expect the case to take?
- Can I pull out of the case part way through if I change my mind?
- What will happen if I do?

How many claims like mine have you handled in the past twelve months?



10 steps to success

1

Something happens which is not your fault and which causes you injury, loss or damage

2

Make detailed notes about what happened, when and where as soon as possible so you don't forget

3

Collect information such as the name and address of anyone who saw what happened

4

Collect evidence such as photographs of the damage to your car, the hole in the roof or your injuries

5

Consider whether you want to:

- make a claim
- prevent it happening again
- get an apology

If you think you may want to make a claim, consider discussing this with your local law centre, Citizens Advice Bureau or other advice agency. If your case is about a personal injury, you can contact a solicitor who specialises in personal injury cases, or if it is about a medical accident, contact Action against Medical Accidents (AvMA): see *'How to find a solicitor'* on page 9

6

Check with your household, holiday, car insurers or credit card provider to see whether you have any legal expenses insurance cover for your type of claim

7

Check with your employer, trade union or any other organisations you are a member of whether you have any cover for this type of claim

8

Find a solicitor who has experience in your type of claim: see *'How to find a solicitor'* on page 9

9

Follow the steps listed in *'Choosing the right solicitor'*, page 9

10

Depending on the advice you get from the solicitor, decide whether or not to go ahead with your claim

Useful contacts

Action against Medical Accidents (AvMA)
email: advice@avma.org.uk
Helpline: 0845 123 23 52

Association of Personal Injury Lawyers
www.apil.com
Helpline: 0870 609 1958

Department for Constitutional Affairs (DCA) Claims Management Regulation Monitoring and Compliance Unit
www.claimsregulation.gov.uk
0845 450 6858

Community Legal Service Direct National Helpline
www.clsdirect.org.uk
0845 345 4 345

Criminal Injuries Compensation Authority
www.cica.gov.uk
Freephone: 0800 358 3601

Legal Complaints Service
www.legalcomplaints.org.uk
Helpline: 0845 608 6565

Solicitors Regulation Authority
www.sra.org.uk
0870 606 2555

All solicitors must follow a set of professional rules, known as the solicitors' conduct rules. The SRA takes action against solicitors who have broken these rules.

Jargon buster

The jargon	What it means
ATE insurance	ATE is short for 'after-the-event' insurance. This is an insurance policy you can take out after an accident has happened and you have decided to make a claim. If you lose your claim the insurance company will pay your opponent's legal costs and disbursements (expenses).
Basic charges	The amount a solicitor charges for the legal work involved in handling your claim. They are calculated using an hourly rate. These rates may vary depending on the experience of the person doing the work. Your solicitor should explain to you how their basic charges are calculated and put it in writing.
BTE insurance	BTE is short for 'before-the-event' insurance. It is also known as legal expenses insurance and is often added to car and household contents insurance either free or for a small fee. Some credit cards have BTE insurance, but it can be taken out as separate insurance, too. BTE insurance may pay for the legal costs of making a claim for compensation, whether you win or lose. Your solicitor will be able to check the terms and conditions of any BTE insurance you have and tell you what it will and will not cover.
Breach of contract	A contract is 'breached' if it has been broken or ignored in some way, for example, if your car comes back from the garage after a service and it doesn't work, the garage will have breached its contract with you.
Clinical negligence	The legal term used to describe a medical accident where someone has been harmed because a doctor or other healthcare professional has not given the proper standard of care. But not all complications or medical procedures that don't work are clinical negligence, because sometimes what happened could not have been avoided.
Conditional Fee Agreement (CFA) or 'no win, no fee'	This is a contract between you and your solicitor under which your solicitor will not get paid for their work unless you win your case. But you must still work out how to pay your opponent's costs if you lose.
Damages	The money you win as compensation, either after a court hearing or by reaching an agreement before getting to court.
Disbursements	Disbursements are expenses, such as court fees, medical reports, police accident reports and after-the-event insurance premiums. Your solicitor may pay these for you at the start of your claim and get repaid by your opponent if your claim is successful. If you don't win your claim, under some after-the-event policies you will have to find a way of paying these costs.
Limitation period	This is the period of time within which you must make a claim for compensation. It is usually three years for personal injury cases and six years for other claims. After this time, you are very unlikely to be able to make a claim, although there are exceptions to this. Your solicitor will advise you about the limitation period that applies in your particular case. This is a good reason for seeing a solicitor as soon as you think you may have a possible claim for compensation.
Negligence	Negligence is when a person or organisation doesn't take reasonable care over something where they have a duty to do so, for example, failing to drive carefully. If you are injured because someone was negligent (they did something they shouldn't, or didn't do something they should), you may be able to claim compensation.
Other side, opponent or defendant	These are the different terms you may hear used to describe the organisation or person from whom you are claiming compensation.
Personal injury	Any injury you suffer is personal, but in legal terms, a personal injury for which you can claim compensation is where a person, company or some other organisation is to blame (at least partly) for your injuries. An injury need not be physical – you may be able to claim compensation for psychological injury such as shock or upset.
Statutory duty	This is a legal responsibility to do something set out in an Act of Parliament. So, for example, employers are under a statutory duty to protect the health and safety of their employees. If an employer fails to do this they are said to be 'in breach of their statutory duty'.
Success fee	Solicitors who act under a CFA will charge you an extra fee on top of their basic charges if you win your case. This is called a success fee. It is a proportion of your solicitor's basic charges and cannot be more than 100 per cent (in other words, it must be no more than the basic fee itself). Your solicitor should explain their success fee before you start your claim. If you win your case, the other side will usually pay most of the success fee. But you may have to pay the rest of it out of your compensation.

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Written by Clare Shirtcliff.

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