

# Personal Injury Compensation Guide

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# Personal Injury Compensation Claim Guide



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This booklet has been produced by Synnott Lawline Solicitors to give our clients an understanding of the personal injury compensation claims process.

In some of our correspondence to you during the course of your compensation claim, we will make reference to the relevant sections of this guide by way of explanation of the particular aspect of your claim. Lawline Solicitors was the first firm of solicitors in Dublin awarded the Q Mark by Excellence Ireland.



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# The claims process

During the first interview we will take the details of your accident and injuries and answer any questions you may have. We will weigh up your claim immediately and if you have a valid claim for personal injury compensation, we will inform you of your options.

**If you decide to proceed we will appoint one of our personal injury solicitors to handle your claim and the claims process will unfold as follows:**

- We will write to you confirming the instructions and issue an originating letter of claim to the third party and / or their insurers
- We will collect evidence to support your personal injury case and will keep you informed at every stage of your claim
- We will correspond with the insurers outlining the legal basis of your claim and the nature of your injuries
- We will ensure that your claim is presented fully and comprehensively so that you receive the full level of compensation to which you are entitled.

# Have I a case?

If you have suffered injury, loss, damage or expense as a result of the negligent act or omission of another party, then you may be entitled to compensation from that other party or his/her insurers.

The purpose of this information is not to discuss the particular laws involved. Before accepting your instructions, we will have discussed your case with you and will have advised you of the strengths and weaknesses (if any) of your case. In many cases, it is very clear from the outset that an injured party will succeed in being fully compensated, for example, where the injury results from a motor accident when the client is a passenger, to give but one example. In some cases, the courts apportion liability, i.e. they rule in favour of the Plaintiff but make a deduction from the full value of the case on the basis of the Plaintiff's "contributory negligence."

It is important to note that many valid claims are never brought because an injured party feels the accident was his own fault, whereas the primary cause of the accident may well rest with some other party, and the injured party's own carelessness may only have been a contributing factor. In such cases the courts may apportion Liability. It is therefore always advisable to consult a solicitor concerning any injury resulting from an accident.



# Costs

The law requires a solicitor to provide a client with particulars in writing, when the solicitor is instructed, or as soon as is practicable after that, of:

- a. The solicitor's actual charges, or, where this is not possible or practicable
- b. An estimate of the solicitor's charges, or, where this is not possible or practicable
- c. The basis on which the solicitor's charges are to be made
- e. The number and importance of the documents prepared or examined
- f. The amount of value or any transaction involved
- g. The importance of the matter to you
- h. The time reasonably spent by personnel in the solicitor's firm on the matter
- i. The place, or places, and the circumstances in which the matter is pursued

Solicitors' charges are calculated by reference to a number of factors including the following:

- a. The complexity of the matter
- b. The urgency of the matter
- c. The difficulty or the novelty of the questions raised
- d. The skill, labour, specialised knowledge and responsibility involved

These are also the factors which are taken into account in the assessment of a solicitor's bill. In addition to the professional fee and miscellaneous charges payable to the solicitor, there will be items of outlay payable to third parties, including government agencies, which must be discharged by you.



# Litigation

If your solicitor is dealing with a contentious matter for you, the law requires that the following explanation be given to you.

Unless otherwise agreed, when your solicitor sends you a bill of costs, you are responsible for the payment of that bill. You remain responsible for this amount even where you reach a settlement with the defendant or any other third party and a term of that settlement is that you will be paid your costs.

This is also the case where the defendant or other third party is ordered by a court to pay your costs. Your solicitor will seek to recover as much as possible of the charges from the defendant or other third party. When the monies are so recovered, if you have already paid your solicitor, the monies will be refunded to you, less any costs incurred in their recovery. Otherwise, they will be set off against the full amount due to your solicitor.

The amount which the defendant or other third party may agree or may be ordered to pay will not generally be sufficient to set off your solicitor's entire charges. Insofar as the costs recovered from the other party are insufficient to discharge your liability to your solicitor, then you remain liable to make up the shortfall.

Even where your solicitor is satisfied that you have a good case, the law requires that it is explained to you that, in the event of the following circumstances arising, you may be liable to pay, in addition to your own costs, the costs of the Defendant or other third parties.



# Outlay

In the course of handling your claim we will incur certain items of outlay including doctors' fees for preparing medical reports, stamp duty on the proceedings, Counsel's fees for drafting, and in some cases fees of Litigation Engineers for preparing reports. The outlay averages about €1,000 per case but in large cases can be much more.

If your claim succeeds, then we can usually recover most of the outlay from the other side. Our clients have the option of paying the outlay on an ongoing basis, in which case the recoverable portion thereof will be refunded to you at the successful conclusion of your case. Alternatively, we can offer the facility of funding from a claims funding company on favourable terms.

# Will I have to go to court?

Every case is handled on the basis that it may end up in court, but in practice few cases do, perhaps 5% of our cases; the other 95% are settled. Cases go to court for two reasons, either the defendant has not offered enough compensation or the defendant has made no offer.

If an offer is made, then it is you who decides whether or not to accept the offer; we and your Barrister will give our advice in relation to any offer, but the ultimate decision is yours. If no offer is made, then this would indicate that the other side is reasonably confident of successfully defending the case. In such event your options will be clearly outlined to you.



## What is the value of my case?

The amount of compensation to which one is entitled varies in each case. It is often futile to attempt to value a claim in the early stages. After taking your initial instructions, we take up reports from any medical practitioners whom you may have attended. The early reports are usually preliminary in their nature, and will enable us to decide in which court to launch your case, i.e. the District Court which has jurisdiction to make awards up to €15000, the Circuit Court which has jurisdiction up to €60,000, or the High Court which has unlimited jurisdiction.

The value of your case in terms of General Damages will depend on the nature and severity of the injury or injuries, the pain, suffering and inconvenience resulting there from, the length of time for recovery and the prognosis for the future.

In addition to General Damages you are entitled to claim compensation for all financial losses and expense sustained by you as a result of the accident, including loss of earnings, doctors' fees, hospital fees, medication, travelling expenses etc. The value of your claim will be discussed with you in some detail by us and your Barrister at the time of settlement negotiations or prior to the Trial of your case.

## How long will it take?

Up until a few years ago, one had to wait 2-3 years for a trial date after the pleadings had been closed, that is after the formal exchange of relevant documents between solicitors. Thankfully, all that has changed, and in most cases we can now get a trial date within a few months of requesting one.

The time it takes to finalise a case usually depends more on the medical process rather than the legal process. As a general rule we advise our clients not to attempt to settle a case within 12 months from the accident date. It is good practice to see how the injury has settled at that stage. Subject to the medical report and Counsel's advice, it may be opportune to try to settle the case after about 12 months, although many cases may take considerably longer, particularly the more serious ones.





# Statute of limitations

Subject to certain very strict exceptions, you have two years from the date of your accident to commence your claim for compensation. If the two year period has expired, even by one day, then your claim is Statute Barred from proceeding. An important exception to this rule is that persons under the age of 18 years at the time of the accident (minors) have until their 20th birthday to commence proceedings.

In theory therefore, a four year old for example has 16 years to commence proceedings, although a lengthy delay may create difficulties and may give rise to the defendant having grounds to apply for a dismissal of the claim on the grounds that his right to put up a defence has been prejudiced by the delay. It should be noted that it can take time to have legal proceedings issued so you should not leave it until the last few weeks before expiry of the statute before instructing your solicitor in the matter.



# What is the procedure?

Once we have taken the details of your accident and agreed to take on your case, we will write to you confirming the instructions and issue an originating letter of claim to the third party and/or his insurers. We will subsequently enter into correspondence with the insurers when we will outline the legal basis of your claim and the nature of your injuries. We will apply to your medical attendants for preliminary medical reports.

We will apply for any other relevant reports, for example, the Garda Abstract Report in traffic accident cases. In cases requiring an engineers report, we will instruct our Litigation Engineers to attend at the accident location and to prepare a detailed report and photographs. We will arrange to take witness statements if necessary. The Defendant insurance company will arrange for you to undergo an assessment by their nominated doctor or doctors.

Once we have assembled the necessary reports and statements we will register your claim with the Injuries Board (See page 14 of this Guide). If the Injuries Board does not assess your claim for whatever reason or if the Injuries Board assessment is declined either by you or by the other side then we may issue court proceedings for your compensation.

Following the issue of proceedings the defendant's solicitors comes on record by 'Entering an Appearance'. They will then issue a 'Notice for Particulars' and we will take your instructions for replies to that notice.

The Defendant's solicitors then file their Defence. The Defence will indicate whether the defendant accepts or denies liability. In some cases it may be necessary for us to issue certain Motions compelling the Defendant's solicitors to take certain steps, for example a Motion to compel them to file their Defence if they delay in doing so, or a Motion compelling them to allow our engineer inspect the defendant's premises, or a Motion for Discovery compelling them to produce certain relevant documents, and so on. During the course of the case, we will obtain updated medical reports as required.

When the pleadings have been closed (i.e. the Defence file) we instruct Counsel to prepare an "Advice on Proofs" which is a summary of the further steps to be taken prior to the trial and identifies the witnesses required.

In many cases a "Settlement Meeting" takes place before the case is set down for trial. If the case does not previously settle, we arrange for it to be set down for trial. In some cases, the Defendant makes a lodgement of money into court.



## Court lodgements / tenders

When a case reaches defence stage, the Defendant may serve a "Notice of Lodgement." This is a document which tells us that the Defendant has lodged a certain amount of money into the court bank account and invites you to accept that amount in full settlement of your claim. In that event, you will have the benefit of our advice as to whether we believe your case may be worth more than the amount lodged or otherwise. Regardless of our advice one way or the other, you have the option to accept the amount lodged in which case we will serve "Notice of Acceptance" and subsequently the court office will issue a cheque for that amount to complete the matter.

If you refuse the lodgement and your case does not subsequently settle but proceeds to trial and the Judge awards you an amount equal to or less than the lodgement figure, then you will have failed to beat the lodgement and will be held liable for all costs of the proceedings from the date of the lodgement up to the conclusion of the trial. The Judge, when making his decision, will not be aware as to how much the Defendant has lodged.

A Tender operates in the same way as a Lodgement.

Also an Injuries Board Notice of Assessment operates as a Lodgement / Tender in cases where the assessment has been delivered by you.

## Medical examinations

For the purpose of your claim we will request your doctor and / or the casualty consultant of any hospital you may have attended and any other medical practitioners, to prepare medical/legal reports on your injuries. Sometimes these medical practitioners may furnish reports based on the notes taken when they examined you previously, but very often they will write back to us giving us a date, time and venue for a medical examination.

We will of course notify you in writing of all medical appointments which we receive on your behalf. You should make a very careful note of all medical appointments and ensure that you are in prompt attendance. Failure to attend can give rise to a non attendance fee being charged by the doctor and possibly a lengthy delay for another appointment.

If any appointment does not suit you, please telephone us as soon as possible to let us know, and we will rearrange the appointment. We would ask you please not contact us to confirm that you will attend an appointment unless we specifically ask you to do so. Unless we hear from you to the contrary, we will assume that you will attend.



# Defendant's medical examinations

It is standard procedure in all cases for Defendant's insurance company to request that you attend a doctor from their own panel of medical practitioners. Depending on the severity and nature of your injuries, the insurers may wish to have you examined by more than one medical practitioner. In very serious cases, there may be several medical examinations carried out by specialists in different fields.

You should note that following the Defendant's medical examinations, the doctor's medical report is not sent to us but is sent to the insurance company's solicitors.

It would therefore be helpful to us if following any Defendant's medical examination, you send us a brief statement outlining how it went. As with medical examinations by your own doctors, you should always make a very careful note of the appointment date, time and venue and ensure that you are in prompt attendance.



# Settlement meetings

Your solicitor will meet you at the appointed time outside Court No. 1, in the Round Hall of the Four Courts (Dublin cases only).

1. Your solicitor will then introduce you to your Barrister. Your Barrister will previously have been fully 'briefed' about your case and will have with him our "Brief" consisting of copies of relevant material to your case.
2. Your Barrister will talk to you informally about your case, and we will give you advice about the "value" of your claim, i.e. the approximate sum which a Judge would be likely to award to you in the event that your case goes to Court at a later date.
3. Your Solicitor and Barrister will then go away and discuss your case with the insurance company's solicitor/barrister and will endeavour to obtain their best offer and one which, hopefully, we can recommend to you.
4. We will then come back to you to discuss any offer which has been made and give you our advice in relation thereto. Further negotiations may then take place.
5. Please note that you will not be pressurised into accepting or rejecting any offer. Your solicitor and barrister are skilled negotiators and are experienced in valuing cases. They are there to give you the benefit of their experience and to advise you. However, it is your case, and your decision as to whether you will accept or refuse the Defendant's best offer.
6. In addition to "General Damages" for your injury, we will be claiming on your behalf, all expenses which you have incurred as a result of the accident. Please bring with you to the meeting, any relevant bills, receipts etc. which you have not already furnished to us.



# Notice for particulars

It is standard procedure in all cases for the Defendant's solicitors to furnish us with a "Notice for Particulars." This is a document which forms one of the pleadings and consists of a series of questions concerning your case, such as how the accident happened, details of witnesses, the nature of the injuries you sustained, your progress to date, details concerning your claim for loss of earnings (if applicable), details of all expenses incurred by you as a result of the accident, the names and addresses of your doctors etc.

When we receive the Notice for Particulars, we will send you a copy and will request that you furnish us with your written replies. It is of the utmost importance that your replies are entirely accurate and truthful. Failure to disclose a relevant fact which is requested by the defendants may seriously compromise your claim.

You should furnish your replies to us in your own words and we will then re-word your replies in formal language for the purpose of putting in the formal reply. Although much of the information requested by the Notice for Particulars will already be on our file, it would be most helpful of you would furnish your replies to all questions in any event, unless we specifically confirm that you need not reply to any particular questions. Some of the questions will be of a legal nature which we will deal with.

If you have a difficulty with any of the questions, then please pick up the telephone and give us a ring to discuss. Alternatively, you may wish to drop in to see us about the matter in which case please feel free to telephone for an appointment. When furnishing your replies to us, please at this stage also furnish us with all receipts, or copies thereof, relating to all expenses which you have incurred as a result of the accident.



# Child plaintiffs

## Going to court

Persons under the age of 18 years in law are known as minors or infants. Minors may not bring proceedings in their own name. They must be represented by a “next friend,” usually one of the parents. If a minor reaches the age of 18 years before the claim settles, then he or she can continue the proceedings in his or her own name at that stage.

Any compensation awarded to a minor is lodged into the court bank account and becomes payable to the minor together with interest when he or she reaches the age of 18 years. Any settlement of a case involving a minor must be approved by the court.

In Circuit Court cases, your case will be presented in Court by your Barrister. In High Court cases, you will be represented by a Senior Counsel as well as a Barrister (Junior Counsel). A pre-Trial Consultation takes place with your Counsel either on the day of the Trial or within a day or two previously. When arriving for your case, it is important that you dress in a manner which shows proper respect for the Court.

Your Barrister will lead you through your evidence, and you should ensure that you answer all questions to the best of your ability. Try to avoid giving hasty or confused replies. If you are not sure of the answer of any question, you should say so. After the examination by your own Barrister, the Defendant’s Barrister will cross-examine, in an attempt to illicit details from you which may be favourable to the Defendant’s case.

The Judge may also have some questions. After completion of your evidence, the evidence of any other witnesses is taken in the same way. In regard to medical evidence, medical practitioners may be in attendance in Court but more usually, their evidence is admitted in the form of medical reports handed into the Judge.

When all the witnesses have been heard, and Counsel has made any relevant points to the Court, the Judge usually makes his/her decision there and then, or s/he may adjourn for a short time for consideration or, on occasions, postpone his/her judgement to another day. The judge delivers a decision on liability, and if deciding in favour of the Plaintiff, will make an award of damages as compensation.



# Appeals

Either party may Appeal the decision of the Court. An Appeal can be brought against the judgement on liability or on “Quantum” (the amount of the Award). In Circuit Court cases the Appeal to the High Court must be lodged within 10 days. The Appeal is “De Novo,” a complete re-hearing of the Trial by examination of witnesses in the same way as in the Circuit Court.

An Appeal from the High Court is made to the Court of Appeal.

# Our promise

1. We will deal with your enquiry and / or application promptly.
2. We will focus on meeting all your needs.
3. We will respect your privacy at all times.
4. We will be courteous, fair and polite in all our dealings with you.
5. We will make all efforts to ensure our offices are accessible to everyone including people with disabilities.
6. We will facilitate all our clients to complete their business in a friendly, efficient and comfortable environment.





# Injuries Board

Since the coming into force of the Personal Injuries Assessment Board (PIAB) Now called 'Injuries Board'. Act 2003, Personal Injury Claims, with some exceptions, must be assessed by the Injuries Board, before any Court Proceedings can be issued. Once we have obtained the necessary medical reports, we will present your case to The Injuries Board on your behalf. The Injuries Board will then notify the other side, or more usually their Insurers, of the application. The other side has the option of consenting to the The Injuries Board Assessment Procedure, or of declining.

If they decline, then The Injuries Board take no further part, and we will then issue Court Proceedings for compensation for your injuries, loss, damage and expense. If the other side consent to the Injuries Board Assessment, then they will consider the medical reports furnished by both sides, and possible (any independent reports commissioned, and it will produce a valuation of the claim, usually within 9 - 15 months.

There is no oral hearing. If you are willing to accept The Injuries Board Assessment and provided the other side are willing to pay it, then this is the end of the matter. However if either you or the other side does not accept the Assessment, then the claim will proceed under the former system of Court Litigation.

It should be noted that The Injuries Board does not award any costs, so your Legal Fees must come out of the figure assessed by The Injuries Board. The foregoing is a very brief synopsis of the workings of The Injuries Board and needless to say, there are all sorts of diverse situations which can and do arise, and we will of course fully advise you in relation to your particular circumstance.



# Road accidents

Road accidents involving drivers, passengers, pedestrians and cyclists are among the most common causes of personal injury claims in Ireland. Every year more than 350 people are killed on Irish roads, approximately 900 sustain serious injury, and a further 7,000 will receive minor injuries. If you have been injured as a result of a road accident you might be entitled to claim compensation if the accident was the fault of someone else.

Synnott Lawline Solicitors are specialists in bringing claims for compensation for people injured in road accidents. In the past eight years we have recovered millions in losses and damages, a testament to our ability to achieve maximum and appropriate amounts of compensation as quickly and efficiently as possible.

# Work accidents

Every year in Ireland many thousands of people are injured at work or suffer work related illness. Common incidents involve handling, lifting, carrying, slips, trips, falling objects, hand-tools, machinery and falls. Others are injured as a result of the repetitive nature of their work activities or the absence of appropriate training. In 2014 alone more than 15,000 people brought successful occupational injury claims against their employers. An estimated 20,000 people were absent from work for more than three days as a result of injuries incurred in the workplace and a further 38,000 suffered illness caused by or aggravated by their job. Whatever industry you work in it is your employer's duty to provide a safe working environment and if they fail to do so, you may be entitled to compensation if injuries or illnesses are sustained.

If you have suffered an accident or illness at work and think you may have a valid case then seek legal advice immediately. Our solicitors have a wealth of experience and expertise in health and safety legislation and can advise you of the course of action which best suits your particular situation.



# Public accidents

Every year in Ireland, many thousands of people are injured as a result of accidents in public and private places. The largest proportion of claims relate to accidents occurring in places such as playgrounds, leisure centres, shops and supermarkets. They often result from collisions with falling masonry, slips on spillage, dog bites, or trips caused by poorly maintained pavements or footpaths.

If you were injured as a result of an accident in a public place, you may be entitled to claim compensation. The law in this area can be complex and it is important that you are provided with specialist knowledge and advice relevant to your case. At Synnott Lawline Solicitors, our expert team has considerable expertise in this area and can advise you of the course of action which best suits your particular situation.

For more information or for free initial advice on a potential claim please contact us on **freefone 1800 20 40 60**



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