

WHAT COMPENSATION CAN BE CLAIMED

In most cases we will not carry out very much work in considering the amount of compensation that you can expect to receive if your claim succeeds until the preliminary medical issues have been investigated and resolved although we will always be able to give you broad outline advice as to the likely value of your claim. As soon as our investigations have been completed and a definite decision has been made to issue court proceedings we will carry out a great deal more work in valuing your claim and then give you precise advice as to the sum that you can reasonably expect to recover if your case were to go to court and you were to succeed.

There are three possible heads of claim:

- Compensation for pain, suffering and disability.
- Compensation for financial losses that have already been incurred
- Compensation for anticipated future financial losses.

The position is however, different in cases where the victim has died.

Compensation for pain, suffering and disability

You will be entitled to a sum of money to compensate you for any pain, suffering, injury and disability that you have suffered. These are called General Damages. We will need to obtain medical reports in order to establish the extent of your injury and the extent to which your injury will continue into the future. The English courts are generally believed not to be very generous in awarding General Damages: for example £35,000 for the loss of an eye, £90,000 for the loss of a leg and £250,000 for quadriplegia.

Compensation for financial loss

You will be entitled to claim any out of pocket expenses that you may have incurred as a result of the negligence for example, loss of earnings or travelling expenses. These are called Special Damages. Although it is obviously helpful to have receipts and other documentary evidence to support your claim for out of pocket expenses, you will not be prevented from claiming simply because no receipts are available. Nonetheless, it is obviously sensible to keep receipts if at all possible.

Compensation for anticipated future financial losses

You will be entitled to claim for any future financial losses that you are likely to incur as a result of the negligence: for example loss of earnings, loss of pension and care costs. These are called Future Losses. It is frequently necessary for us to instruct experts such as occupational therapists, housing experts, physiotherapists, care experts etc to help us quantify these likely Future Expenses.

If the claim for future financial losses is substantial, because the losses are expected to continue over many years into the future, the court may insist that they should be paid in the form of annual or other periodic payments rather than a single lump sum.

Fatal Injuries

Where someone has died as a result of medical negligence the compensation is calculated differently. In these circumstances there will be two claims:-

- the victim's claim.
- the dependant's claim.

The two claims are not alternatives. They are additional to each other although they should be claimed at the same time and in the same court proceedings.



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The victim's claim includes compensation for any physical and emotional pain that he or she suffered after the injury was caused and prior to death. If the victim died immediately or never regained consciousness little or no compensation will be awarded. The claim will also include any financial losses that the victim incurred as a result of the negligence prior to the death together with funeral expenses. It is possible to include a claim for any earnings that the deceased lost prior to the death but not any earnings that would have been earned in the "lost years" after the death. The victim's claim is made on behalf of the deceased's estate under the authority of the Law Reform (Miscellaneous Provisions) Act 1934. This means that any compensation that is received as a result of this claim will ultimately go to whoever are the beneficiaries under that estate.

The dependant's claim is made on behalf of those members of the deceased's family who were financially dependent upon the deceased. The claim is made under the authority of the Fatal Accidents Act 1976 and is restricted to the surviving spouse (including a divorced spouse) or co-habitee of the opposite sex who lived with the deceased for at least two years immediately before the death, children, parents, grandparents and grandchildren. The compensation is awarded to compensate for the loss of the deceased's financial support as a result of the death. If it cannot be shown that there has been any loss of financial support there will be no claim. The amount is usually assessed as a proportion of the deceased's annual income together with a sum to compensate for any services (such as childcare, gardening DIY etc) that the deceased provided. Where there is more than one eligible dependant the award must be apportioned amongst them. Younger children will usually receive more than older ones to reflect the fact that they will spend more of their childhood without the deceased parent.

The dependant's claim made under the Fatal Accidents Act 1976 can also include the funeral expenses (although they will not be awarded twice if also claimed as part of the victim's claim under the Law Reform (Miscellaneous Provisions) Act 1934) and compensation for bereavement. Currently the amount of compensation that can be awarded for bereavement is capped by an Act of Parliament to a maximum of £11,800 and because of this most cases involving the loss of a child are awarded surprisingly low levels of compensation. The bereavement award can only be claimed by a surviving spouse (including civil partners) or (where the deceased was a child who died before the age of 18) by either both parents jointly if legitimate or by the mother alone if illegitimate.