

Where there's blame...?

Personal injury claims in Jersey



Jeremy Heywood
Partner
+44 (0) 1534 760 851
jeremy.heywood@bcrlawllp.com

A plethora of adverts on UK television promise no hassle, 'no win no fee', no risk, legal representation to recover damages for personal injuries. Apparently all that is needed is that the accident was not your fault and you could recover thousands of pounds in damages at no risk or cost to yourself. Is this true of Jersey?

What is a "duty of care"?

The law in relation to personal injuries and clinical negligence claims is very similar (but not identical) to English law. You have to establish that you were owed 'a duty of care' (an obligation to ensure your well-being or safety - for example, by your employer, by another driver, by a doctor etc.). That must have been breached. That breach has to have been the cause of damage to you. You have to bring your claim within a certain time from the incident. In Jersey, this is three years for tortious claims (e.g. those against another driver) and ten years for contractual claims (e.g. those against your employer).

How do I fund my Claim?

If you wish to be legally represented you have to consider funding. Legal aid is not available for personal injury claims in England. Legal aid may be available to you in Jersey. 'No win, no fee' arrangements are rarer in Jersey than they are in England but, depending on the strength of your case, you may be able to find a Jersey lawyer prepared to act on that basis. Often household insurance policies include a level of cover for legal expenses insurance, which may be available to you (check with your insurer). If you are a member of a union, the union may be prepared to fund your claim. Obviously, you can also fund the claim yourself. At the end of the claim, if you are successful, you will usually recover between 60% to 80% of your costs. Some law firms will agree to limit their costs to those recovered from the defendant.

Other firms will seek to recover the difference from your damages. It is as well to be sure of the approach that will be taken from the outset. It used to be the case that if you lost your case, you would usually be liable to pay the defendant's costs.

A recent rule change, which comes into effect on 1st June 2017, means that there will often be limits placed on the extent to which a defendant can enforce any costs order against you.

So how do you bring a claim?

A good first step is to meet with a lawyer to explore whether or not you actually have a claim. You will usually be able to get an initial meeting free of charge and with no obligation. You can pursue a claim yourself but, if you can, it is advisable to instruct a lawyer (I would say that, wouldn't I?!). The next step is to write to the defendant, set out what happened, what impact it has had, and what you think the value of the claim is. The defendant will respond to that letter. The claim might be settled at this stage (but this is unlikely).

Formal proceedings are begun by you filing an Order of Justice - a formal document which sets out who you are, what happened, why it was the fault of the defendant, what injury you suffered, and what it is that you are claiming. The defendant will then file an Answer, which should respond to the allegations you have made and set out the defence relied upon.

At any stage during the litigation process the parties can engage in alternative dispute resolution to attempt settlement of all or any part of the dispute. This is very much encouraged by the Court. If the case does not settle then it will proceed to trial, with various procedural steps in between, such as disclosure of relevant documents, witness statements, exchange of expert evidence etc. At trial the Court will hear from you, and your witnesses, and the defendant, and its witnesses, and will make a decision.

Things to consider

Often, plaintiffs underestimate the length of time that it takes to get a matter before the Court, the costs of doing so, and the stress and emotional challenges involved in living with a case and dealing with a trial. It is an intrusive process. Usually your medical, and other personal, records will be provided to the defendant. You will often have to be examined by a number of medical experts. If you have been injured as a result of the actions of another then you can claim for damages - it just might not always be easy or pleasant, whatever the adverts will have you believe. It is important to have the right support throughout the process.