

Personal Injury Cases: An Introductory Guide



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The legal system can at times appear to a lay person to be both intimidating and complex.

The purpose of this article is to attempt to explain some basic legal principles and the steps involved in taking a case for personal injuries.

The person who takes a case is known as a Plaintiff.

The aim of taking a case for personal injuries is to compensate a Plaintiff for the injuries suffered and to put a Plaintiff in the position that they would have been but for the accident. The reality is that no amount of money can fully compensate a person for the loss they experience as a result of a catastrophic injury.

Although no two cases are identical, a number of general legal principles apply to all cases.

No matter how serious an injury is, compensation will only be awarded by a Court if there is negligence on the part of another person or company or another legal entity. In other words a third party must be at fault for the injuries suffered. The negligence must also have caused the injury. The legal term for this is *causation* and it is crucial to the success of any case.

It is often (but not always) the case that the person or company that an action is being taken against will have an insurance policy that will cover any legal claims that are made. This is frequently the case in accidents at work or road traffic accidents involving a third party. In these circumstances, the insurance company will appoint Solicitors and they will deal with the case on behalf of the individual or company concerned.

Any action for personal injuries caused by the negligence of another must be initiated within a period of two years from the date of the injury. There are certain exceptions to this two year rule, where for example an individual only becomes aware that they have been injured some time after the event that caused the injury. An example of this might be where an individual had been exposed to asbestos and is only diagnosed with an illness many years after the exposure.

The first step involved in initiating a claim for personal injuries is to lodge an application with the Injuries Board. The Injuries Board is an independent government body which assesses the amount of compensation due to a person who has suffered a personal injury. The Injuries Board will assess the value of a claim based on medical evidence. Any assessment made

by the Injuries Board is only binding on the parties if both parties accept the Injuries Board's Assessment. If either party does not accept the assessment, the Injuries Board will release the claim and the case can then proceed through the Courts.

It is usually the case that where catastrophic injuries are suffered, the Injuries Board will not be in a position to assess the claim and they will release the claim without making an assessment. When the Injuries Board declines to assess a claim or where either party rejects an assessment, the Injuries Board issue a document known as an Authorisation. The Authorisation is required in order to commence proceedings through the Courts.

An action through the courts for personal injuries is commenced in the form of a legal document known as a "Personal Injuries Summons". This is a legal document that sets out in detail the nature of the injuries and the events that led to them. A High Court Personal Injuries Summons is issued in the Central Office of the High Court. The Central Office is the administrative heart of the High Court and Court paperwork is filed there.

A number of steps need to be completed before a case is ready to be heard in Court. A Defendant's Solicitor will regularly seek further clarification as to the matters

addressed in the Personal Injuries Summons. The Defendant's solicitor can do this by asking a number of questions that are set out in a document called a "Notice for Particulars". The Defendant also has to file a document called a "Defence". This sets out the Defendant's position in relation to the issues raised in the Personal Injuries Summons.

It is usually necessary for a Plaintiff's Solicitor to issue what is known as a "Motion". A Motion is a legal document that requests the Court to make an order in relation to a case. Motions are used as a means to deal with certain issues that arise in advance of a Court hearing.

Another important aspect in any case is the issue of "Discovery". This is a process whereby a party to a case can request the other side to produce information and documents that are relevant to the matters involved in the case. Discovery can often cause delay because information has to be gathered. However it can often play a vital role in the outcome of a case and can be of great assistance to a Plaintiff or indeed a Defendant

A Solicitor works in conjunction with a barrister. There are two different categories of barrister namely Junior Counsel and Senior Counsel. In High Court cases Junior Counsel usually prepare the paperwork involved in the case. The Senior Counsel argues the case before a Judge at the Court hearing.

It is possible for a case to settle in advance of a hearing date. It is often the case that a

case will have to be at an advanced stage before settlement discussions will be even possible. Indeed, cases can often get settled on the day of a hearing.

There are two categories of compensation to which a Plaintiff is entitled to if they are successful in their case. The first category is called "Special Damages" (out of pocket expenses). The second category is called "General Damages" (compensation for pain and suffering). There is no limit on the amount of Special Damages that a Court can award. However all claims must be fully supported. This is usually done by expert evidence. It is therefore necessary to obtain expert reports to support any claim for Special Damages. A nursing consultant will assess care costs. An occupational therapist will assess the medical aids and equipment required. A vocational assessor will determine the effect that an injury has had on an individual's ability to work. An actuary will calculate loss of future earnings and other future losses. An architect will review a Plaintiff's housing and recommend any changes that are necessary in order to make the house more accessible.

It is a general principle that where a Plaintiff is successful in his/her case that the legal costs will be paid by the Defendant. This means that the Defendant will have to pay the Plaintiff's legal costs and their own legal costs and this is separate to any compensation that is awarded to the Plaintiff.

It is important to note that compensation can be available in situations where it would

seem that there is no case. An example of this would be where a person is involved in a hit and run road traffic accident. The Motor Insurers' Bureau of Ireland compensates innocent victims of accidents caused by uninsured and untraceable vehicles. However it is still necessary to pursue the legal route in any action against the Motor Insurers' Bureau.

A person can also be entitled to compensation if they are the victim of a violent assault whether or not the assailant has been apprehended. A claim for compensation for personal injuries that are the result of a criminal offence is made before the Criminal Injuries Compensation Tribunal. The time limit for making a claim is three months. However, if a claimant has a reasonable explanation for a delay it is possible that the tribunal will not impose the time limit. It is also possible to bring a claim against the assailant although this may not be workable if the assailant does not have any financial means.

If there are any particular legal topics of interest to you please contact:

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