

Compensation Claims Relating to Chronic Pain

Part Five: Information and checklists

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Keywords

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Introduction to the different lawyers and what they do

In England and Wales, the lawyers who deal with personal injury claims are either solicitors (or others employed by solicitors) or barristers. Traditionally, solicitors are experienced lawyers who work within a 'firm', which to the client is no different to a company. It is an organisation which can employ anything from a handful to hundreds of staff. Traditionally, solicitors, and those employed by them, attracted work (i.e. 'clients') by: having a presence in the field (i.e. a good reputation for personal injury work); a good general reputation locally or even nationally (perhaps as a firm that could also handle a range of legal problems); and having a financial association with an insurance company, or perhaps a union, so that injured individuals were 'referred' to the firm (usually for a fee of some kind). This type of 'referral fee' was outlawed in April 2013.

Solicitors and those they employ are still responsible for 'compiling' the elements of the claim, from an initial first meeting with an injured person and agreeing the terms upon which they will act for that person, to gathering factual evidence about the accident and its effect, and obtaining medical evidence.

Many cases are dealt with from 'start to finish' by a firm of solicitors without the need to involve barristers. However, in more complex cases, perhaps where establishing fault for the injury is in dispute, where the medical issues are complicated, or where the compensation could be substantial, solicitors often turn to barristers to provide advice.

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In the vast majority of situations, therefore, a barrister is ‘instructed’ (that is ‘brought into a case’) by a solicitor. The barrister’s particular expertise has traditionally been the assessment of evidence and advice on the likely outcome of a trial. More recently, barristers very often advise at an earlier stage in the claim, to assist the solicitor to ‘shape’ the evidence so that it can be presented in its most attractive light at a trial. In that way, only a *tiny minority* of claims end with a trial – the vast majority are settled through negotiations.

Barristers are also the individuals who conduct trials (still often wearing their ‘wig and gown’) if settlement cannot be achieved.

The people you may encounter in the solicitor’s office

Firms of solicitors also employ people who have different qualifications but can still provide useful services (at a lesser wage cost to the firm). The typical composition of a solicitors firm may include all of the following individuals acting for an injured person:

Partner: A senior solicitor, often also a co-owner of the solicitor’s firm, who is granted the prestigious title ‘partner’.

Associate solicitor: An experienced solicitor who is usually looking to become a partner.

Consultant: Usually an experienced solicitor, or legal executive.

Solicitor: A lawyer qualified in accordance with the standards and requirements of the Law Society.

Assistant solicitor: A fully qualified but less experienced solicitor.

Trainee solicitor: An apprentice solicitor.

Legal executive: A lawyer qualified in accordance with the standards and requirements of the Chartered Institute of Legal Executives, who is able to undertake all work that may be undertaken by a solicitor under the supervision of the solicitor.

Litigation executive: A person who does not have legal qualifications, but may (or may not) be experienced and knowledgeable.

Paralegal: Similar to a litigation executive.

The barrister – also referred to as ‘counsel’

A barrister, just like a solicitor, is a lawyer. Barristers have a long and interesting history. There is still something of a mystique about barristers, probably because they still wear a very historical costume in court, the best-known parts of which are a horsehair wig and a long black gown.

The vast majority of barristers are self-employed. They work in offices called historically ‘chambers’, and they pool the administration costs between themselves. Barristers are only permitted to act for a client ‘directly’ in limited circumstances, and even then they may not undertake all of the work done by a solicitor. Therefore, in the vast majority of cases, your solicitor will ‘instruct’ (i.e. request) a barrister to provide an opinion on aspects of the case because of his expertise in putting together the arguments and evidence required to construct your case.

There are only two ‘levels’ of barrister. About 90% are ‘just’ barristers, who are also known within the profession as ‘junior counsel’. About 10% of barristers are ‘senior counsel’, who are also known as ‘Queen’s Counsel’ (or ‘QC’), as recognition of excellence and seniority within the profession (after perhaps 25 years in practice). Within the profession, more experienced juniors are sometimes known as ‘senior juniors’. It follows that in the vast majority of personal injury cases, you will be

represented by a barrister who is not a QC. In very rare cases, either of very high value (perhaps £1 million+) or immense complexity, a QC will be involved.

Courts and judges

Personal injury claims are 'civil cases' (as opposed, for example, to criminal cases). As such, they are dealt with by the 'civil courts' (rather than, for example the Crown Court, which deals with criminal cases). There are two 'levels' of civil court where your claim may be handled: the County Court and the High Court.

The County Courts

The County Courts are based in regional cities and towns, and deal with the vast majority of personal injury cases, from small claims to high-value claims. The location of your nearest County Court can be found using the Courts Service website.

The High Court and District Registries of the High Court

The High Court deals with the most complex and/or highest value cases. It is based at the 'Royal Courts of Justice' in the Strand, in London. You will probably have seen the building on television or in the press many times.

Although it is of more historical interest, and is not something which will affect you at all, personal injury claims are dealt with in one part (or 'Division') of the High Court, known historically as the 'Queens Bench Division' (or 'QBD').

As well as its base in London, the High Court has bases (best thought of as 'branches') outside London. These are called 'District Registries of the High Court'. The High Court District Registries are confusingly located in the same buildings as the County Court. Also, as very few District Registries have 'their own' High Court judges, the same judges (who are granted special permission to do so) deal often deal with High Court and County Court cases in District Registries.

Who are the judges?

Judges are (almost always) former solicitors and barristers. The vast majority of District judges are former solicitors, and the vast majority of County Court and High Court judges are former barristers. There are also some part-time judges who 'sit' as judges for a few weeks a year, and otherwise work as solicitors and barristers.

Table 1 -Judges of differing seniority have separate titles and are addressed accordingly in court:

Court	Judge	Title	Called
High	High Court Judge	Mr Justice Smith	My Lord/My Lady
High (London)	Master	Master Smith	Master
High (London)	Deputy Master	Deputy Master Smith	Master
High District Registry	District Judge	District Judge Smith	Sir/Madam
County	Circuit* Judge	His Honour Judge Smith	Your Honour
County	Recorder**	Mr Recorder Smith	Your Honour
County	District Judge	District Judge	Sir/Madam
County	Deputy District Judge	Deputy District Judge Smith	Sir/Madam

(*For historical reasons, relating to the geographical region, or 'circuit' over which they preside, senior County Court judges are also known as Circuit judges)

(** A Recorder is a practising lawyer who sits as a Circuit judge a few weeks a year)

(^ A Deputy District judge is a practising lawyer who sits as a District judge a few weeks a year)

In general terms, after the claim is started, it is managed by the Court at short hearings, often by telephone. These hearings are almost always dealt with by District judges in the County Court (and District Registries) and by Masters in the High Court in London.

Tips for locating a solicitor

- Locating a solicitor is easy – but finding an excellent specialist is not.
- The Internet is a good starting point, particularly ‘blogs’, which often carry up-to-date comments from other people who have had a claim.
- Websites may also have testimonials from clients, and although these only reflect the image the firm wants to project, there may be references to a particular type of work, or injury or condition, which suggests specialist knowledge.
- You may find that you are able to find firms dealing with certain syndromes, symptoms or conditions by using those words in the search engine, *but always ...*
- Remember to be (politely) sceptical – just because someone calls themselves a specialist in a field – such as personal injury – does not mean they will provide an excellent service. As in any field, lawyers must earn your trust.

Questions to ask a solicitor you are considering asking to act for you

- What are your qualifications and experience?
- Can you give me an example of a similar claim that you have dealt with?
- Will you personally handle my claim?
- If not, who will, what are their qualifications and can I meet him/her now?
- How will my claim be funded?
- Who will pay for the medical reports and other ‘disbursements’ incurred during the claim? (some firms use ‘interim payments’ – a payment ‘on account’ made by the insurance company before the end of the claim - to pay for medical reports at a time when the injured person is most in need of funds)
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- Will the firm make any deductions from any interim payments? (the same point as above, check whether interim payments will all be paid to you)
- At what stage might you involve a barrister in my claim? (in some cases it is sensible to involve the barrister early on to plan a strategy. Some senior solicitors may not feel the need to do so but the reasons should be explained clearly to you).
- Is there any restriction on the barrister(s) who can be instructed? (it is important for you to know that the barrister instructed will have the specialist knowledge required you’re your case)
- Will you obtain and read my medical records before instructing medical experts?
- Will you collate my medical records and let me have a copy of them if I want one?
- How do you select medical experts? (i.e. do you select them because of their reputation, or your own experience of them, or just because an agency suggests them – and if the latter, what steps do you take to ensure they are high calibre?)
- Do you instruct medical experts directly or rely upon a medical agency? (if the expert used is not known to your solicitor you should ask that an ‘example’ report be obtained – with the client’s name deleted – so that your solicitor/you can see whether the report seems thorough/well-reasoned before they are instructed).
- Will you review all medical evidence, and my comments on it, before serving it?
- How, and how frequently, will you update me on the progress of my claim?

- At the end of the claim, will I receive all of the damages agreed with the defendant (or ordered by the court) or could my compensation be reduced in any way?

Stages in a typical injury claim

- Meeting/discussion between injured person and solicitor
- Solicitor instructed (terms of business agreed) by injured person
- Letter of claim sent to defendant, setting out the reasons for the claim
- Defendant's response (three months), providing documents (if disputing fault)
- Claimant obtains medical evidence
- Claimant requests interim payment if fault/liability accepted
- Defendant obtains medical evidence
- Attempts made to settle claim before proceedings issued
- Claim form issued – (almost all cases) this must be within three years of accident
- Claim form, particulars of claim, schedule of loss, medical evidence sent to defendant
- Defence, counter-schedule sent to claimant
- Allocation of claim to a 'track' by court – reflecting complexity/value of the claim – almost all chronic pain cases will be allocated to the highest track, known as the multi-track
- Questions posed to opposing party to clarify issues in dispute
- Questions posed to respective experts to clarify issues
- Formal disclosure of documentation relating to 'fault' and 'valuation' issues
- Witness statements of facts exchanged
- Service of any further medical/non-medical expert evidence
- Joint statements by medical and non/medical expert witness – setting out issues on which they agree and disagree, with reasons for disagreements
- Final schedule of loss served
- Final counter-schedule served
- Joint settlement meeting often takes place (or 'mediation')
- Trial

Selection of terms you are likely to encounter during the litigation

For a full glossary of terms you are likely to encounter during a claim, visit www.abarristersguide.org.uk and download the free book. What follows are a few of the more important terms which may be encountered. Any and every lawyer you meet ought to be delighted to explain these (and any other) terms.

General damages	These are losses of various types which are not capable of precise calculation. For example, they include the award for 'pain suffering and loss of enjoyment of life' (lawyers refer to as 'amenity'), which is the award for the actual injury and associated suffering. It also includes awards reflecting a person's future restrictions (or 'handicap') on the job market. Contrast 'special damages', below.
Joint expert	(also single joint expert) An expert who receives his/her instructions from both parties. This is usually seen in a small or moderate case, where the evidence is unlikely to be controversial, or in a more serious case, where the injury covered by this expert is likely to be a substantial part of the overall claim.
Not to be confused with:	
Joint report	A report prepared by opposing expert witnesses in the same field which sets out all of the areas in the case within their expertise, on which they agree, and disagree, and giving reasons for disagreement.
'JSM'	Joint settlement meeting – meeting between parties to try to settle a claim. This is a meeting with the parties in separate rooms, usually a few months before a trial. It is vital that a person is advised in the clearest terms, with good reasons, what the range of possible outcomes are at trial, so that they can participate in the JSM and contribute to its successful outcome.
Mitigation of loss	Taking reasonable steps to limit the consequences of an injury. Every injured person has a duty to try to minimise the effect of an accident, perhaps by returning to work when possible (even if at restricted hours and/or duties), or perhaps by redistributing domestic tasks between family members to reduce any claim for 'domestic care and assistance'.
PI trust	Personal injury trust – a method of investing compensation to protect state benefits.
Schedule of loss	This is the critical document in a personal injury case, because it sets out the special damages (see below) and very often also the general damages (see above). The defendant serves a counter-schedule which answers the claims made in the schedule, so that once these

documents have been finalised both parties ought to be able to identify their strengths and weaknesses of their positions, and consider how best to conclude the claim – often by arranging a ‘JSM’ – see above.

Special damages

These are financial losses which (unlike general damages, see above) can be calculated. Typically, these include lost earnings, travel expenses, medical treatment or medication costs etc.

‘Without prejudice’/‘WP’

This is a phrase, or even just the two letters ‘WP’ signifies that the parties are discussing aspects of the case in secret. Using the ‘without prejudice’ label in letters, and discussions, allows both parties to explore settlement of any/all aspects of a claim by making secret offers and suggestions which are often more generous than their stance in the case itself. So, for example, a defendant may offer to settle one aspect of a case for £5,000 in its counter-schedule (see above), which is an ‘open’ document seen by the court when determining the case, but it may make a higher offer on a ‘WP’ basis, to reflect the risk that it might lose the argument and be ordered to pay a higher sum.

Crucially, if a party fails to beat a ‘WP’ offer, the court is only told about the offer after it has decided the issue. At that point the party who declined an offer which it later failed to beat is very likely to face very unpleasant costs consequences – including having to pay the wasted legal costs after the offer was rejected out of the overall compensation he or she was awarded.

Claimant checklists on liability and valuation issues

Liability/the fault issue

- Write down an account of the accident as soon as you can.
- Take several photos immediately after any accident, to illustrate what happened, the position of vehicles, a piece of dangerous equipment etc.
- Consider who else might be able to provide information about the accident.
- Consider who else could provide evidence in a broader context (e.g. in a workplace claim) on issues relating to training, or equipment.
- *In a workplace claim*, note down names and addresses of colleagues who leave the defendant's employment who might provide evidence concerning liability issues, or valuation issues (e.g. your reputation, opportunities for promotion etc.).

Valuation/loss of earnings or income

- (1) Keep anything which will help to show how you have earned your living both before and after the accident (e.g. payslips, tax records, accounts, order books).
- (2) Consider realistically (not pessimistically) what the future probably held if the accident had not happened:

Assuming that your employer is still trading:

- (a) Would you still have the same job?
- (b) Would you have had a pay rise?
- (c) Might you have had a promotion. If so:
 - (i) Who was your competition?
 - (ii) Why were you 'better'?
 - (iii) Did you have periodic appraisals, which would show how well you were doing?
 - (iv) Who got the promotion?
- (d) Were you receiving employment benefits which are now lost: e.g. health insurance, use of vehicle, telephone?

Assuming that your employer is not still trading

- (e) What would you *then* have done if you had not been injured?
- (f) What were your chances of finding further work, and at what wage, and when, and where?
- (g) Might there have been increased or reduced travel costs in further work?
- (h) What qualifications did you have before the accident?
 - (i) Can you still use any of those qualifications, or if not, is that because of the accident, or for some other reason?

- (ii) What can you manage now?
- (iii) *Can you retrain in a field you know?*
- (iv) How long would retraining take, what would it cost, what is the rate of successful completion (something the college or provider should tell you), and what proportion of successful candidates find work?
- (v) Do you know what opportunities there may be?
- (vi) *Could you retrain in a new field altogether?*
- (vii) How long would retraining take, what would it cost, what is the rate of successful completion (something the college or provider should tell you), and what proportion of successful candidates find work?
- (viii) Do you know what opportunities there may be?
- (ix) What could you do if you did not pass the retraining course/exams?

Valuation/personal care and domestic assistance

- (1) Keep a record (perhaps weekly) of the sort of personal care provided to you (noting particularly any unsocial hours). This may include help with: washing; dressing; toileting; changing dressings etc.
- (2) Keep a record of tasks which others carry out for you. Typical examples are:
 - (a) cleaning;
 - (b) vacuuming;
 - (c) laundry and ironing;
 - (d) cooking;
 - (e) gardening;
 - (f) DIY/decorating;
 - (g) window cleaning;
 - (h) shopping; and
 - (i) vehicle maintenance/cleaning.
- (3) Also, if you were excellent at an aspect of DIY or gardening etc., say so, and provide 'before photos' of work you had done, which demonstrate those capabilities. If you had not yet had the opportunity to use such skills, you will need to explain in more detail.
- (4) Whether you have any formal qualification (NVQ etc.).
- (5) If not, then describe how you obtained the skill.
- (6) What you intended that skill to achieve.
- (7) Think as broadly as you can – *you are simply trying to give a comprehensive picture of the likely impact of the accident on you.*

Valuation/potential claims

- Do not miss important claims, but be sensible and realistic about whether the accident has actually caused the losses you are claiming.
- Some further examples of relevant questions might be:
 - Will you need any extra equipment or furniture in your home?
 - Do you need an automatic vehicle?

- Do you need an adapted vehicle?
- Are you likely to incur additional travel costs?
- Will conventional holidays be possible? If not, how can you be provided with holidays, and what additional costs might there be?
- Again, think as broadly as you can – *you are simply trying to give a comprehensive picture of the likely impact of the accident on you.*

Conflict of interest disclosures

Disclaimers and conflict of interest policies are found at: <http://bit.ly/1wqiOcl>

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