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INFORMATION HANDBOOK 2

## Civil Law: Compensating the Victims of Road Death or Injury

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SCARD and CADD  
RCM Business Centre, Dewsbury Road, Ossett, WF5 9ND  
email: [info@scard.org.uk](mailto:info@scard.org.uk)  
[www.scard.org.uk](http://www.scard.org.uk)  
Office phone: 01924 562252  
Registered Charity 1081572

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# Civil Law: Compensating the Victims of Road Death or Injury

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## 1. INTRODUCTION

The system of compensation for the victims of those injured or killed in road collisions is governed by Civil Law. This has to be distinguished from Criminal Law and there are a number of important differences. Compensation is simply the award of money (sometimes called the payment of damages) to either the injured person, or to the relatives of the deceased person. Payments are usually made through Insurance Companies, or the Motor Insurers' Bureau.

## PARTIES INVOLVED

The person bringing a claim is called a Claimant, and the person defending the claim is called a Defendant. The Defendant will usually have the backing of an Insurance Company who will normally appoint its own solicitor from a panel of solicitors that most Insurance Companies keep.

It is essential to know that the Claimant or the family of those who are killed has an absolute right to choose his or her own solicitor. It is important that a solicitor is chosen who is experienced in personal injury work or fatal accidents compensation. It is rare to find a solicitor who deals with divorce or conveyancing work that has the necessary experience to deal with compensation claims. This is sometimes forgotten in cases arising

from road traffic accidents. Some Insurance Companies insist that Claimants use a solicitor from the Insurance Company panel of solicitors. It is important to guard against this, as from experience, most panel solicitors are inexperienced in dealing with serious or fatal injuries and the work can often be downgraded to an unqualified clerk.

Most experienced legal practitioners can offer, "No Win, No Fee" arrangements so the benefit of legal expense insurance is now somewhat doubtful in any event. Legal Aid is not available for any claim here.

## BURDEN OF PROOF

The burden of proof usually rests with the Claimant. The standard of proof in Civil cases is based on the "balance of probabilities", unlike in the criminal court where the proof has to be "beyond all reasonable doubt."

It will be seen, therefore, that for a Claimant to prove his or her case, a lesser degree of proof is required than in a similar criminal case being heard at Magistrates or Crown Court. This is important. It means that although a person may not have been charged with any criminal offence, or even if a person has been charged but acquitted of a criminal offence, it may still be possible for a Claimant or the relatives of the victim of a road incident to claim compensation.

## COMPENSATION OR DAMAGES

For an injured person, it is possible to claim damages that split into two categories of claim.

### General Damages

This is compensation for a person's pain and suffering, both physical and psychological.

### Special Damages

These are the direct or indirect financial losses which have been caused by the road traffic incident, including everything from loss of earnings, recompensing friends and relatives who have helped the injured person, rehabilitation, private medical treatment and so on.

The biggest award to date in England and Wales is an award of a little over £13,000,000,000. Of that award at that time, only £120,000 was awarded for pain and suffering, with the rest of the award being for Special Damages for care, rehabilitation and the like.

## COMPENSATION FOR FATAL INCIDENTS

There are two claims here, they are as follows: -

**Law Reform (Miscellaneous Provisions) Act 1934** (known as "The Law Reform Claim")

This covers:

- (a) financial losses incurred by the deceased before his or her death
- (b) compensation for pain and suffering before death
- (c) funeral expenses

### Fatal Accidents Act 1976

(known as the "Fatal Accidents Claim")

This covers

- (a) Bereavement award of £15,120, for certain dependants.
- (b) Dependency claim for financial losses suffered by dependants.

### (c) Funeral expenses

Note: The Bereavement award can only be claimed by:

- the surviving spouse, or
- Parents, if the deceased was unmarried and under 18

Therefore, if the deceased was over 18 and unmarried there is no claim for bereavement award.

## WHO IS A DEPENDANT?

- Parents
- Grandparents
- Children
- Spouses
- Ex-spouses
- Co-habitee of more than 2 years cohabitation before death

## 6. DEPENDENCY CLAIMS

Let us suppose that the deceased was the major breadwinner leaving behind a widow and two children. A dependency claim is made, by calculating the financial dependency, which those who are left behind had upon the deceased, and multiplying that by the number of years it would have been expected that the breadwinner would normally have lived.

## 7. NERVOUS SHOCK

It is important to know that compensation is not normally payable for the act of death itself. Grief and sorrow are not compensatable. However, if you witness the incident or the immediate aftermath of it, then it may be possible for you to be compensated if you suffered depression or stress as a result of what you saw. However, the law is in something of a mess at present.

Essentially remember the three features are:

- (1) **Your relationship to the deceased or injured person.**
- (2) **You have to demonstrate that you suffered a mental injury such as stress or depression from the sudden and unexpected shock.**
- (3) **You have to be present at the scene or at the time or immediately afterwards to be able to qualify for any award of compensation for nervous shock**

## 8. THE COURT

Serious claims are normally heard in the High Court before High Court Judges who are usually of a more senior rank than County Court Judges. The distinction is being rapidly blurred however, with County Court Judges now dealing with claims of a value, which even a few years ago would have been the preserve of the High Court. The distinction is now somewhat artificial and unnecessary.

## 9. MOTOR INSURERS' BUREAU & THE INSURANCE COMPANIES

Even though the driver against whom a claim is to be made may be untraced following a "hit and run" incident, or the driver of the vehicle involved has no insurance, those who were injured or dependants of those killed may be compensated by the Motor Insurers' Bureau. This is a company, which is funded by all the major Insurance companies.

In simple terms, the Motor Insurers' Bureau (MIB) acts as an insurance company to step into the shoes of the un-traced hit and run driver, or the uninsured motorist, and will pay out compensation on exactly the same basis as though a valid Insurance Policy had been in place. The uninsured motorist will be required to repay to the MIB all the compensation which the MIB have paid out to the injured person or to the deceased's dependants.

Insurance companies have a reputation for being slow, indeed reluctant, to make payments to claimants; their defence is that they have a responsibility to their shareholders.

It is SCARD's experience that when you are represented by an experienced solicitor, claims tend to be settled more efficiently and satisfactorily.

## 10. CHOICE OF SOLICITOR

Taking into account the above point, it is absolutely critical that those who are injured are assisted in the pursuit of proper compensation by those who are experienced and expert in this area of law.

Do not be afraid to ask the solicitor of your choice what experience he or she has in dealing with serious claims.

- **Insist that he or she is a qualified personal injury solicitor.**
- **What is the maximum compensation that they have secured for a client?**
- **Have they handled issues in respect of Criminal Law and appeared in Inquests before?**
- **Ask them to describe previous cases in which they have been involved and ask them what their views are on seeking interim payments.**
- **Are they prepared to represent you on a “No Win, No Fee” basis.**

The Law Society, which is the governing body of Solicitors in England and Wales, has a panel of Personal Injury Lawyers who have demonstrated to the Law Society their expertise in personal injury cases.

There is also an association called the Association of Personal Injury Lawyers of which claimant solicitors are usually members.

Most Solicitors are more than happy to travel to see people at their home. Again, do not be afraid to ask a solicitor if he or she is willing to undertake home visits.

Finally, do not be foisted onto a Legal Expense Insurance Solicitor appointed by your Insurance Company simply because you think it will cost you nothing by having a Legal Expense Insurance Panel Solicitor acting for you.

**As explained above, you have the right to choose your own solicitor, and it is critical in claims involving a deceased person, or a seriously injured person, that a properly equipped and experienced solicitor, who is able to devote proper time and effort in the pursuit of your claim, is appointed.**

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