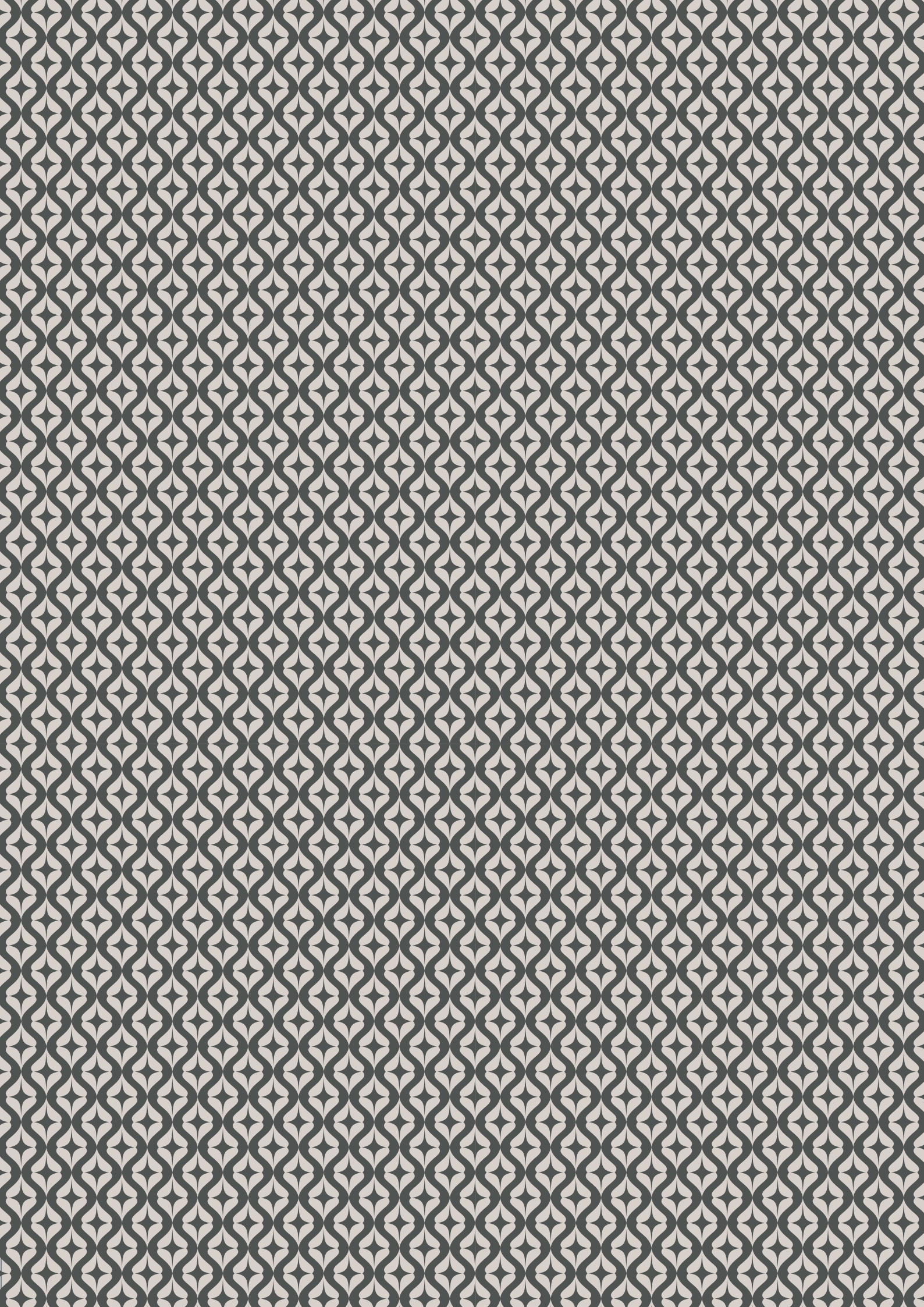




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A GUIDE TO ROAD TRAFFIC COLLISION CLAIMS





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THE AIM OF THIS BOOKLET IS TO PROVIDE SOME ASSISTANCE IN THE FIELD OF ROAD TRAFFIC COLLISION CLAIMS.

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INTRODUCTION

ACCORDING TO THE DEPARTMENT OF TRANSPORT'S STATISTICS BULLETIN, REPORTED ROAD CASUALTIES IN GREAT BRITAIN: MAIN RESULTS 2014, WHICH IS BASED ON ACCIDENTS REPORTED TO THE POLICE IN 2014, 1,774 PEOPLE WERE KILLED IN ROAD TRAFFIC COLLISIONS. THE NUMBER OF PEOPLE SERIOUSLY INJURED WAS 22,807 AND THE OVERALL NUMBER OF CASUALTIES OF ALL SEVERITIES WAS 194,477. A ROAD USER MAY BE LIABLE TO AN INJURED PERSON, OR TO THE ESTATE OR DEPENDANTS OF A DECEASED PERSON, ON THE BASIS OF COMMON LAW NEGLIGENCE. A HIGHWAYS AUTHORITY MAY BE LIABLE TO SUCH PEOPLE ON THE BASIS OF NEGLIGENCE AND/OR BREACH OF STATUTORY DUTY.

QUANTUM – VALUE OF YOUR COMPENSATION AWARD

In November 2012, a teenage girl left paralysed following a road traffic collision was awarded a lump sum plus annual payments thought to total over £23 million over her lifetime, in what is believed to be the highest ever personal injury award in England and Wales. Of course, the vast majority of claims are settled or determined for considerably smaller amounts, most within the fast track limit of £25,000.

As your lawyer, our job is to establish liability against the defendant and to achieve the highest possible level of damages for you. Although we are experienced personal injury lawyers, we will only be able to quantify your damages approximately.

Essentially, our aim is to restore you to the position you were in prior to the incident. Of course, it is impossible to take away the pain and suffering associated with a personal injury, particularly as, in many cases, there will be lasting physical and/or psychological disability. The award of monetary compensation is the only remedy available to the court and, particular in cases of catastrophic injury, claimants and their families will cope better with the physical, mental, social, and financial consequences of the injuries where appropriate monetary compensation is received.

In most cases, you will receive a lump sum award in full and final settlement of your claim, which means you will not be able to return to court at a later date to seek additional compensation. It is therefore essential that you let us know of all your losses prior to the settlement of your case.

Past Financial Loss – “Special Damages”

The main heads of special damages are:

Cost of repairs to or replacement of your vehicle	Where your vehicle is damaged beyond repair, you are entitled to claim its pre-accident value, less any salvage price obtained. Where the vehicle has been repaired, you are entitled to the reasonable costs of the repairs.
Vehicle recovery and storage charges	You will be able to claim any reasonable costs incurred in recovering the vehicle from the accident site and storage costs prior to repair or disposal. As you are under an obligation to mitigate your losses, you should not allow your vehicle to languish in storage facilities for too long or you may find you are unable to recover all the associated charges.

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QUANTUM – VALUE OF YOUR COMPENSATION AWARD (cont.)

<p>Loss of use of a motor vehicle or hire of a substitute vehicle</p>	<p>Where your vehicle is damaged and is off the road for a number of weeks while being repaired, you may claim damages for the ‘loss of use’ of your vehicle. A weekly amount should be claimed, and this will reflect the level of inconvenience and hardship incurred by you having to rely on other means of transport.</p> <p>Where a claim for hire charges is made, generally, a claim for loss of use will not be made as you have not been without a vehicle.</p>
<p>Loss of a no claims bonus and wasted road fund licence</p>	<p>Under the terms of an insurance policy, a no-claims bonus (NCB) will entitle the policyholder to a discount on his annual premiums where he has not made any claims under the policy for a specified period.</p> <p>Where there is a NCB of five years or more, the policyholder may be entitled to a discount of as much as 60% to 75% and, as premiums are becoming increasingly expensive, the loss of the NCB may represent a significant monetary loss to the claimant. You will lose the NCB where, as a result of his being involved in an accident, the insurance company has to make payments to either you or a third party under the terms of the policy and is unable to recoup such losses from anyone else.</p> <p>As it is a NCB and not a no-fault bonus, it is immaterial whether you were at fault or not. Where you have lost your NCB, or is at risk of doing so, the loss should be included in the claim for damages.</p>
<p>Loss of earnings</p>	<p>The starting point in the calculation is to determine your average net wage for the period immediately prior to the accident. The common approach is to obtain, from your wage slips or bank statements or from your employer, details of your earnings for the 13-week period prior to the accident. Where that 13-week period is not representative of your average pre-accident wage, a longer period, for example six months, should be considered.</p> <p>Further adjustments should be made to take account of any pay increase, promotion, or further benefits which you would have obtained during the period from the date of the action.</p> <p>In some cases, such as where you had obtained a job immediately prior to the accident and a clear pattern of pre-accident wages cannot be provided, or where there has been a lengthy period between the date of the accident and the assessment of damages, it may be useful to obtain details of a comparative earner. This involves identifying someone who was in a similar post and earning a similar salary to you immediately prior to the accident, and determining what his earnings pattern had been and, where appropriate, tracking his career progression and salary increases during the period</p>

Clothing and personal effects	There may be damage to items of clothing and other personal effects, such as mobile telephones, laptop computers, watches, etc. Where such items are damaged beyond repair, you are entitled to claim their pre-accident value, and appropriate documentary evidence (such as receipts or valuations) should be provided.
Cost of medical care	You are entitled to recover all medical expenses reasonably incurred as a result of the defendant's breach of duty—for example: prescriptions, over-the-counter drugs, and private medical care and treatment.
Cost of care and quasi-nursing services	<p>Care that would have been provided gratuitously, by a member of your family or a close friend. You are under no obligation to use care services provided by the NHS.</p> <p>You can either claim back charges of professional care provided to you or submit a claim for gratuitous care so long as such services were rendered necessary by the negligence of the defendant. In other words, the care provided must be over and above that which you would have normally received from the carer.</p>
Cost of DIY, gardening and housework services	You are entitled to recover from the defendant the reasonable costs of obtaining DIY, gardening and housework services which he used to provide for himself but has been unable to do as a result of the accident. The services may be provided commercially or gratuitously.
Cost of aids and appliances	You may require specific aids or equipment to enable him to cope better with his disabilities.
Cost of alternative and/or adapted accommodation	If you are living at home with a disability which was sustained in the accident, it is possible that the accommodation you prior to the accident is no longer suitable. It may require alterations and adaptations, such as the installation of ramps for a wheelchair or a hoist for access to the bath, alterations to the internal layout of the premises to facilitate access to bedrooms and bathrooms, or the creation of extra storage space to accommodate wheelchairs and other aids or appliances.
Transport costs	You are entitled to claim reasonable travelling costs, whether by private car or other transport, such as buses, trains and taxis, which have arisen as a result of the accident. The costs of travelling to hospitals, doctors, physiotherapists, etc., are all claimable.

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QUANTUM – VALUE OF YOUR COMPENSATION AWARD (cont.)

EVIDENCE

Is it on us, as the claimant, to prove all items of special damages, and details should be set out in the appropriate witness statement(s). Where damaged items are capable of repair or services are required, you should obtain two or three estimates in order to demonstrate that the costs incurred are reasonable. A decision to use a more expensive service provider should be explained in full.

Documentary evidence is very important when claiming for these losses—e.g. the Court of Appeal upheld the judge’s decision not to allow petrol costs where no receipts were supplied.

Injuries and Future Financial Losses – “General Damages”

The main heads of general damages are:

	Damages for pain and suffering	Awards of damages under this head are designed to compensate you for the pain and suffering attributable to any physical injury and psychological illness caused by the defendant’s actions, from the moment of the accident.
Pain, suffering and loss of amenity	Damages for loss of amenity	Strictly speaking, there is a separate head of damages known as ‘loss of amenity’, but compensation for this loss is usually included with compensation for pain and suffering. This element is designed to compensate you for the loss of enjoyment of life which has resulted from the accident. Examples under this head include interference with your sex life, or the loss or impairment of his enjoyment of holidays, sports, hobbies and other pursuits.
Handicap in the labour market	The purpose of this award is to compensate you for the potential difficulties you may face in obtaining another job, should you lose your current job, as a result of your injuries.	
Loss of congenial employment	The concept of compensating you for a loss of job satisfaction has been accepted by the courts for some time. You may have had to change jobs/roles as a result of the injuries sustained, and you may find your new job/role less satisfying as the one prior to the incident.	
Future loss of earnings	The court will need to determine what you would have earned, had you not been injured, up to the time you would have ordinarily retired or for a specified period, if you are expected to recover sufficiently to be able to work in the future.	

Future cost of medical expenses and care/non-medical care and aids and appliances	<p>In cases of catastrophic injury, it is possible that the claim for the cost of future care and quasi-nursing services will exceed the claim for future loss of earnings. This is because the need for care will often continue beyond your normal retirement age, plus the fact that specialist care is extremely expensive. It must be remembered that the cost and type of care may change in the future.</p> <p>For example, a severely injured child's costs of care will increase as he becomes older because it is unlikely that his parents will be able to look after him when they are elderly and, as such, increased professional help will be required.</p>
Lost pension	<p>In more serious cases, where you do not return to work or return on a lower wage, consideration must be given to a claim for lost pension. Your pension is normally based upon your period of service with the company and the salary that you would have earned at retirement age.</p>

ESTABLISHING LIABILITY FOR ROAD TRAFFIC COLLISIONS

THE DUTY OF ONE ROAD USER TO ANOTHER

All road users have a duty of care to avoid causing injury to others who it may reasonably be anticipated may be injured by their actions or failure to act. The term 'road user' includes not only those driving motor vehicles or riding motorbikes or bicycles, but also their passengers, pedestrians and owners of roadside property, such as signs and bollards, and the highway itself, which in most cases will be the local highway authority.

Clearly, a driver has a duty to drive carefully so as not to cause injury to his passengers or other road users, but other examples include the duty of a driver not to park his vehicle where it might constitute a danger, the duty of a pedestrian not to step into the path of a vehicle, and the duty of the highway authority to keep the highway in good repair.

This duty of care is well established and, in the majority of cases, will not be in dispute between the parties.

THE STANDARD OF CARE

The standard of care is that of the ordinary skilful driver, and it is not lowered to take account of the fact that the driver is a learner driver. A driver is not entitled to assume that other road users will always exercise reasonable care and skill.

BREACH OF DUTY

Each case must turn on its own facts. It is for the court to decide whether there has been any breach of the duty to take reasonable care in relation to other road users. How roads work is documented at length in black and white, most notably in the Highway Code, and so this element is usually simple to establish.

CAUSATION

You will have to prove that the breach of duty caused the loss and damage you are complaining about. The medical experts we arrange for you to see will provide their qualified medical opinion on whether the injuries you complain of are linked to the accident or not.

CONTRIBUTORY NEGLIGENCE

You have a duty to take care of your own safety and to take reasonable precautions against risks of injury of which you were aware or ought to have been aware. Your actions or failure to act might amount to a breach of this duty, and the court may conclude that you were fully or partly responsible for the injury suffered. Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 states:

Where any person who suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, ... the damages recoverable in respect thereof shall be reduced to such an extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

Therefore, the court will reduce the damages payable by the defendant to you only where the defendant is able to prove, on the balance of the probabilities:

- (a) that you were at fault;
- (b) that the fault was causative of the injury suffered; and,
- (c) that it would be just and equitable for your damages to be reduced.

An example of the above is that you may not have been wearing your seatbelt at the time of the incident, or you may have walked out into the road without looking which would most likely be seen to be a contributory cause to your loss/injury.

THE PROCEDURE

Most RTC cases are worth below the £25,000 threshold of the MoJ Portal, and so the MoJ Portal Protocol is very relevant to most RTC cases. The RTC set out a three-stage process.

A summary of each stage is set out below.

Stage 1 – “Liability Period”

To start your claim, we must send off a Claim Notification Form (“CNF”) to the Defendant to consider. The CNF needs to contain all information pertinent to the RTC and cannot be sent without it.

- a) Your personal details, including your national insurance number;
- b) Defendant’s details, including the vehicle registration number;
- c) Date, time, location and description of the incident;
- d) How much time you have had off work as a result; and,
- e) If you attended hospital, and if so, the name of said hospital.

We will, based on the information you give us, set out why the defendant driver is to blame for the accident. To assist us in doing so, it can be of immense assistance to have photographic evidence of vehicle damage. This not only confirms that a collision actually occurred but can also demonstrate points of impact which in itself could determine liability.

An example of this would be photographs of the rear damage to your vehicle, and the front damage to the defendant’s vehicle. This would be indicative of the Defendant driving into the rear of your vehicle. There are occasions where only one vehicle is involved in an accident. For instance, a mother driving her children to school and negligently collided into a wall. Whilst she would not be entitled to damages, her children are, and would be awarded compensation.

If liability is admitted within the MoJ Portal, the matter would then proceed to Stage 2 (determining the value of your compensation), which is set out below. If liability is not admitted, then the matter would proceed outside the MoJ Portal and on a standard basis. We will advise you of how the matter proceeds should liability not be admitted.

Stage 2 – “Negotiation Period”

As advised aforesaid, Stage 2 is the process of determining the value of your compensation. To proceed with Stage 2, we would need documentary evidence of loss. For injuries, we would need medical reports which catalogue the injuries you sustained in the RTC. Once we have documented all your loss, we would then put forward an offer to settle to the Defendant. The measuring stick to gauge how much your injury claim is worth is set out in the JC Guidelines. Such guidelines provide a spectrum of each injury from their most to their least severe, along with the estimated recovery time.

Once we have put forward our first offer, the Defendant has 15 working days to consider the offer. If they accept the offer, that is the case settled. Should they make a counter-offer, this will start a final 20 working day time limit to conclude negotiations between us and the Defendant. Failure to agree will result with the matter proceeding to Stage 3 (set out below).

It is vitally important you notify us of all loss prior to us settling your claim. Once settled, there is no reopening of the case.

Stage 3 – “Court Determination Period”

This stage means that both parties (us and the Defendant) submit our final offers to settle, and an independent adjudicator will, based on the documentary evidence before them; determine the award you will receive.

Prior to the determination, the Defendant must pay all damages they were prepared to pay in their final offer to us immediately. The difference in dispute will be determined by the independent adjudicator.

LIMITATION

Under sections 11 and 12 of the Limitation Act 1980, where you claim damages for negligence, nuisance or breach of duty, and that claim consists of or includes a claim for personal injuries; you must normally commence your claim (ie the claim form must be issued, or received by the court in order to be issued) within three years from:

- (a) the date on which the cause of action accrued; or,
- (b) the date of knowledge (if later) of the person injured.

In a simple road traffic collision case, generally you have three years from the incident (excluding the date of the incident) in which to commence the claim. If the last date of this period is a Saturday, Sunday or Bank Holiday, the time is extended until the next day when the courts are open and the claim can be issued. Where the three-year period has expired, you are not prohibited from commencing proceedings, although if you do so, the defendant may seek to have the claim struck out on the grounds that it is statute barred.

However, you may apply to the court for the limitation to be disapplied under section 33 of the LA 1980. In respect of children claims, limitation period starts on their 18th birthday and expires on their 21st birthday.

CHILDREN

Anyone under the age of 18 is entitled to bring a claim; however, they would require a litigation friend. In certain circumstances, the court will make an order permitting a child to conduct litigation without a litigation friend only where it is satisfied that the child has sufficient maturity and understanding to deal with the proceedings.

Generally, a parent would act as the litigation friend. The nominated person to be a litigation friend would simply have to let one of our lawyers know that they have been appointed. Once the child reaches the age of 18, the appointment will cease.

Court's Approval of Settlements

No settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid without the court's approval. This approval is necessary to ensure that the claim is not settled for less than it is worth and that the award is invested appropriately. Moreover, if such approval to a settlement is not obtained, a child claimant upon reaching 18 may issue proceedings against the defendant. If the child reached the age of 18 and became aware that the parent appointed litigation friend under settled or negligently handled the claim, they could be entitled to issue proceedings against the litigation friend.

THE MOTOR INSURERS' BUREAU

It is not uncommon for individuals to suffer personal injury as the result of the negligence of an uninsured driver or a driver who cannot be traced. The Motor Insurers' Bureau (MIB) was founded in 1946 with the specific purpose of entering into agreements with the Government to compensate victims of negligent and uninsured drivers. All motor insurers are obliged under the RTC 1988 to be a member of the MIB and to contribute to the fund from which compensation is paid. These contributions are funded by the premiums paid by their policyholders

The relevant agreements, explanatory notes and application forms may be found on the MIB's website at www.mib.org.uk.

Untraced Drivers – including 'hit and run' cases

The Untraced Drivers Agreement 2003 ('the 2003 Agreement') relates to accidents occurring on or after 14 February 2003 and requires the MIB to consider applications for compensation for victims of 'hit and run' cases where the owner or driver cannot be traced.

Criminal Activity Involved?

In the recent case of Delaney, it is possible that you could make a claim for compensation arising out of a road traffic collision even when criminality was involved. This could be drink-driving, or evading police vehicles.

Requirements

The applicant, or person acting on behalf of the applicant, must have reported the event to the police:

- a) in the case of claims for death or bodily injury alone, not later than 14 days after the event occurred; and
- b) in the case of claims for property damage, not later than five days after the event occurred. Evidence of the report must be supplied in the form of the crime or incident number, and the applicant must have cooperated with the police in any investigation they conducted.

Investigation of claims

The MIB is under an obligation to make an award only if it is satisfied, on the balance of probabilities, that the death, bodily injury or damage was caused in such circumstances that the unidentified person would (had he been identified) have been held liable to pay damages to the applicant in respect of it. The MIB shall investigate the claim and reach a decision as to whether it must make an award to the applicant, and where it decides to make an award, it will determine the amount.

Compensation

The MIB shall award a sum equivalent to the amount which it would have awarded to the applicant for general and special damages if the applicant had brought successful proceedings to enforce a claim for damages against the unidentified person. In calculating the sum payable, the MIB shall adopt the same method of calculation as the court would adopt in calculating damages.

OFFERS OF SETTLEMENT

Pre-medical offer

Occasionally, once the defendant has received the CNF, they will put forward pre-medical offers to entice you for early settlement. The benefit of them for you is that you will receive compensation a lot sooner. The possible negative of accepting a pre-medical offer is that you could be under-settling what your claim is actually worth.

An example could be that whilst they have offered £1,000 for you to have today, your claim could be worth £2,500 several months later (after the medical examination).

Part 36 offer

Part 36 offers can crop up at any time and carry with them possible consequences for the recipient. We, of course, are entitled to put forward a Part 36 offer at any time, to settle the case for a specified desired amount. If the Defendant accepts, then the matter will conclude.

More importantly, if you were to receive a Part 36 offer from the defendant, you must take into consideration the consequences of failing to beat that offer. Whilst you may well want more money than they are offering, should you reject that offer and then fail to obtain compensation higher than the amount the defendant offered, you could well be obligated to pay the defendant's legal costs from the time they made the offer to the conclusion of the case. This could well amount to thousands of pounds. This highlights the importance of the after-the-event insurance policy we can provide. (Ask our lawyers about ATE.)

WHO'S WHO AND WHAT'S WHAT?

There are several labels given in these cases which you may not be accustomed to.

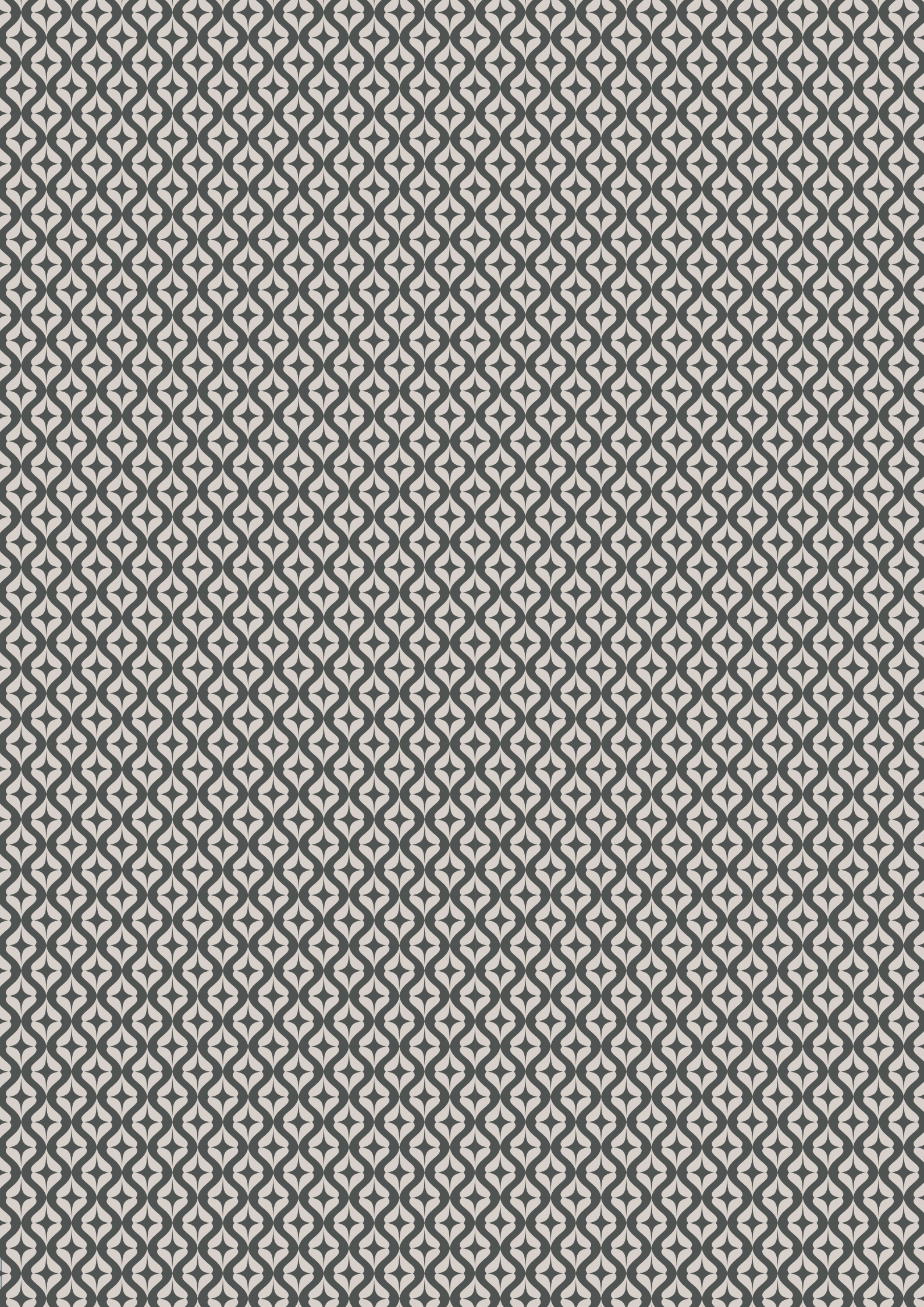
Claimant	You would be the claimant as you are the individual bringing the claim.
Defendant	This is the legal entity you bring the claim against. This would be the driver of the vehicle, and/or the insurance company responsible.
RTC	Road Traffic Collision, which encompasses terms including but not limited to 'crash', 'accident', and 'incident'.

WHY INSTRUCT US?

We have a team of dedicated lawyers with decades of experience in dealing with cases of this nature. Our lawyers are prepared to discuss your case at length by any means of communication that suits you. You are not just a number. You are not just a case that has been referred on. Your concerns matter, and our first priority is delivering the best possible outcome for you!

Once you notify your insurance company of the RTC, they will most likely refer you to their personal injury lawyers. At that time, you may consider agreeing to this as you will be happy that it is for free. But, what if your insurance company is the same as the defendant's? Would your insurance company's lawyers look to fight tooth and nail to ensure fair settlement from them?

In simple terms, if you are insured by 'Ace Insurance', and the person who collided into you is also insured by 'Ace Insurance', would 'Ace Insurance's legal team look to claim as much as they could against 'Ace Insurance' when they too are employed by 'Ace Insurance'? Could you really place trust in that legal team? It may be worth your time instructing us. We are independent from any Insurer and can assure you that we will endeavour to secure as much compensation as you are entitled to.





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