



the brain injury association

Claiming compensation after brain injury

This publication offers information on claiming compensation after a brain injury. It explains:

- what compensation is,
- who can claim compensation,
- common concerns of claiming compensation,
- the process of claiming compensation, and
 - other related issues.

The information provided in this publication is offered as a general guide. You should always seek specialist legal advice for claiming compensation. For more guidance on getting legal advice after brain injury, visit our website at

www.headway.org.uk/about-brain-injury/further-information/legal-advice.

To browse through our publications on a range of issues relating to brain injury and download these free of charge, visit

www.headway.org.uk/about-brain-injury/information-library.

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Contents

Introduction	4
What is compensation?	4
Eligibility for claiming compensation	5
Common concerns about making a compensation claim	5
Concerns about the claims process being too complicated	6
Concerns about the claims process being too expensive	6
Concerns about the claims process taking too long	7
Concerns about being too late to make a claim	8
Concerns about not having a strong enough basis to make a claim ..	9
Concerns about making a claim against a loved one/employer	9
Concerns about the impact of a compensation claim on welfare benefits	10
Concerns about not knowing who to claim against	10
Completing the claims process	11
Getting a solicitor	11
Investigating the facts	11
Contacting insurers	12
Gathering medical evidence	12
The medical assessment process	12
Neuroimaging evidence	13
Evidence in relation to personal care needs	13
Calculating your claim for damages	14

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Contents (continued)



the brain injury association

Settling your claim	14
Steps for Court proceedings	15
Pre-action protocols	15
How the Court will manage your case	15
How the Court costs are managed	16
Expert Assessments	16
How witnesses will be managed	17
Civil Procedure Rules	17
Joint Settlement Meetings	17
Trial	17
Rehabilitation alongside the compensation process	18
How the Rehabilitation Code can help	18
Quantum - how much compensation?	19
General damages	19
Special damages	20
Damages for future losses and expenses	20
Mental capacity	21
Summary	21
Glossary	22
Acknowledgements	23

This publication was previously Highly Commended at the British Medical Association Patient Information Awards 2016.

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Introduction

A brain injury can change a person's life, causing many long-term difficulties, sometimes with serious financial consequences. In cases where someone else was responsible for causing the injury, legal action may be necessary. This typically takes the form of claiming compensation.

This publication offers information on what compensation is, who can make a claim, common concerns, the process of claiming compensation, and other related issues.

This information applies to compensation claims governed by the laws of England and Wales. If you have been injured in another country, including Scotland or Northern Ireland, you will need to obtain specialist legal advice from a lawyer with experience in successfully handling brain injury compensation claims in the relevant country.

Words in **bold and underlined** are defined in a glossary at the end.

What is compensation?

Compensation is something (usually money) that is given to someone to make up for damage, injury or loss.

Compensation is paid **by** the person, company, employer, local council or other such party that has caused the damage, injury or loss (known as the **defendant**). It is paid **to** the person who has sustained the damage, injury or loss - in the case of this publication, this is the brain injury survivor.

The amount of money that is compensated after brain injury is calculated very carefully. It is based on the impact of the brain injury, and includes things such as:

- **financial impact** - for example, struggling to return to work after brain injury and therefore losing income;
- **practical impact** - for example, needing to pay to appoint carers to look after the survivor, or a **case manager** to coordinate care;

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- **physical impact** - for example, losing the ability to walk or complete self-care activities independently, such as washing or dressing;
- **psychological impact** - for example, no longer being able to go out to socialise or pursue day-to-day activities, due to anxiety or depression.

Compensation payments can be used to cope with the financial impact of the injury, for example to pay for rehabilitation, employ case managers, buy adaptive equipment, make necessary home adjustments or cope with the loss of regular income.

Eligibility for claiming compensation

Never assume that you will not be entitled to compensation.

You can claim compensation if you can demonstrate that another person was at least partly responsible for your injuries. Even if you were partially at fault, you can still make a claim, though the amount of compensation you receive might be reduced proportionally.

Common concerns about making a compensation claim

In this section, we offer information to address some of the common concerns people may have about claiming compensation after a brain injury. The concerns we discuss cover the following:

- concerns about the claims process being too complicated;
- concerns about the claims process being too expensive;
- concerns about the claims process taking too long;
- concerns about being too late to make a claim;
- concerns about not having a strong enough basis to make a claim;
- concerns about making a claim against a personal contact, such as a loved one or an employer;
- concerns about the impact of a compensation claim on welfare benefits.

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Concerns about the claims process being too complicated

Claiming compensation is a legal process that should always be done under careful guidance and instruction of a solicitor. Therefore, although the process can be complicated, you should always be supported by a solicitor to understand and complete the steps needed to make a claim.

Brain injury cases can be especially complicated because of the often hidden and long-term nature of brain injury. Solicitors with specialist knowledge of brain injury should therefore be sought to manage these cases.

Our *Solicitors Directory* provides a list of solicitors with specialist knowledge of brain injury who can help with brain injury compensation cases. To access the directory, visit www.headway.org.uk/supporting-you/in-your-area/head-injury-solicitors-directory

Concerns about the claims process being too expensive

Never decide against making a claim through fear of legal costs. There are a number of legal funding options available, and the majority of solicitors will offer free initial consultations.

Please note that legal aid is not available for personal injury claims.

Below are some of the funding options that may be available to you.

- *Legal expenses insurance cover* - you may have the benefit of legal expenses insurances as part of an existing policy, such as a car insurance or home insurance policy. In many cases this will help you to cover legal costs.
- *Trade unions* - if you are a member of a trade union, you may have legal costs cover for workplace incidents.
- *Conditional Fee Agreements* - this is a 'no win - no fee' agreement, a financial agreement where a legal representative only gets paid if they win the case.

Solicitors may be able to suggest other funding agreements. It is important that

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you discuss the options for funding your legal costs with your solicitor and enter into the arrangement which is most suitable for you. A good solicitor will guide you and help you to decide what is the best option for you to make sure you get the best outcome from any claim.

Please note that in claims arising from hit-and-run accidents, where the motorist cannot be traced and there is no insurance company to deal with the claim, or for Criminal Injuries Compensation claims, legal costs are dealt with differently. It is likely in these cases that you will be responsible for the majority of the legal costs from your damages. This should not stop you from pursuing a claim and a good solicitor will make it clear what the likely costs will be at the outset of the claim.

Concerns about the claims process taking too long

Brain injury cases can take a long time, and will depend on factors such as the severity of the injury. However, for many, making a claim is a necessary and worthwhile step to making sure that the right financial and practical arrangements are made for the future.

If your brain injury has caused a loss of earnings and you are struggling with finances in the meantime, you can ask your solicitor about making arrangements for **interim payments**. These are payments that can be made to you while you wait for the claims process to be completed and can help you to continue to pay essential bills in the meantime.

Interim payments can be useful to pay for specialist medical, therapeutical or residential treatment or care. You can also use it to employ a **case manager** and, in very serious cases, to purchase suitable housing, wheelchairs, disability aids, equipment and transport. Most insurance companies now see the benefits of making **interim payments** to help injured people.

It is your solicitor's responsibility to make claims for your financial losses and needs at various stages, and to obtain **interim payments** of damages for you from the **defendant**'s insurance company. There is no limit to the number of **interim payment** applications that can be made.

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Sometimes an insurance company will agree an **interim payment** without difficulty, usually after fault has been admitted. If a large payment is requested, or fault has not been admitted, it can be more difficult to agree an **interim payment** with the insurance company, and in such circumstances, an application may need to be made to the Court.

If it is difficult to establish **liability**, it may not be possible to secure **interim payments**. In these circumstances, your solicitor should seek to make sure, that, wherever possible, you get help from statutory bodies. This may include helping you with applications to the local authority for housing adaptations, applications to special educational needs services or community care, and seeking provision of therapeutic services from the NHS.

Concerns about being too late to make a claim

There are strict time limits for pursuing compensation claims, so a solicitor should be contacted as soon as possible to start the process.

Court proceedings must be started within three years from the date of the incident, otherwise the Court can stop the case proceeding because the claim is out of time. However, this three-year rule does not apply if the injured person is under 18 years old at the time of the injury, in which case the time limit is extended until that person's 21st birthday.

Importantly, this time limit does not apply to someone who is not able to manage their own affairs because of impaired **capacity**. For this reason, someone who has suffered a brain injury may be able to bring a claim many years later, although this is not a reason to delay making a claim.

If you have been the victim of a criminal assault, you have the right to seek compensation from the Criminal Injuries Compensation Authority (CICA). There is a two-year time limit for making an application to the CICA. However, in special circumstances, the CICA can apply discretion to permit cases to be considered outside this time period.

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Concerns about not having a strong enough basis to make a claim

Anyone can make a claim for compensation if they can show that someone else was either fully or partly responsible for their brain injury. Even if the injury was partly the survivor's own fault, they can still make a claim for compensation against anyone else who was also responsible, although they might get less compensation money awarded because of their partial responsibility.

Example...

Someone has sustained a brain injury through a road traffic collision. The other driver who crashed into them was driving recklessly over the speed limit and is therefore responsible for the crash. However, the survivor was not wearing their seatbelt while driving, so would also need to accept partial responsibility for the injury. This would reduce the amount of compensation received from the other driver.

It is important to note that brain injuries are not always recognised immediately after they occur. For instance, if someone sustains a brain injury during illegal activities and is detained by the police before the injury is suspected, it may go undetected for some time. Police officers may not be aware of how brain injuries can occur or how they present, leading to a delay in detection. A solicitor can help you understand these issues and assess the strength of your claim, even if the injury was not identified at the time.

Concerns about making a claim against a loved one/employer

It is natural to feel hesitant about making a claim if the injury was caused by someone close to you. You might worry about harming your relationship or risking your job. However, it's important to understand that making a claim isn't personal - it's about getting the compensation you deserve for your injury.

Keep communication open and honest. Remember, your employer cannot legally dismiss you for filing a personal injury claim against them.

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Concerns about the impact of a compensation claim on welfare benefits

When your compensation is paid, the defendant must reimburse the government for any state benefits you received due to your injury, up to five years after the injury or until the settlement date. This amount is typically deducted from your compensation.

It is important to seek advice on how your compensation will affect your state benefits. Non-means tested benefits will continue as long as you are eligible, but you may lose eligibility for means-tested benefits unless you set up a personal injury trust to protect your entitlement.

Further guidance on personal injury trusts is available in our publication [*Personal injury trusts after brain injury.*](#)

Concerns about not knowing who to claim against

When making a claim, the claim will be brought against the person or entity responsible for your injury, known as the “**defendant.**” Here are some examples of potential defendants in various incidents.

- Road traffic accidents: The driver of the vehicle that caused the accident.
- Workplace injuries: Your employer, if the injury was due to unsafe working conditions or negligence.
- Public liability: The owner of a property where you were injured, such as a shop or restaurant.
- Medical negligence: The healthcare provider or hospital responsible for your treatment.
- Product liability: The manufacturer or retailer of a defective product that caused your injury.

Any documents used for the Court case must be certified by you with a ‘statement of truth’ to confirm that it is accurate.

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Completing the claims process

Getting a solicitor

The first thing you should do to start the claims process is to get a solicitor. A compensation claim is a legal process, so you will need legal advice and representation throughout the claim.

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You should contact a solicitor as soon as possible so that the legal processes can begin. The solicitor will want to interview witnesses whilst events are still fresh in their minds, and to obtain photographs and plans of the incident scene. You should choose a solicitor that specialises in brain injury, so they have the right knowledge of how to work with you, what the full impact of your brain injury may be, and therefore how much compensation you could be owed.

We have put together some helpful questions to ask your solicitor when making a decision about choosing a solicitor. You can find these on our website at www.headway.org.uk/about-brain-injury/further-information/legal-advice/questions-to-ask-your-solicitor.

Investigating the facts

Once you have appointed a solicitor, they will need to start gathering information relevant to your case. This may include signed statements from relevant witnesses, police reports or photographs of the scene where the injury took place.

Photographic evidence is important, so if you have taken photographs of the scene or any equipment involved, give them to your solicitor.

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Contacting insurers

The solicitor will submit a letter of claim to the **defendant(s)** and will then contact their insurers. The insurance company will have to say whether they will accept the claim or not. If they do not, this is called contesting **liability**.

There will be a set time scale for the insurance company to make a decision about **liability** and to state whether or not they intend to compensate you.

If the insurers contest **liability**, your solicitor will then take steps to start Court proceedings on your behalf.

Gathering medical evidence

Your solicitor will instruct medical experts to prepare reports which describe your injuries, the history of your treatment, your present medical condition and how you will be affected in the future. This will not be the same medical expert who was involved in your treatment, as they will need to be independent and will be chosen by the insurance company or your solicitor.

The medical assessment process

You will be required to attend a medical examination. This is an important part of your case and is a chance for the impact of your brain injury to be understood and documented.

It is very important that the medical expert involved in your case should understand the details of your brain injury and the impact of it. It is therefore helpful, or sometimes necessary, to bring a close relative along with you to the medical assessment, so that they can speak on your behalf or give important information about the injury.

You could also consider making a list of your difficulties before the medical assessment and giving this to the medical expert. Take your time with making this list, and consider the day-to-day impacts of the injury.

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Remember, whatever your problems are it is important that they are explained in as much detail as possible and that you do not downplay or minimise the consequences of the injury. Consider all types of effects that you are experiencing, not just physical ones.

It is likely that several medical experts will be instructed by your solicitor, in particular:

- A *neurosurgeon* or *neurologist*, who can report upon brain scans and advise on the significance of issues such as **post-traumatic amnesia**. They may also give an opinion about the clinical consequences of the injury and a **prognosis** for the future.
- A *clinical neuropsychologist*, who will be able to carry out tests to analyse the ways in which your injury has affected your cognitive functions, particularly memory and concentration, your personality and behaviour, and your ability to cope with the tasks of daily life and work.
- A *rehabilitation consultant*, who can advise about your needs for rehabilitation, including all forms of therapeutic treatment, and can provide a medical overview in relation to reports from therapists. The consultant will also be able to give an opinion as to your ability to work and to manage at home in the short, medium and long term.

Neuroimaging evidence

Your solicitor may suggest that you undergo brain scans, especially if you did not have them in hospital when you were treated. CT scans, or more detailed MRI scans, can often show the extent of injury to the brain, which may help the neurologist when preparing the medical report. However, it is important to note that scans cannot show damage at a microscopic level, and some injuries can cause severe difficulties without being evident on scans.

Evidence in relation to personal care needs

Many people who have had a brain injury are much more dependent upon

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members of their family for help and support in many areas of their lives.

Your solicitor will need to obtain witness statements from family members of professional carers/helpers to provide detailed evidence as to what day-to-day problems currently exist, what carers are regularly providing, and what care needs there may be in the future.

Calculating your claim for damages

Your initial financial losses from the injury need to be added up and properly presented in a **Schedule of Loss** to the **defendant**'s insurance company, together with all supporting documents. The expenses that you and your family incur after the injury will be included.

When the case reaches an advanced stage and all expert reports are available, an updated and final schedule will be prepared setting out all of your financial losses, both past and future. The future loss projections will be based upon mathematical models, and it is important that your solicitor has a good understanding of the mathematical principles involved in the calculations.

In cases where the loss of future earnings claim is complicated, or if you were involved in a business, a partnership or a company, your solicitor might need to instruct a specialist accountant experienced in legal cases to prepare a report for the Court.

The schedule of **damages** prepared by your solicitor will eventually form the agenda for the negotiation and settlement of your claim or for the trial of the case at Court.

Settling your claim

After all of the evidence has been gathered and calculations for your claim have been made, the insurers should make proposals for settlement (the amount of money you will receive for your claim). Your solicitor will suggest whether their offer is reasonable and whether or not you should accept it.

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Some of the things that you should consider when deciding whether or not to accept are:

- What would be the total value of your claim if you were to win completely?
- What are the chances of succeeding and the risks of losing?
- Should any reduction be agreed for any fault on your part (called contributory negligence') and if so, what percentage?
- Should there be any reduction from the scheduled value of your claim due to the medical and other evidence submitted by the insurance company or their solicitors?
- Are any deductions likely to be made from your claim if the case goes to Court and a judge hears the evidence?

Your solicitor may instruct a **barrister** to offer you advice for this. It is often helpful to have a meeting with both your solicitor and **barrister** at this stage. However, the final decision is yours, and your solicitor and **barrister** should not accept anything without your prior approval and consent. If you cannot manage your own affairs, your solicitor must also advise the **Court of Protection** about any settlement and obtain their approval.

Steps for Court proceedings

Pre-action protocols

These protocols pertain to personal injury claims, and aim to facilitate the early exchange of information and advice. They establish a timeline for the insurance company to determine **liability** and compensation. The pre-action protocols also ensure that all necessary information to support your claim is fully shared with the insurance company.

How the Court will manage your case

Once the initial documents are complete, the Court will arrange a date for a

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procedural hearing at which the judge will give instructions for the exchange of evidence for the case to progress.

If **liability** is disputed by the **defendant**, the judge will usually order a split trial. A split trial is a preliminary trial of the **liability** issues only, which means that the Court will be able to hear the evidence relating to **liability** in isolation.

If **liability** is agreed before the hearing, or if you win the case in Court, the judge will confirm a timetable for the exchange of expert medical evidence aids in the valuation of your claim.

It is essential that Court timetables are complied with, as the Judge may not allow evidence or documents that are delivered after the deadlines set out in the Court orders. Your legal team will manage this on your behalf.

How the Court costs are managed

The Court should set a budget for the legal costs incurred in a case. Each party will receive their own separate budget. Once ordered, all parties must comply with their set budget and any requests outside the budget must have prior permission from the Court. Effective cost management will protect you and ensure all work conducted in your claim is necessary and proportionate. Additional costs outside the agreed budget are unlikely to be recovered from your opponent.

Expert Assessments

Your legal team will coordinate with independent medical and non-medical experts to produce reports detailing your injuries, treatments, **prognosis**, and future recommendations. These experts, who must not be involved in your NHS treatment, will include specialists in fields such as neuroradiology, neurology, neuropsychology, care and physiotherapy.

The insurer will also appoint similar experts to create their own reports. Both sets of reports will be exchanged and reviewed under court instruction to produce a joint statement highlighting agreements and disputes. If your claim goes to trial, these experts may be called to testify.

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How witnesses will be managed

Your legal team will serve witness statements from witnesses they wish to call to any trial to give evidence. The Insurer will do the same. In some circumstances, witness statements may be submitted to the Court, without the witness being called to give evidence at a trial. Your legal team will support you fully in coordinating and understanding all witness statements and attendance of any witnesses.

Civil Procedure Rules

The Civil Procedure Rules streamline the legal process and encourage early settlements by promoting cooperation. This efficiency is especially beneficial in complex personal injury cases, aiming to resolve matters swiftly and reduce court burdens. Transparency ensures both parties understand each other's case strengths and weaknesses, facilitating effective negotiations and potential settlements without lengthy trials. This approach saves time, resources, and reduced stress and uncertainty for all involved.

Joint Settlement Meetings

Joint Settlement Meetings (JSMs) are a key tool in the Civil Procedure Rules for encouraging early resolution of disputes. By bringing both parties and their legal representatives together, often with clients present, these meetings provide a structured environment to negotiate and settle claims before they reach trial. This method has proven to be very effective in resolving many cases, saving time, costs, and removing the emotional toll of a court trial.

Trial

If a settlement is not reached and the case proceeds to a final hearing, your solicitor will guide you through the process of giving evidence. It is important to present your story honestly, supported by any relevant notes or documents.

In cases involving brain injuries, the court often relies on testimony from family

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members, medical experts, and other professionals rather than the injured person themselves. This approach helps ensure that the court gets a comprehensive understanding of the impact of the injury without putting undue stress on the injured individual.

Rehabilitation - alongside the compensation process

Many people with brain injury need some level of rehabilitation after being treated in hospital to maximise their potential for independence.

As your claim for compensation progresses, it is important to ensure that your personal rehabilitation needs are met. These might include therapy, re-education, re-training, housing, transport, disability aids/equipment, care support and enabling help.

Your solicitor should take an active role in working with your rehabilitation team and should provide clear information about the possible extra resources that can be made available through the compensation process. Your solicitor should work with the rehabilitation experts within the NHS to ensure continuity of care as far as possible.

How the Rehabilitation Code can help

The Rehabilitation Code is a vital framework designed to ensure personal injury claimants receive support and intervention as early as possible. Here are some key aspects.

1. *Proactive role of solicitors.* Solicitors for both claimants and **defendants**, as well as insurers, have a duty to consider the potential benefits of medical help, rehabilitation, or early intervention for the claimant. This proactive approach is crucial for facilitating a fulfilling and independent life for the injured party.
2. *Independent Assessment.* If the necessary support has not been provided by treating professionals or medical experts, the Code mandates an

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independent assessment. This assessment, conducted outside the litigation process, identifies the claimant's needs and the associated costs.

3. *Funding by insurers.* Insurers are required to consider providing **interim payments** to cover the costs of medical treatment or rehabilitation identified in the independent assessment. This ensures that claimants can access the necessary services without delay.

By adhering to these guidelines, the Rehabilitation Code aims to enhance the recovery process and improve the quality of life for those affected by injuries.

Quantum - how much compensation

1. **General damages.** These cover pain, suffering, and loss of amenity. This compensation addresses the physical and emotional impact of your injury.
2. **Special damages.** These cover financial losses incurred up to the date of the settlement. This includes medical expenses, lost earnings and other out-of-pocket costs directly related to your injury.
3. **Future losses and expenses.** This category covers anticipated future financial losses and expenses. It includes ongoing medical treatment, future loss of earnings, and costs for long-term care or rehabilitation.

Each case is unique, and the exact amount of compensation will depend on the specifics of your situation.

Categories considered for compensation awards

1. **General damages**

- Pain and suffering (the physical and emotional impact of your injuries)
- Loss of amenity (how your injuries affect your daily life, family interactions and recreational activities)

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2. **Special damages**

These cover financial losses up to the settlement date, including:

- Loss of earnings
- Medical expenses
- Support costs (value of help from family or friends, including their lost earnings)
- Professional care costs
- Costs for any aids and equipment, including maintenance and replacement
- Expenses for home adaptations
- Costs incurred by you and your family for travel
- Value of items damaged in the incident.

3. **Damages for future losses and expenses**

- Future loss of earnings, including lost promotion prospects
- Loss of pension rights, if your ability to work is affected
- Personal care and support, including future costs of care, both professional and voluntary
- **Case management**, if a case manager is needed
- Costs for any required special housing
- Domestic expenses (increased costs like heating)
- Ongoing therapy costs
- Transport costs, especially for specially adapted vehicles
- Costs for professional management of your finances

Keeping detailed records and receipts is crucial for providing these expenses.

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Mental capacity

A brain injury can affect the ability to process, retain and weight up information to make decisions in one's own best interests. This is known as lacking mental **capacity**. Losing this ability can cause some people to be at risk of harm, and in these cases, it becomes necessary for someone else to make decisions on their behalf under legal frameworks.

Further information on mental **capacity** and making arrangements for appointing someone to arrange finances on a survivor's behalf is available in our publication [*Mental capacity: supporting decision making after brain injury*](#).

In cases where a brain injury survivor lacks **capacity** to manage their own finances, it might be necessary for someone to be appointed to manage this, including any compensation claim payments.

Summary

If you or a member of your family has suffered a brain injury, it is absolutely essential that you take legal advice from a solicitor with expertise in dealing with similar cases. Ensure your solicitor has experience with brain injury cases, and make sure they are on Headway's Head Injury Solicitors Directory.

Most solicitors offer initial advice free of charge. If you have a strong case, it is unlikely to cost you anything to pursue your claim upfront. Only accept advice from legally qualified solicitors. Avoid advice from unqualified individuals and organisations

If you choose the right solicitor, many of the problems you and your family face can be tackled confidently. You should receive a great deal of support from your solicitor as you work positively through rehabilitation and a compensation claim, and aim towards achieving the best possible quality of life.

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Glossary

Barrister - a lawyer who specialises in representing clients in court and providing expert legal advice. They are often hired by solicitors for their expertise in courtroom advocacy.

Capacity - an individual's ability to understand, make, and communicate decisions about their legal matters. If a brain injury impairs this ability, the person may be considered to lack capacity, meaning they cannot make informed decisions on their own.

Case management/case manager - the coordination of medical care, rehabilitation, and support services to ensure the best outcome for the injured person.

Court of Protection - a specialist court responsible for managing the financial affairs of individuals who lack the **capacity** to do so themselves, often due to brain injuries. In some cases, they could support welfare decisions.

Defendant - a person or entity accused of a crime or incident or sued in a court of law. They are the party required to respond to the charges or claims brought against them, in your case.

Disbursements - out-of-pocket expenses incurred by a law firm on behalf of a client. These expenses are separate from the lawyer's fees and can include costs such as court filing fees, expert witness fees, medical report fees, and travel expenses.

Damages - the monetary compensation awarded to the injured party for both financial losses (like medical expenses and lost wages) and non-financial harm (such as pain and suffering) caused by the injury.

Interim payments - advance partial payments made before a compensation claim has been fully settled.

Liability - determining who is legally responsible for the injury. It involves identifying the person or entity whose actions or negligence caused the accident,

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and who may be required to provide compensation for the harm done.

Post-traumatic amnesia - a temporary state of confusion and memory loss that occurs after a traumatic brain injury. During this period, the individual may have difficulty forming new memories, recalling past events, or understanding their surroundings.

Procedural hearing - a preliminary court session where the judge reviews the case's progress, clarifies legal issues, and determines the next steps needed before a trial.

Prognosis - a medical term that refers to the likely course and outcome of a disease or condition. It includes predictions about the chances of recovery, potential complications, and overall outlook for the patient's health.

Schedule of Loss - a document setting out your financial losses that you wish to reclaim.

Acknowledgements

The original version of this publication was written by Grahame Codd and Neil Whiteley, specialist personal injury solicitors in national law firm Irwin Mitchell LLP. This 2025 edition has been revised with kind support from Sarah Griggs, Partner at Irwin Mitchell LLP, Tracey Storey, Managing Partner for Personal Injury and National Team Leader, Serious Injury at Irwin Mitchell LLP, and Tracey Lyth, Client Journey Manager at Irwin Mitchell LLP.

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Last reviewed March 2025.

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