Understanding your Legal Options After a Serious Road Collision

Do I actually need a solicitor?

While it is advisable to speak to a specialist personal injury lawyer after a fatal or serious road traffic collision, it is an entirely personal choice. A reputable firm would always be expected to provide some initial advice and guidance without placing you under any further obligation.

While no amount of money can ever compensate for the suffering caused by a road traffic collision, you may be able to make a civil claim. For those bereaved this will involve looking at everything the person who has died provided - from their income, to tasks they carried out around the home (such as cooking or gardening), and childcare. It may also include funeral or memorial costs, and the claiming of bereavement damages. If you have been seriously injured, a civil claim may mean being able to swiftly access treatment, rehabilitation and therapy. It could also help with ongoing care and any adaptations needed. Those considering making such a claim are likely to benefit from a specialist lawyer to guide them through the process and to deal with other parties on their behalf.

However, more than helping with financial security, many law firms may also offer free support at inquest, assistance with accessing benefits and can signpost to emotional support (even if there is no civil claim).

When should I seek legal advice?

A civil claim must usually be commenced within 3 years of the death (which is not always the same date as the collision) or serious injury. Exceptions apply to those under 18 (who have until the date of their 21st birthday) and where a person has lost the capacity to manage their own affairs (where there is no time limit).

In the aftermath of a collision, you may feel bereft, exhausted or overwhelmed; it is completely understandable that speaking to a lawyer may not feel like a priority. However, speaking to a lawyer as soon as you can is highly advisable. Sometimes lawyers can secure interim payments which cover immediate bills, rehabilitation and therapy. Lawyers can also offer advice and guidance and help to talk you through the criminal, coronial and civil justice processes. They can assist in securing or preserving evidence that may be needed for a civil claim to be made later.

At criminal court, a lawyer may accompany you and be able to help explain what is happening, they may also pick up on crucial information that aids your claim. At an inquest, you can ask questions of any witnesses, but doing so yourself can feel very nerve-wracking; your civil lawyer may instead do this on your behalf and can otherwise guide you through the inquest process.

Will speaking to a solicitor affect the police investigation?

During their investigation, the police may share limited information with you (or ask you to restrict information known to immediate family), to ensure that no harm is brought to any potential criminal proceedings. This does not and should not prevent you from speaking to a lawyer. The police are responsible for the criminal investigation, which is entirely separate to any civil claim your lawyer pursues on your behalf. Your lawyer will conduct themselves in a professional and confidential manner. Your lawyer can also use the correct and proper channels to request that the police disclose certain information to them to help them with your civil case.

Can I have legal advice before the criminal case finishes?

Yes, absolutely.

It is often the case that the civil and criminal processes run side by side.

Evidence obtained in the course of a Police investigation, coroner's inquest, and any criminal proceedings will likely be important for the civil claim.

A criminal case can take many years to conclude due to complex investigations and court backlogs; it is important to be mindful that a civil claim should usually commence within 3 years of the date that the death or serious injury occurred.

Early advice is important, often before this evidence is available, to enable access to important support from the "at fault" insurer through a civil claim.

This can include support to pay bills or access medical care almost immediately after the collision has occurred – this is where a specialist personal injury lawyer can be of huge help.

It is also important to be aware that in some cases criminal charges may not be brought, but a civil claim may still be possible and should be thoroughly investigated at the earliest opportunity. This is because the burden of proof is lower – in criminal cases, the prosecution have to prove things beyond reasonable doubt, whereas in a civil claim the court applies the "balance of probabilities" to determine what is more likely than not to have happened.

What does a solicitor actually do?

If you have sustained a serious injury, early rehabilitation is crucial. Your Solicitor can engage with the motor insurer to facilitate private rehabilitation where the needs are not fully met by the NHS. Solicitors and insurers often work together to organise a package of treatment to help you. This can take place even without a final decision being made on liability as those investigations continue.

Your lawyer and their team will work to gather proof of what has occurred and the impact this has had upon your life; they will then liaise with insurance companies or (in the case of an uninsured or untraced driver) the Motor Insurers' Bureau on your behalf. Your lawyer will work to get you financial support along the way which helps to secure the future of your family or

enables you to rebuild your life as far as possible (while acknowledging that life will never fully return to the way it was before the collision).

Where someone has sustained a serious injury, solicitors work with the insurer of the "at fault" party to try to secure early rehabilitation to support their recovery and to work towards offering help with quality of life.

Your lawyer will negotiate on your behalf if out-of-court offers are made, provide advice about the claim, and represent you if your case goes to trial at civil court (although many civil claims reach a settlement).

How do solicitors achieve this?

The focus of a good solicitor is always on you and your family. They should listen to you, to help them to understand your priorities and should then explain how they can help.

It can feel overwhelming with many changes following a serious injury or the death of a loved one. This is why a good solicitor can be an important source of support, particularly in the early stages.

They also offer support during the criminal process, attending court hearings as well as offering representation if there is an Inquest.

Will I have to pay anything?

Most specialist personal injury lawyers work on a “no win - no fee” basis.

This means that if your civil claim does not succeed, there will normally be nothing for you to pay.

Your legal representative should discuss with you at the outset how legal costs will work in your case. It is important that you ask them any questions you have so that you understand if there is anything you may have to pay. You can approach different firms if you wish and compare their terms as well as the overall service on offer before you settle on the firm to represent you.

Can I change solicitor?

Yes, you can. Generally, this is a very straightforward thing to do. Once you have selected a new solicitor, they will be able to prepare a form of authority for you to sign that can be sent to your previous solicitor requesting that the file be transferred. The standard procedure is for the previous firm to request an agreement from the new firm to include their incurred costs in the final bill once the case concludes. You do just need to bear in mind though, that if you are instructing a new solicitor, the funding arrangements may not be the same as they were with the original firm so you will need to check those and take advice if appropriate.

Do I have to use the solicitor recommended by my insurance company?

No, you don't. You can choose to instruct whomever you like but there are certain aspects to be borne in mind. If you proceed with the solicitors appointed by your insurance company, then there will automatically be an insurance policy in place to protect the claim against loss. If you instruct your own solicitor, then the insurer may refuse to provide this indemnity, and you may need to obtain your own 'After the Event' insurance policy to protect the claim. However, this is a very straightforward thing to do, and your chosen solicitor would be able to advise you on this. In some cases you may not even need such insurance but your solicitor will be able to advise you on this.

What if my loved one was partly responsible?

If your loved one was partly responsible for the collision, please try not to let this put you off speaking with a specialist personal injury lawyer; they will not judge you or your loved one. While this may be a difficult process, a decision will be made as to the percentage of which your loved one was responsible for the collision – this percentage will then be deducted from any financial claim. However, more than financial support alone, a lawyer can still assist you with wider support including at inquest or with signposting for emotional support.

Can I claim if the driver died?

Yes, you can make a civil claim where the driver has died. The claim is handled and paid out by the insurance company who insured the deceased driver. If there was no insurance policy in place, the claim will go through the Motor Insurers' Bureau (MIB).

Can I claim if the vehicle was stolen (and/or uninsured?)

Yes, if you or your loved one were hit by a vehicle that was stolen or uninsured you can make a civil claim. Your lawyer will be able to talk you through this, but the claim would be made through the Motor Insurers' Bureau. If your loved one was a passenger in a stolen/uninsured vehicle, they may also be able to make a claim; this would be dependent on them being able to prove that they genuinely did not realise the vehicle was uninsured or stolen.

Can I claim if no-one can trace the vehicle?

Yes, if the vehicle and driver that caused the collision cannot be traced, you may be able to make a claim against a different scheme run by the Motor Insurers' Bureau.

What happens at an inquest?

When a person is killed or dies in unexpected circumstances, the coroner for the area in which they died will open an inquest. In the case of a road traffic collision, the inquest is then usually suspended while the police investigation takes place. At the end of the police investigation, criminal charges may be brought against a driver; in this case the inquest will remain suspended while the case goes to Magistrates' Court and in some cases, Crown Court.

Ultimately, if a driver is found guilty for either Causing death by careless driving or Causing death by dangerous driving, the coroner will usually accept the findings of the criminal court and close the inquest. However, there are occasions where the coroner may decide that they still wish to hold a full inquest, or where the family may want this. The decision for this sits with the coroner, they must judge that there is sufficient reason to resume, such as if wider questions regarding the death remain unanswered.

If a driver is found not guilty of causing a death, the coroner may or may not hold a full inquest; again, it will depend on whether the coroner feels that the death has been examined thoroughly in the criminal court.

If no criminal charges are brought at the end of a police investigation, the coroner will hold a full inquest.

An inquest seeks to establish who has died, when, where and how. The inquest will not apportion blame and is not a criminal trial. The coroner or a jury will listen to witness testimony and review police and medical statements or reports. The coroner will decide who is called to give evidence at an inquest – this will not always include other drivers involved in the collision. During the inquest, the coroner, the bereaved family and other interested persons (such as a representative from the insurance company) can ask witnesses questions. Understandably, bereaved families can find the thought of this intimidating, so a lawyer can act on their behalf.

A 'pen portrait' of the person killed may also be read out – this is a personal tribute (and can include a photograph) submitted by the bereaved family. The pen portrait tells the inquest what the person who died was like.

Once the coroner considers that the 'fact-finding' of the death has been completed, they will record a formal conclusion – this allows for the registration of the death and the issuing of the final death certificate.

How long will a claim take and what does it involve?

There is no definite answer as to how long a civil claim will take. In some cases, your lawyer will be able to secure interim payments so that you can start to get some support very quickly. However, the completion of the whole claim could take anything from several months to several years.

Your lawyer and their team will work to gather proof of what has occurred and the impact that this has had on your life. This may involve the need to provide your lawyer with documents such as bank statements and bills. Your lawyer may also arrange for you to be seen by medical experts to help them with gathering evidence; you should be aware that the defence can also make similar requests. This process can feel challenging, but a reputable lawyer will do their best to carefully explain what is needed and why, and to manage things as sensitively as possible.

Your lawyer will negotiate with the insurance company or Motor Insurers' Bureau on your behalf – they will provide you with advice, but they can only accept or decline an offer with your say so. If an out-of-court settlement cannot be reached, your lawyer will represent you at a trial at civil court and may engage the service of a barrister.

Will a claim affect my benefits?

Yes, your current or future entitlement to means-tested benefits and local authority support may be affected if you have a successful civil claim. It is important to bear in mind that even if you are not currently receiving benefits or care, you may wish to make a claim in the future, and this information may still be relevant.

When assessing entitlement to means-tested benefits or care, the Department for Work and Pensions (DWP) or local authority will consider any capital you own. This includes savings, investments, and in some cases property that you own but do not occupy as your main home.

Individuals receiving means-tested benefits or care have a legal right to place compensation received from a personal injury claim into a Personal Injury Trust. If properly established, the compensation held in the Trust is generally disregarded when calculating entitlement to means-tested benefits and support. This is an important right and should not be overlooked. Your solicitor will be able to advise you on this and you should let them know about any benefits or support you receive.

Receiving personal injury compensation may affect your entitlement to certain means-tested benefits, financial assistance or publicly funded care and support.
In some circumstances, establishing a Personal Injury Trust may help protect your compensation from being taken into account when your financial circumstances are assessed.

There are specific rules and timescales associated with Personal Injury Trusts, and individual circumstances will vary.

We strongly recommend seeking independent legal advice from a suitably qualified solicitor before making decisions about how your compensation is held or managed.

Can Road Victims Trust (RVT) recommend a solicitor?

Whether to pursue a civil claim, and (if so) which law firm to use must be your decisions. However, RVT can signpost you to their Legal Panel, which is made up of carefully selected firms that specialise in personal injury claims. The firms on the Legal Panel all have significant experience of acting for those bereaved or seriously injured through a road traffic collision.

RVT expects that all firms on its legal panel adhere to the Solicitor's Regulatory Authority (SRA) Code of Conduct. They also expect that all individuals contacting a panel law firm will be treated with professionalism and compassion and adhere to the RVT's Code of Conduct.

Finally, initial advice should be provided without any obligation, and no pressure should be placed on an individual or family to make an immediate decision.