


Claiming for
personal injury
in Moray

morayclaims.co.uk



Table of Contents

Chapter 1: Do you need a solicitor at all?.....	11
A serious headache.....	11
What's wrong with you conducting a DIY personal injury claim?.....	12
Dealing directly with the insurer (“Third Party Capture”).....	13
The downside of third party capture – settling your claim for too little.....	13
The disadvantages can be very significant.....	14
Accident victim = one-shotter / insurance company = repeat player.....	15
Don’t add insult to injury.....	15
Chapter 2: How soon should you contact a solicitor after an accident?.....	17
It’s never too early to call your solicitor	17

CLAIMING FOR PERSONAL INJURY IN MORAY

- The evidence is fresh.....18

- It reduces the chances of problems with time limits in relation to your claim.....19

- It may prevent you taking action which could be against your best interests20

Chapter 3: Can You Choose Your Own Personal Injury Solicitor?.....22

Solicitors nominated by insurers are not generally independent.....23

Important points when choosing a personal injury solicitor.....24

Chapter 4: How do you know which solicitor to choose?.....25

The Proportion of People Searching the Internet for a Solicitor.....25

The Top Criterion in Choosing a Solicitor – Proven Specialist Knowledge.....26

Other Important Factors.....26

How Do You Find an Accredited Specialist Solicitor in Scotland?.....27

Finding a Personal Injury Solicitor in Scotland – An Additional Resource.....27

Chapter 5: How Much Does A Personal Injury Claim Cost?.....29

A hidden cost in some cases.....30

“No win – no fee” and legal aid.....31

Insurance required for no win – no fee claims.....31

Paying an agreed percentage to a claims funding company.....32

Maximising total damages and minimising deductions.....33

Moray Claims / G&Y “nil deduction” scenario 1: legal aid.....33

MC/G&Y “nil deduction” scenario 2: “no win – no fee” pre-litigation or in the Sheriff Court.....33

MC / G&Y cases where a deduction is inevitable: Court of Session actions.....34

Case Study 1: Road Traffic Accident.....34

Case Study 2: Accident at work.....35

Case Study 3: Road Traffic Accident.....35

CLAIMING FOR PERSONAL INJURY IN MORAY

Case Study 4: Road Traffic Accident.....36

Summary: deductions matter.....36

Chapter 6: How long will your claim take?.....37

There is no standard timescale.....37

Ballpark timescales should be possible to assess.....38

What influences how long it will take?.....38

A possibly-speedy conclusion39

The usual need for medical evidence.....40

Complications in cases take many forms – some examples.....41

Chapter 7: Maximising your personal injury claim’s value.....42

It’s all about money.....42

Factor 1: Whether your claim succeeds at all.....43

CLAIMING FOR PERSONAL INJURY IN MORAY

Factor 2: If it succeeds, but there is contributory negligence.....43

Factor 3: Whether your case settles before or after going to court.....43

Factor 4: If court action is raised, whether you beat any formal offer43

Factor 5: How much of your compensation is paid to your solicitor.....44

Chapter 8: Injury Rehabilitation Services in Moray.....46

Private treatment costs are recoverable.....46

Help that your GP approves should be a recoverable cost.....47

A list to help you.....47

Physiotherapy.....48

Osteopathy.....49

Complementary therapies.....49

Chapter 9: What Are The Biggest Pitfalls To Avoid?52

2 Ways Exaggeration of Injuries Can Damage Your Personal Injury Claim.....52

Your life: nothing hidden.....52

What you say -v- what you show.....53

Examples from our own experience.....54

Why is it such a big deal if you exaggerate your injuries?.....55

Summary: the 2 possible drawbacks of exaggerating your injuries56

Chapter 10: Winning your PI claim and still losing.....57

How can that happen?.....57

But why do national firms charge so much?.....58

And how do we get paid for all this trouble?.....58

CLAIMING FOR PERSONAL INJURY IN MORAY

How we can help..... 60

Contacting us.....60

Introduction

I joined Grigor & Young, Elgin, in September 1992, having just completed my legal training in Edinburgh.

My favourite subject during my Law Degree was Delict (basically, “the law relating to accidents”) and I had been able to develop that interest during my Traineeship.

As a general practice firm, Grigor & Young did a bit of personal injury work – as most firms did at that time – and I was gradually able to increase the proportion of my workload which comprised that type of work over the next few years.

We did work for a well-known legal expenses insurer and, as personal injury work became more high-profile, increasingly competitive and more “controversial”, we also received referrals from a well-known accident helpline.

My colleague, Marie Morrison, who probably has more experience in personal injury work than I do, joined G&Y in 2005. Since then, we have both become Accredited Specialists in Personal Injury Law through the Law Society of Scotland, Accredited Senior Litigators through the

CLAIMING FOR PERSONAL INJURY IN MORAY

Association of Personal Injury Lawyers (APIL), and the Elgin branch of G&Y (we also have an office in Forres) has gained corporate accreditation from APIL.

In 2012, we launched our Moray Claims website (morayclaims.co.uk) and have gone on to post a lot of articles there about different aspects of personal injury law and related issues.

The whisky industry is a crucial part of the Moray economy and this eBook is an attempt to distil the experience we have gained in helping people make personal injury claims over 20 years and highlight some important considerations if you are based in or around Moray and find yourself in the unfortunate position of having to make a personal injury compensation claim.

I hope you will find the information useful. If you notice any mistakes or find anything you do not understand, feel free to get in touch. Our contact details are at the end of the book.



Best wishes.

Peter Brash, Elgin, May 2015.

Chapter 1: Do you need a solicitor at all?

A serious headache

Imagine you have been injured in an accident at work and suffered a serious skull fracture. You needed an emergency operation because of bleeding on your brain. You're lucky to be alive.

After 3 weeks in hospital, you are allowed home to continue your recuperation.

Almost immediately, you are inundated with phone calls about your accident. It's your employer's insurers. They want to negotiate a settlement of your claim with you. When you seem to them to be taking too long, they even send out a claims inspector to your home, trying to get you to sign on the dotted line.

Is that fair and reasonable behaviour by the insurers?

“Beware of the ‘wolf in sheep’s clothing’ – the growing trend for the insurer of the person who caused your injury to make direct contact with the you, the victim, offering to settle the compensation claim direct.” – APIL

What's wrong with you conducting a DIY personal injury claim?

Most personal injury claims are insurance claims.

In most personal injury claim situations, it is an insurer who will be dealing with it and paying the compensation to you. So, if you have been in a car accident, you don't deal with the other driver. If you have had an accident at work, you don't deal with your employers.

Insurance companies are not charities.

They are businesses and their duties are to their shareholders. In every claim, their priority is to pay out compensation at the lowest possible level, preferably making no payment at all.

It can be easy to lose sight of this fact.



Dealing directly with the insurer (“Third Party Capture”)

A common practice among insurers – where they have been informed of an accident and reached the conclusion that their insured was to blame – is to contact you (the innocent, injured party) direct and try to persuade you to settle the claim straight away. This approach has come to be known as “third party capture”, which sounds dramatic but is an appropriate description. *Insurance companies are not charities.*

The downside of third party capture – settling your claim for too little

The problem is that there are countless examples of third party captures where insurers have got to the point of making a settlement offer and the injured person has finally become suspicious that the insurers might not be putting forward a reasonable valuation.

The insurers have no duty or incentive to act in your best interests. The injured person has then sought legal advice and found that their claim was actually worth a lot more than the offer on the table. The Association of Personal Injury Lawyers (APIL) has campaigned tirelessly to put a stop to third party capture and they have many examples of unfair practice by insurers in this area.

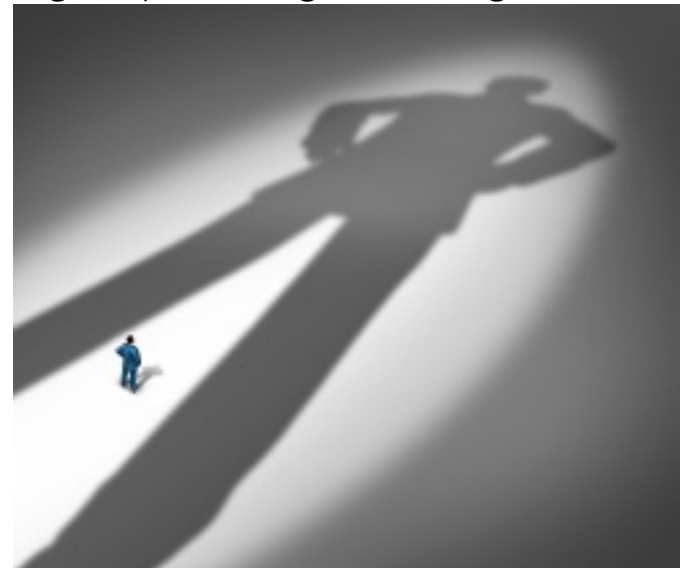
The disadvantages can be very significant

Returning to the extreme example at the beginning of this chapter – which is from our own files – our client had suffered a serious head injury in an accident at work, which required surgery to remove a blood clot and left him with some brain damage.

He was only recently out of hospital when his employer's insurers contacted him directly and made an offer of £10,000 to settle the claim. He contacted Grigor & Young and, following the raising of proceedings in the Court of Session, his claim settled for a figure in excess of £400,000.

In cases of serious injury, it is madness to settle without a medical report from at least one specialist.

In the example given above, doctors from five separate medical specialisms were required, ranging from neurology to plastic surgery.



Accident victim = one-shotter / insurance company = repeat player

But, of course, accident victims tend to be first-timers in that position. Your first inclination is **not** to be suspicious that accepting a “pre-medical offer” (i.e. one made with only a sketchy idea of the nature, extent and long-term effect of the injuries and what other losses you have) from an insurer is probably a bad idea from your point of view.

By its very nature, the full extent of third party capture is impossible to establish but the cases that come to the attention of personal injury claimant solicitors are probably only the tip of the iceberg.

Don't add insult to injury

Where you've been injured, say, in a road accident and the third party insurers quickly offer you a courtesy car while your own is being repaired, it can seem that they are helping you and reducing the amount of hassle for you. But any offer they make to you for your injuries is likely to be at the lowest possible level.

The insurers know that if you involve a specialist solicitor in making your personal injury claim, they will have to pay full value to you and also meet that solicitor's fees on an agreed scale – so there is no cost to you.

CLAIMING FOR PERSONAL INJURY IN MORAY

Allowing the insurers to deal with you directly, without help from a specialist solicitor, really can be adding the insult of under-settlement of your claim to the injury from the accident. Please don't let that happen to you.

Chapter 2: How soon should you contact a solicitor after an accident?

You should get in touch with a solicitor as soon as possible.

If you have been seriously injured, you may not be fit enough to contact a lawyer yourself for months after the accident. In those circumstances, it can be acceptable for a friend or relative to make the first contact. Most solicitors will do home or hospital visits, if that will help get things under way. Or they can get the basic details from the friend or relative, which will allow a start to be made.

Ultimately, it will have to be you, the injured person, who gives the instructions to your solicitor but that is not necessarily essential in the first place.

It's never too early to call your solicitor ...

Years ago, the Law Society of Scotland ran a marketing campaign with the strapline: "It's never too soon to call your solicitor ... but it could be too late."

This may have been dropped because of the appearance of popular alternatives such as “It’s never too soon to call your solicitor ... a b*@!*?d!”. (Along the same lines as “Every little helps ... line the pockets of the shareholders of your favourite multinational supermarket”).

Why is it important not to delay in getting expert advice from a specialist accident solicitor?

There are probably more reasons than the ones that follow but these are good reasons, in our view:

- **The evidence is fresh**

Over time, your memory of the accident circumstances will fade and so will the recollections of any witnesses. Added to that, some types of accident have to be treated as “emergency” investigations in every case and the sooner these are carried out the better. One example of this is in cases of people tripping on pavements and suffering injury. In these situations, you need to get good quality photos of the defect in order to show there was a sufficient height difference for the defect to be classed as “dangerous” and you need evidence as to how long the defect has been in existence prior to



the date of the accident.

If investigation only first takes place months or longer after the accident, it can become extremely difficult to get good quality evidence about how long the tripping hazard was present **before** the accident date.

- It reduces the chances of problems with time limits in relation to your claim

Most personal injury claims have a life of only 3 years from the date of the accident.

For some claims, for example, related to aircraft / aviation or accidents on seagoing vessels such as ferries within the UK, the period is two years. You have to either settle your claim by negotiation within the relevant time period or raise a court action to keep the claim alive beyond the deadline. If you leave it late to obtain legal advice, it may be difficult for your solicitor to investigate properly the merits of the claim within the limitation period, so as to be able to reach a decision on its viability. It is not ideal to be forced into the position of having to raise a court action to preserve a possible claim before you are even confident it is likely to succeed.

Most personal injury claims have a life of only three years.

Another possible time limit applies to insurance you might have that could cover legal expenses in relation to the making of a personal injury claim. House contents insurance and other common types of household insurance often have legal expenses insurance (LEI) as an “add-on”. However, the option may only be there if you notify the insurer of the possible claim within a certain period (usually a few months) of the accident.

- It may prevent you taking action which could be against your best interests

Unfortunately, there is still a possibility you will be contacted directly by insurers for the person who caused you to be injured, offering you a quick settlement of your claim. It is wise to be sceptical about these offers. The insurers are not required to have your best interests at heart and it is naïve to think that they would.

As discussed right at the beginning of this book, we have personal experience of a case in which an injured person was offered £10,000 to settle their claim within weeks of getting out of hospital following a serious head injury. When the claim eventually came to be settled, the compensation received was in excess of £400,000.

Many people injured at work, in our experience, can be tempted to resign their post when they realise

CLAIMING FOR PERSONAL INJURY IN MORAY

they may not be fit to go back to work at all or only after a lengthy period of time off. It is not always detrimental to the value of your claim if you have resigned from your job following an accident but it can be. It is always best to get advice on the pros and cons before making the decision to resign.

There are still rare occasions where employers dismiss employees injured at work because they are no longer fit for work. In these situations there can be employment law issues arising – such as unfair dismissal – and it is important to get urgent advice because the time limit applying relative to an application to an Employment Tribunal is typically three months from date of termination of employment.

Chapter 3: Can You Choose Your Own Personal Injury Solicitor?

The answer is, generally, “yes”.

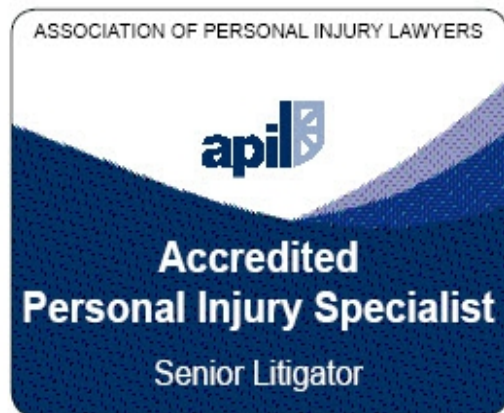
In many situations if you have been injured as the result of an accident, you will have other property losses that will be insured and you will be contacting your insurers to claim for those. The most common example is in the case of a road traffic accident. Your car may well have been damaged and you will contact your insurers to see about repairs or a replacement vehicle.

Your motor insurers will usually ask you if you have been injured in the accident. If you have been injured, they will refer you on to a specific law firm, chosen by them, as if it is “the normal thing to do”.



Solicitors nominated by insurers are not generally independent

It is important to be aware that there is a financial relationship between the insurers and the solicitors they recommend to you. The relationship operates on the basis that the insurance company agrees to pass on all their claims to the solicitors and the solicitors pay a referral fee for the privilege. It means that the recommendation is not necessarily made in your best interests. The business relationship is the overriding factor.



In addition, the recommended solicitor may not be local either to you or to the place where you had your accident. Many are based in larger city firms. A solicitor who is local to you is likely to be more convenient for you to meet face-to-face and contact easily. A solicitor who is local to the place where you had your accident is more likely to be familiar with that location than a more distant solicitor. This “local knowledge” can be invaluable to winning the case. In many situations, if a court action is required in relation to your claim, the local solicitor is also better-placed to deal with court action because it will be raised in the local Sheriff Court.

So, bear in mind that you are perfectly entitled to choose your own personal injury claim solicitor. It is your claim, after all. You do not have to follow your insurance company's recommendation.

Important points when choosing a personal injury solicitor

Ideally, they should be accredited as specialising in personal injury law. It is also good if they have membership of an organisation – such as APIL – which demonstrates their commitment to ongoing training and personal development as well as a willingness to abide by certain standards (e.g. no cold-calling).

Also, be sure to choose a firm which offers legal aid for personal injury claims or will run the case on a “no win – no fee” basis. Only this will give you peace of mind and protect you against the risk of having to pay something if your claim fails.

In choosing your own solicitor, you need to select someone who specialises in personal injury law as this will ensure they have the knowledge and experience to handle your claim.

Chapter 4: How do you know which solicitor to choose?

If you think you need a solicitor and you do not either have one already or manage to get recommendations from relatives or friends, the likelihood is that you will do an internet search to find a suitable solicitor.

That was the main finding of research carried out by the German equivalent of Which? Magazine (Stiftung Warentest) and published in its March 2013 edition.

And it's not an unexpected result.

The Proportion of People Searching the Internet for a Solicitor

What is perhaps surprising is that internet search came quite a distant third (behind “have a solicitor already” and “ask a trusted person to suggest a good solicitor”) with only 15% of respondents citing



the internet as their main research method.

On the other hand, you were probably carrying out an online search if you are reading this book ...

The Top Criterion in Choosing a Solicitor – Proven Specialist Knowledge

The survey also included a question about which issue people felt was most important when making their choice as to which solicitor to consult.

The clear winner, with 51% of participants making it their number one, was whether the solicitor had qualifications or accreditation which showed the solicitor to be a specialist in that field of law (e.g. personal injury law, family law, employment law).

The clear winner ... was whether the solicitor had qualifications or accreditation which showed the solicitor to be a specialist in that field of law.

Other Important Factors

- 16% said that a solicitor being recommended to them by a trusted friend or relative was the crucial factor;

- For 14% the top criterion was geographical proximity – where the solicitor was either in their home town or near their place of work; and
- The possibility of an early face-to-face appointment with their solicitor was the most important thing for 6% of respondents.

How Do You Find an Accredited Specialist Solicitor in Scotland?

The best way to find a solicitor with an interest and with relevant experience in a particular area of law is to use the “Find a Solicitor” search facility on the Law Society of Scotland website.

You can search for a solicitor in your region or town / city or you can search by the type of work you need carried out. This covers everything from help buying or selling a house to a personal injury claim or employment law matter.

Finding a Personal Injury Solicitor in Scotland – An Additional Resource

In addition to the Law Society of Scotland’s Find a Solicitor page, there is also the possibility of searching on the website of the Association of Personal Injury Lawyers (APIL) for members of the organisation who are also APIL-accredited personal injury practitioners.

CLAIMING FOR PERSONAL INJURY IN MORAY

APIL is a not-for-profit campaign organisation, with about 4,300 member lawyers across the UK, which devotes itself to changing the law, protecting and improving access to justice and widening the services available to victims of personal injury.

Membership of APIL alone is not evidence of expertise, experience or competence and, as a result, from 1999, APIL has operated an accreditation scheme for its members. This is overseen by an independent academic quality council. Accredited members attend regular training to keep their specialist personal injury skills up-to-date.

Peter and Marie of Grigor & Young / Moray Claims are accredited as Specialists in Personal Injury Law by the Law Society of Scotland and as Senior Litigators by APIL.

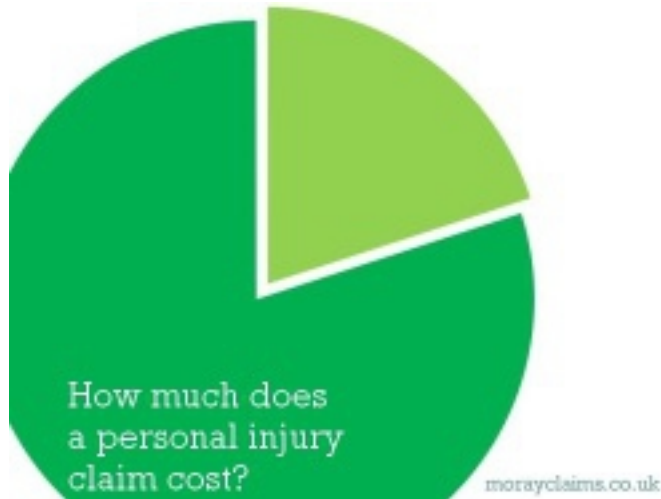


The Elgin office of Grigor & Young has corporate accreditation from APIL.

Chapter 5: How Much Does A Personal Injury Claim Cost?

Your solicitor's aim is to maximise the amount of compensation you receive for your injuries and other losses.

The "top line" value of your claim needs to be as high as possible, but that's not all. You also want to try to reduce the amount you will lose in having to pay legal fees from your compensation. For most people who become a personal injury client of Moray Claims / Grigor & Young, you pay nothing to us out of your compensation. In other words, you receive your damages in full, without any deduction. In a minority of cases, though, a deduction does apply.



So , how much does a personal injury claim cost? And how can you minimise what you will have to pay out of your damages? As we will see, it can mean the difference between

receiving 100% of your compensation and only 80% – and the reduction has nothing to do with contributory negligence. Putting it another way, how would you feel if your claim settled at £75,000 and you only received £60,000 when, with a different firm of solicitors handling your claim, you would have received the full £75,000?

A hidden cost in some cases

One of the hidden factors in the economics of personal injury claims relates to how much of your compensation you will actually receive if your claim succeeds. Few people consider this matter at the outset of a claim. It's hardly surprising. You've got so many other things to worry about, including recovering from your injuries and staying afloat financially, if you are not fit to work. But the nature of the agreement about what fees will be payable is an important consideration when you are deciding which solicitor you want to help you with your claim.

Arithmetic features heavily in this chapter because it is easier to explain what we mean by using worked examples. The examples below are real cases we have dealt with, though we keep everything anonymous. The examples illustrate how crucial it is to be clear at the start what sort of feeing agreement you are entering into with your solicitor. It could make a significant difference to the amount of compensation you receive in your hands at the end of your claim.

“No win – no fee” and legal aid

At Moray Claims / Grigor & Young, we take on personal injury claims in two main ways. We either deal with them “no win – no fee” or using legal aid. Legal Aid is still available for personal injury claims in Scotland, though the position may change in future. Many solicitor firms in Scotland which specialise in personal injury have decided to concentrate on no win – no fee and no longer offer legal aid as an option. The big risk in personal injury claims is losing the case after a court action has been raised. You can have a large liability for the opponent’s costs.

Insurance required for no win – no fee claims

You need to make sure your no win – no fee claim is covered by some kind of insurance.

An “After the Event” policy, such as we offer at Moray Claims / Grigor & Young, will do the job or insurance via a claims funding company set up by the solicitors themselves. A common arrangement for no win – no fee is for you to sign an agreement in which you agree that, if you win your claim, the funding company will receive a percentage of your compensation.

Paying an agreed percentage to a claims funding company

Arrangements vary but a typical example would be that you have to pay -

- 20% of the first £100,000 of your claim,
- 15% on the next £400,000 (i.e. on the value from £100,000 to £500,000), and
- 10% on anything above £500,000.

So, for example, if your claim settles at £60,000, you have to pay 20% to the funding company – i.e. £12,000 – which means that you receive £48,000.

If your claim settles at £600,000, you lose £90,000 (i.e. £20,000 + £60,000 + £10,000) and receive £510,000

Note that, as a percentage of the total amount of compensation, you lose less for a bigger claim than a smaller claim.

Taking the examples above, the percentage loss on £60,000 is a straightforward 20%. On the £600,000, the percentage reduction is 15% (i.e. $[90 / 600] \times 100$).

Maximising total damages and minimising deductions

Many firms will emphasise how they maximise the value of your claim and often get for clients two or three times the initial offer, by the time the claim settles. We say that's fair enough but it's only half the story. You must also look at what is being taken away from your compensation to pay the funding company.

Moray Claims / G&Y “nil deduction” scenario 1: legal aid

If we deal with your claim under legal aid, there is no deduction from your compensation if the claim settles successfully. So, if your claim settles at £40,000 before or after court action is raised, you receive all of that amount. Under the sort of “no win – no fee” arrangement we have described above, the loss would be 20% – i.e. £8,000. You would receive only £32,000 in your hands.

MC/G&Y “nil deduction” scenario 2: “no win – no fee” pre-litigation or in the Sheriff Court

If we deal with your claim “no win – no fee” and it settles without the need for a court action or after

proceedings have been raised in the Sheriff Court, you will receive your compensation in full.

If your claim settles at £17,000, you get all of that amount. Contrast this with the 20% deal, above. Under that, you lose £3,400. You receive £13,600.

MC / G&Y cases where a deduction is inevitable: Court of Session actions

As we are a small firm in Moray and do not have an Edinburgh office, we need to get help from Edinburgh solicitors if we decide that a Court of Session action is the best way to maximise your compensation. At the end of the claim, we need to get paid, as do the Edinburgh solicitors and the advocate (barrister) or advocates who deal with the claim in court.

What follows is a series of case examples. These are actual Court of Session cases we have dealt with and which concluded from 2012 onwards. We think the figures speak for themselves.

Case Study 1: Road Traffic Accident

This claim involved serious lower limb injuries and permanent loss of function which restricted the range of jobs the client was able to do in future. The Court of Session case settled in July 2014 for £225,000. The shortfall was £22,600. The client received £202,400. Under the alternative deal

mentioned above, the deduction would have been £38,750, i.e. £16,150 more. The difference in percentage terms is between losing about 10% of your compensation and about 17%.

Case Study 2: Accident at work

Our client's claim settled at £275,000 as a result of his Court of Session action in April 2013. The shortfall was just under £18,000. The client received about £257,000. Under the alternative type of arrangement described above, the client would have had to pay £46,250 out of his damages. He would have received £228,750. The differences are between losing about 6.5% of your money and 16.8%.

Case Study 3: Road Traffic Accident

This Court of Session action settled in September 2013 and the agreed damages were £40,000. The shortfall was about £6,350, with the client receiving about £33,650. Under a "20%" arrangement, the client would have had to pay out £8,000, thereby receiving £32,000. You can see that, on a "lower" value claim such as this, the differences are minor. In percentage terms, the comparison is between 15.9% and 20%.

Case Study 4: Road Traffic Accident

The Court of Session action resulted in an award of damages of £285,000. The claim concluded in December 2013. The shortfall was about £23,100, so the client received about £261,900. This is about 8.1% of the total. Under the alternative arrangement, the deduction would be £47,750 – or 16.75% of the total. The client would have received £237,250.

Summary: deductions matter

When you are deciding who should handle your personal injury claim for you, don't just look at what they say about maximising the value of the claim. Also consider what is likely to be taken off your compensation before you receive it. It is so easy to overlook this and yet it could make many thousands of pounds of difference at the end of the claim.

... don't just look at what they say about maximising the value of the claim. Also consider what is likely to be taken off your compensation before you receive it.

Chapter 6: How long will your claim take?

We find that there is a common misconception about delay. As we have discussed above, make sure you contact a solicitor and get legal advice as soon as possible after an accident.

Beyond that, it is a common perception, if you have been injured in an accident, that personal injury claims take years. The tales are of insurers dragging things out as much as possible. This then makes you vulnerable to a “soft” offer because you get to the stage where you just want it all to be over.

There is no standard timescale

When we are asked: “How long will my claim take?”, we would generally confirm that it is unlikely that your accident claim will be finished within weeks. A timescale of months is more realistic. No two claims are ever the same, so an accurate estimate at the outset is not possible. However, it is too simplistic to suggest that the delaying factors are all under the control of the other party or their



insurance company.

Ballpark timescales should be possible to assess

One of your solicitor's regular jobs in handling your claim is to monitor progress and decide on the next step required in order to keep things moving as quickly as possible. It should always be possible for your solicitor to give you at least a ballpark idea of how much longer your claim is likely to take.

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What influences how long it will take?

Some of the questions that are relevant to how quickly your claim can proceed are:

- Is liability for the accident admitted?
- How serious are your injuries?
- How long will it take to obtain medical evidence from a suitable expert?
- How complex is the case generally?

A possibly-speedy conclusion ...

If you have largely recovered from your injuries by the time you consult us and the legal basis for your claim is reasonably simple, your compensation could be in your hands within six months.

It's important to be aware, however, that the speed of progress of some parts of the claim cannot be speeded up ...

Personal injury claims arising from accidents in Scotland generally follow procedure set out in the Voluntary Pre-Action Protocol. This is an agreement between solicitors and insurers about specific information to be disclosed by each side in different types of claim. Adherence to the protocol means there are certain prescribed periods of time relative to a claim which it is not generally possible to short-circuit. Insurers are allowed in excess of three months to give their response on liability to your solicitor's intimation of claim letter.

Where there is an admission of liability, it is often possible to negotiate settlement of the claim. If liability is denied, on the other hand, the only way to continue with the claim will be for you to raise court action.

The usual need for medical evidence

In all cases, irrespective of whether liability is denied or admitted, it is usually essential to get medical evidence for your claim by obtaining a report from a suitable specialist – such as an orthopaedic surgeon in the case of a broken arm or leg. We need this evidence so we can value not only the injury part of the claim (known as “solatium”, in Scotland) but the other elements of the claim too (for example, wage loss).

For it to make sense to get an expert report to assist in the valuation of your claim, you generally need to have made enough of a recovery from your injuries that the expert can give an opinion on your probable prognosis – including your future capacity for work – with a reasonable amount of confidence.

Where an expert’s opinion about the future is overly speculative, it increases the risk that a settlement of the claim at that time is too soon. Essentially, the risk is that the claim will be settled at an under value. Once a claim is settled, it is very unusual for there to be any chance of you being allowed to go back later and ask for further compensation. Accordingly, it is important to get the timing right as far

... irrespective of whether liability is denied or admitted, it is usually essential to get medical evidence for your claim by obtaining a report from a suitable specialist ...

as possible. It may mean the prudent course is to be patient and wait a bit longer.

Complications in cases take many forms – some examples

Where you have suffered multiple injuries – and these may be psychological as well as physical injuries – that will often make the claim more complex and liable to take longer to conclude.

There can sometimes be problems arising from the status of the opponent in the claim. Limited companies can be dissolved or struck off the Register of Companies for many reasons. If the opposing party in your claim is a company that has undergone such a process since your accident, it is not possible to proceed with your personal injury claim without first restoring the company to the register. This would generally require a preliminary court action for restoration, followed by the personal injury action itself.

Chapter 7: Maximising your personal injury claim's value

Your personal injury claim is primarily about money.

It's true that other aims are possible – and often more important than just the compensation. One example is maximising your level of recovery from injuries through rehabilitation provided as part of your claim. Another possible driver is “trying to make a point” so the negligent party takes notice and changes their practice for the future, reducing the chances someone else will be injured in the way you were.

It's all about money

But personal injury claims are really about financial compensation. The law tries to put you, as the injured person, back in the position you would have been if the accident had not happened – so far as that is possible in money terms. Given the emphasis on money, the aim is to maximise your damages.

What are the main factors which have a bearing on how much money you receive (if any) at the end

of your claim?

Factor 1: Whether your claim succeeds at all

If liability is not established, you won't get any compensation. In some cases, it is arguable that having a solicitor will make the difference between winning and losing your case.

Factor 2: If it succeeds, but there is contributory negligence

Contributory negligence results in a percentage reduction in the amount of money payable to you as compensation, where your injuries were caused partly by your own fault.

Factor 3: Whether your case settles before or after going to court

Various studies have shown that in many cases the level of award you secure will be higher if you raise a court action than if you settle by negotiation before raising proceedings.

Factor 4: If court action is raised, whether you beat any formal offer

A formal offer in a Scottish court action is called a "Minute of Tender".

An example of a scenario where this plays out to your cost is where, say, your opponent offers you £X to settle your claim. You refuse, on the basis you think your claim is worth more than £X. The case is eventually decided by the court. The award is £(X minus £1,000).

Unfortunately, you have not “beaten the Tender”.

The court will very likely award the expenses (costs) of the action against you from the date of the Tender and this will impact on how much money you receive. In the worst case, you may receive nothing.

Factor 5: How much of your compensation is paid to your solicitor.

This is a complicated matter because the variety of arrangements available is huge and, say, by viewing law firm websites, it is not always easy to work out exactly what deals they offer. In many ways, this element is the “hidden cost” for injured persons making claims. It may be the case that a particular firm of solicitors will “maximise” the value of your claim by any or all of –

- winning it where another firm would have failed or refused to take the claim on at all (of course, this is a big “plus” in itself)

- eliminating, or reducing the percentage of, contributory negligence
- persuading the insurers to increase their settlement offer by raising a court action rather than settling pre-litigation
- not over-estimating the value of your claim so you get stung by a Minute of Tender in any court action you raise.

But, when you know the final compensation level which applies in your case, there may still be a “significant” loss to you depending on the agreement you have made with your solicitor as to how he or she gets paid (and any advocates involved in the case on your behalf, in addition).

It is crucial that you make sure you know any “hidden” costs at the outset.

True, by maximising the claim value in the other ways mentioned above, the solicitor may “earn” what they take away from you at the end, so you don’t actually lose out, but it’s an important factor to bear in mind – and one which is probably overlooked by many injured people until it’s too late.

A solicitor who is prepared to guarantee you will receive 100% of any compensation ... is offering a better deal than one who is going to take 10%, 15%, 20%, 30% etc. of your money.

Chapter 8: Injury Rehabilitation Services in Moray

If you are injured in an accident in Moray, in addition to medical treatment for the acute injury, such as a broken bone, you may need help with rehabilitation. Of course, any assistance you receive through the NHS has the benefit of being cost-free. The essence of good rehabilitation is early intervention and, in our experience, waiting times for NHS treatment in Moray in areas such as physiotherapy are quite good, compared to national averages.

Private treatment costs are recoverable

In any personal injury claim, provided you are going to succeed in proving negligence or breach of duty, you can generally recover any private costs you incur in getting treatment to allow you to recover as fully and as quickly as possible. So, in theory, you are not restricted to NHS treatment, though, in many cases, the financial worries brought on by the fact of being injured – perhaps meaning you are not fit to work – will make it feel too risky to be paying out money for private therapy up-front.

Some insurance companies now provide rehabilitation as an option and among them are insurers who

will fund assessment and treatment even if they do not ultimately accept liability for the accident. The balancing of risk means that it is in their interests (because it will limit the value of your claim), as well as yours, for your chances of a full recovery to be maximised.

Help that your GP approves should be a recoverable cost

Over the many years of our experience in personal injury work, our clients have been helped by a wide variety of specialists in rehabilitation medicine and complementary therapies in Moray. We are solicitors and so we are not medically qualified. We would always emphasise the need for you to discuss any proposed therapies or rehabilitation with your treating consultant or your GP. If they are in favour of it, there should be no difficulty in recovering the cost of the treatment as part of the compensation you receive from your personal injury claim.

A list to help you

The service providers listed below are therapists in Moray who have benefited clients of Grigor & Young / Moray Claims. We do not have any links to them by way of affiliations. We have no commercial links with them at all and receive no commission whatsoever. We are providing this list of injury rehabilitation services in Moray in the hope it will be helpful to you as a victim of injury,

whether it results from an accident and whether you decide to pursue a compensation claim or not. Clearly, whether a particular treatment or therapy will help recovery from injury in a particular case is, to some extent, unique to the individual. However, we hope this list will be of benefit to anyone researching what private treatments and services are available locally to Moray.

The categories of treatment types which are recoverable expenses are probably not closed. You have to be a bit careful in that more obscure or untested treatments may run the risk of not being regarded as “reasonable” and so not being recoverable costs. Physiotherapy and osteopathy are regarded as mainstream treatments, in our experience, and should not be a problem in terms of recoverability of costs. We have recovered the cost of craniosacral therapy as part of a client’s claim. We are aware of court decisions which have confirmed the recoverability of outlays for acupuncture and aromatherapy, for example.

Physiotherapy

Elgin Chartered Physiotherapy Centre, 28 Institution Road, Elgin, IV30 1QT

Tel: 01343 559700; Email: info@physiotherapy-moray.com

There is a helpful video introduction to their services by Sue Cunningham, Physiotherapist, on their

website.

Osteopathy

Moray Osteopaths, North College House, King Street, Elgin IV30 1HU

Tel: 01343 550382; Also in Forres: 01309 671413

Back in Balance Osteopathy, 142 High Street, Forres IV36 1NP

Tel: 01309 694824 / 07810 783428

Complementary therapies

Acupuncture

Moray Osteopaths, North College House, King Street, Elgin IV30 1HU

Tel: 01343 550382; Forres: 01309 671413

Therapists are members of and accredited with the British Medical Acupuncture Society (BMAS).

Craniosacral therapy

CLAIMING FOR PERSONAL INJURY IN MORAY

Joanna Legard, Forres

Tel: 01309 691793; Mob: 07809 450316

Counselling and related (to include Cognitive Behavioural Therapy and variants)

Marja Helkala, HealthWorks Centre for Holistic Health Care, 5 Bank Lane, Forres, Moray IV36 1NU
(EMDR Trauma Therapy)

Tel: 01309 671532; Mob: 07706 359397

Mrs Suzanne Roos, Registered and Chartered Psychologist

Orkney-based but holds regular clinics at Elgin Chartered Physiotherapy Centre (address above).

CLAIMING FOR PERSONAL INJURY IN MORAY

Chapter 9: What Are The Biggest Pitfalls To Avoid?

2 Ways Exaggeration of Injuries Can Damage Your Personal Injury Claim

Exaggerating your symptoms from injuries can damage your chances of claiming compensation. Serious injuries can lead to permanent restrictions in things like your ability to work, to care for yourself and others close to you, or enjoy your hobbies. If that is what you claim following an accident, you need to realise it's likely that all aspects of your life will end up under the microscope. Exaggeration of injuries can damage your personal injury claim. How will you be found out?

Your life: nothing hidden

You will be shadowed and put under video surveillance. Private investigators will stake out your home. You could be filmed in your garden, getting into and out of your car or doing the shopping. A prime time for observation is when you have to go and see any medical expert appointed by the insurers:



they know exactly where you will be and at what times on that particular day. Surveillance cameras may be hand held, mounted in vehicles or in holdalls carried by investigators.

What you say -v- what you show

If you are telling the doctors that you have difficulty on stairs, cannot walk more than 50 yards without a rest and always use a walking stick outwith your home, you must expect that these facts will be put to the test. Insurers will recover your full medical records as a matter of course in serious cases and those may indicate discrepancies between your claimed and actual levels of disability.

Social media is a fruitful source of information which could be used against you. Posting comments which show you have been walking the dog or dancing the night away will damage your case if inconsistent with the ongoing disabilities you claim to have.

Injured people do often have good days and bad days with their pain levels. It may be that they caught you on a very good day and you paid the price for your activity in the days which followed. That line will not be convincing. The damage will have been done. Possibly irreparably.

Examples from our own experience

One client suffered a broken ankle after a fall from height at work. This apparently left them with restrictions in how far they could walk and in their ability to carry heavy weights. Surveillance video showed them apparently setting out to walk from their home a distance of about two miles into the centre of town. In separate footage, they were seen to be carrying bulky and cumbersome loads of firewood from their garden into their house.

The claim still succeeded – and there were issues of contributory negligence in the case as well – but the private investigators' evidence probably reduced the level of compensation received by more than 50%, in itself.

In another case, a client went over on his ankle in the garage where he worked due to a combination of poor lighting and inadequate floor markings. His ongoing symptoms allegedly made him unfit for work. He had difficulty managing stairs. He could not lift up or carry around his toddler daughter. Surveillance indicated that in fact he could do these things.

Again, the client still recovered compensation because, fortunately, there was an independent witness to the accident and so breach of duty on the part of the employer could be proved. But the value of the claim was significantly reduced. Because the employer's insurers perceived that the claimant was

misleading them, it hardened their attitude to the claim to the extent that the case went to a hearing.

Why is it such a big deal if you exaggerate your injuries?

In neither of the examples above did the injured person invent their injuries. The problem is that the exaggeration of symptoms and disability damaged their credibility. The insurers' argument was to the effect that: If we cannot believe what this person says about the level of injury he / she has suffered, how can we believe them on other – more fundamental – things, such as how their accident happened?

It may mean that you fail to prove that there is a basis of claim at all because your general believability is so reduced that the court does not accept you have proved sufficiently convincingly how your accident happened. In that case, your claim fails and you get no compensation at all. We have seen this happen too – where inflation of symptoms leads to the complete failure of the claim. In cases where proving the accident circumstances depends largely or entirely on the evidence of the injured person, any apparent problem with their integrity will

So where you might think that exaggerating the extent of your injuries would only affect the value of your claim, it can have serious implications for liability as well.

undermine all aspects of the claim.

It is perfectly possible for truly injured persons to lose out; not because they have concocted their injuries but because they have embellished them.

Summary: the 2 possible drawbacks of exaggerating your injuries

As we have seen, the first way is that it can reduce the value of your claim. The second way is that, in the worst case, it can extinguish your claim entirely.

Chapter 10: Winning your PI claim and still losing

Imagine having a successful personal injury claim and then losing 20% of your compensation in legal costs. Winning your case should mean keeping almost all your money, but when you engage a national law firm to run your case, you could win and still lose 20%.

How can that happen?

When you have been injured in an accident, you probably have no previous experience of making a claim. You're relieved to find a solicitor who is prepared to take your claim on "no win – no fee", so you do not have to worry about meeting up-front costs. But there is often a hidden cost. If you win, ideally you should take all the compensation home. But, that's not always how events unfold. National law firms do not generally stop at the recoverable fees. They will take some of your compensation too in order to cover fees and/or insurance costs.

But why do national firms charge so much?

They charge so much because they aren't local. They don't have local knowledge. Being national means they have high overheads. Local firms have local knowledge. They can investigate and litigate your claim more economically. They have lower overheads. That's why local solicitors don't need to lop 20% off your compensation. So, you do not need to agree to an arrangement whereby you lose 20% of your compensation if you win. As local (accredited specialist) solicitors, we can run your claim for you for a maximum cut of 10% and, in many cases, for zero cost to you.

We will help you get back any earnings you have lost, as well as the other elements of your compensation, such as the pain and suffering award for your injuries. We will maximise the financial recovery you make, without then chopping 20% off the bottom.

And how do we get paid for all this trouble?

Where your claim is successful, we get paid by the other party's insurers – according to a recognised scale. In some situations, this is a percentage of your compensation and, in the rest, it's based on the actual amount of work we have done. We are always paid these fees in addition to your compensation, not as part of it.

CLAIMING FOR PERSONAL INJURY IN MORAY

National firms receive these exact same payments too. The difference is that they then feel the need to take more money from you. If you make your claim through Grigor & Young / Moray Claims, you will keep all – or almost all – of your money. Certainly, no less than 90% of it.

How we can help

Get in touch with us if you have any questions at all about this eBook or about any aspects of our Personal Injury Claims services.

Contacting us

You can call us on 01343 544077 or send us a Free Online Enquiry via our website.

If we can't help you directly, we probably know someone who can – and we'll be glad to put you in touch with them.

All initial enquiries are free of charge and without obligation.

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