

Frequently Asked Questions on Catastrophic Injury answered by Frances Pierce

1. What is a catastrophic injury?

The most serious personal injuries are often referred to as catastrophic. They can be brain injuries, spinal injuries, amputations, fatal accidents or those caused through clinical negligence. Generally speaking, a catastrophic injury is one that changes someone's life permanently.

2. What do you have to show to bring a claim for catastrophic injury?

You need to show that the other person was at least partially to blame for causing the injuries.

3. How long do I have to bring my claim?

Claims normally have to be brought within three years of the event.

4. What will I recover by way of damages?

The main purpose of pursuing a claim is to receive financial compensation for losses, but it can also provide other benefits. For example, the Rehabilitation Code says that support should be provided to the person who suffers a serious injury and their family; this will usually be in the form of rehabilitation and treatment but could also include counselling or cognitive behavioural therapy or the appointment of a case manager who can assess what support is needed. In some circumstances third party insurance companies will provide support and rehabilitation even when liability is in dispute.

5. What evidence will need to be collated?

Normally medical evidence and documentary evidence to show the extent of the losses. The solicitor will normally arrange for the client to undergo medical examinations to determine the prognosis for the injuries. Any treatment needs and care requirements will also be identified during the examination. In addition to the injury, a claim can be made for expenses – these can include loss of earnings, care, medical expenses and equipment. These include past expenses as well as projected future expenses and wherever possible receipts need to be kept.

6. Who has the burden of proof with the claim?

The person bringing the claim has to prove on the balance of probabilities that they suffered injury as a result of the negligence of another and then have to prove the extent of their losses on the balance of probabilities. Losses have to be foreseeable and connected to the injuries sustained in the accident or event.

7. How do I know that I have recovered the right amount of damages?

There are very few solicitors who specialise in catastrophic work. Those who do will ensure that the best experts are instructed and the maximum damages are recovered. Unfortunately, many cases are settled at too low a level and insurance companies will often starve a person bringing the claim from income and then make an offer which becomes very tempting, but can often be an undervaluation. Those very seriously injured often lack capacity – these have the additional protection of the High Court and/or the Court of Protection looking at the settlement sum and confirming that this is reasonable.

If in any doubt with regard to the capabilities of the lawyer instructed, it is worth looking for certain accreditations, such as the Headway personal injury solicitors list, the Solicitors Regulation Authority Personal Injury Panel or the Association of Personal Injury Lawyers Senior Litigators/Fellows accreditations.