

19

How to take a claim in the civil court

Make a small
claim about
injuries caused
by a car accident

Getting started

This guide is for you if you are considering or have started taking a claim for compensation for ‘whiplash’ or other injuries caused in a road traffic accident that wasn’t your fault. At the end of May 2021, new rules and a new process were brought in for people who want to seek compensation after they have been hurt in a car accident. This guide will help you to understand if the new rules apply to you, and how to make your claim for compensation either way.

Like many charities, we are concerned that the new rules mean that lots of people can no longer have a lawyer to help them with their case and that this creates an uneven playing field, with litigants in person pitted against insurance companies’ lawyers.

We are also concerned that the new rules have artificially reduced the amount of compensation people can get for ‘whiplash’ type injuries – which can be very painful and debilitating in the short-term.

We have written this guide because we want to help you get the compensation the law entitles you to, make your case well, and to take some of the stress and worry out of the system for you.

We will add to this guide as it becomes clearer how the new rules are being applied and which parts people are finding difficult. We will also share with government and other charities supporting litigants in person what we hear about what works well and what does not, and try to get the worst bits changed.

Please tell us about your experience of using the Official Injury Claim Service, particularly if you have any advice you would like to share with others in this situation, via [our survey](#).

This guide is part of a series of guides about taking a claim in the civil court. You can find them all in our [Going to a civil court](#) section.

This guide is for you if you:

- were injured in an accident on the roads in England and Wales, and
- you believe the accident was not your fault, or was partly your fault and partly somebody else’s, and
- are thinking about starting or have started a claim for compensation for those injuries, and
- live in either England or Wales, and
- your case involves a claim for £10,000 or less, with no more than £5,000 for personal injury (we will explain what this means and show you how to estimate the value of your claim in the next section), and
- you are representing yourself (you are a litigant in person) and are not eligible to have your case paid for by legal aid, a trade union, or insurance.

This guide is also for people supporting litigants in person, for example Support Through Court volunteers, Citizens' Advice volunteers, housing support workers, advice workers and court staff, as well as relatives and friends.

If you were injured in an accident before 31st May 2021 you need to use the old system to make a claim. Under the old system, you could only claim up to £1000 for personal injury (and £10,000 in total) in a small claim. If the amount you want to claim is more than that (but under £25,000 in total), you can make a fast-track claim instead.

One of the crucial differences is that in a fast-track claim, you can get money to pay your legal costs if you win your case. This means that you could have a solicitor that helps you on a conditional fee agreement (which means that you only pay the fee if you win your case, and that the fee is paid by the side that was decided to be to blame). This will nearly always be the best thing for you. See [How to find a good personal injury lawyer](#) on page 7.



This guide is not for you if you are involved in:

- a criminal case,
- a medical accident case,
- another kind of personal injury case, perhaps about an accident that happened at work or in a public space.

Top tip

Have a look at [How to take a claim in the civil court – at a glance](#).

Legal language

We try to explain any legal language as we go along, but there is also a [What does it mean?](#) section at the end.

Contents

Is it a small claim?	5
How to find a good personal injury lawyer	7
How to value your claim	8
The Official Injury Claim service	14
Time limits	17
Liability	18
Interim payments	21
Getting and challenging your medical report	22
What to do when you receive an offer	25
Fees	28
Asking the court to decide	29
What does it mean?	30



Is it a small claim?

Is it a small claim?

Whether your case is a small claim or not is important, as there are separate processes and rules for small claims about personal injury. If your case is a small claim, the expectation is that you can deal with the whole process yourself, without any help from a lawyer. And, even if you win your case you won't be able to get money from the 'other side' to pay for any help you had from a lawyer.

If your case doesn't count as a small claim, it will usually be dealt with as a fast-track case or a multi-track case (depending on how complicated the case is, or how much money is at stake). In both these kinds of cases, if you win the other side will pay your legal expenses. This means that you can get a lawyer to help you on a 'conditional fee agreement' (also called 'no win, no fee'). As taking a fast-track or multi-track claim is more complicated this will usually be a much better idea than trying to take the case yourself. See [How to find a good personal injury lawyer](#) on page 7.

Do be aware though, that if you lose you may have to pay your opponents legal costs. If this is the case, your solicitor will ask you to take out insurance to cover this possibility.

Your case is a small claim and you must use the new process if:

- The accident happened on or after May 31st 2021, and
- your claim is for £5,000 or less for personal injury, and £10,000 or less in total – including loss of earnings, additional costs caused by the accident and injury, and any property damage. (We will explain what this means and show you how to estimate the value of your claim in the next section), and

- you were in a car, and
- it does not involve a claim for anyone under 18 years old or anyone who doesn't have the capacity to make important and complicated decisions for themselves.

The rest of this guide will help you through the whole process.

If your accident:

- happened on or after 31st May 2021, and
- involves a claim for anyone under 18 years old who got whiplash type injuries, or
- involves a claim for anyone who got whiplash and doesn't have the capacity to make important and complicated decisions for themselves,

it is definitely a fast-track claim. You should get advice from a good solicitor who specialises in personal injury – see [How to find a good personal injury lawyer](#). Often the solicitor who acts for the child or person with limited capacity, will also act for you.

If your accident:

- happened before 31st May 2021, or
- you were not inside a car (for example if you were a pedestrian, riding a motorbike, bicycle, horse, or mobility scooter, etc), or
- involves an unknown driver (for example, if it was a hit-and-run), or
- involves a driver of a vehicle registered abroad, or

Is it a small claim?

- involves an injury claim for a child or an adult who doesn't have the capacity to make important and complicated decisions for themselves (but did not have whiplash injuries), or
- involves a claim against or for someone who has died, or
- if you yourself are an undischarged bankrupt,

your case is only a 'small claim' if it is for £10,000 or less in total, with no more than £1,000 for personal injury. If it is over this amount, you can make a claim using the fast-track or multi-track instead. If you are in this position you should get advice from a good solicitor who specialises in personal injury. They can advise you about whether you should claim for more than £1000 for personal injury (and therefore not make a small claim), how likely your case is to succeed, and how much it might all cost so that you can make an informed decision about whether it is worth it or not. And if you decide you do want to pursue a claim using the fast-track or multi-track processes they can do it for you.



How to find a good personal injury lawyer

How to find a good personal injury lawyer

All good personal injury lawyers will be accredited by the Law Society to deal with personal injury matters. This means that they have proven to the Law Society that they have at least three years' experience of working on different kinds of personal injury cases. You can search for an accredited solicitor near you by using the ['Find a solicitor' search](#) on the Law Society website. Select 'Accident and injury' from the drop down menu on the left and then enter your postcode in the box on the right.

Alternatively, you could select a member of the Association of Personal Injury Lawyers (APIL). APIL is a not-for-profit organisation made up of all types of personal injury lawyer. All members sign up to a code of conduct (which commits them to always acting in the best interests of their clients) and customer charter when they join, and accredited members have also proven that they have the sufficient expertise and experience. Find an accredited member near you on [Association of Personal Injury Lawyers website](#).



How to value your claim

The value of your claim will be made up of two parts:

- 1 The value of your injury or combination of injuries – the amount to compensate you for your pain, suffering and how your life has been affected. What lawyers call ‘general damages’.
- 2 The extra expenses or loss of earnings caused by either the injury or the accident. What lawyers call ‘special damages’. This includes any property that got broken or damaged in the accident, any costs built up because you didn’t have access to the car or could not drive it because of your injuries.

The value of your injury – general damages

How much you can claim for your injuries depends on how serious the injuries are and how long it will take to get better.

Whiplash injuries

If your accident happened on or after 31st May 2021, there are set amounts for what you can claim for soft-tissue injuries to your neck, shoulder and back (which means injuries to the muscles, tendons or ligaments – often called ‘whiplash injuries’). These set amounts (which the law calls ‘whiplash tariffs’) are low, many people think unfairly so. They are set out in the table below.

Which amount you get depends on how long the injury lasts. If following your accident you experience pain in two or more areas of your neck, shoulder and back, you count just the most severe. So, for example, if you have pain in your back which cleared up after 3 months and in your neck which is still ongoing six months later but your doctor expects it to improve soon, the correct amount would be the one for injuries that lasted 6-9 months. See our advice below about how to estimate how long your injuries will last.

If as well as having whiplash you have experienced shock or anxiety (what the law calls ‘minor psychological injury’), you can claim the amount in the second column.

	Amount for ‘whiplash’ injuries to neck, shoulder, and back	Amount for ‘whiplash’ injuries to neck, shoulder, and back and ‘minor psychological injury’ like shock or anxiety
0-3 months	£240	£260
3-6 months	£495	£520
6-9 months	£840	£895
9-12 months	£1320	£1390
12-15 months	£2040	£2125
15-18 months	£3005	£3100
18-24 months	£4215	£4345

Some people can get a slightly higher amount for ‘whiplash’ injuries. If your injury was unusually severe or your circumstances increased the pain or difficulty caused, you can claim up to 20% more than the relevant amount in the table above. You need to explain how much extra you are claiming for when you start your claim, and explain what is exceptional about your case.

Your circumstances might count as ‘exceptional’ if for example, you were training for the London Marathon, and the injury meant you missed the race. Or if the injury meant you were unable to lift your disabled son as you need to be able to do to care for him properly.

It is often hard to know exactly what a judge would count as exceptional, but it is worth making an argument for an uplift on that basis if there is anything about your situation that made the injury worse than it would have been for most people. It may mean the other side’s insurer makes you a higher offer. If they don’t, you should think carefully about whether it would be worth going to court over.

Other types of injury

You might have been injured in other ways instead of, or as well as, getting ‘whiplash’ injuries to your neck, back and shoulders. Perhaps you hit and cut your head, bruised your knee, broke your wrist, or received more severe injuries.

There is a different way of valuing other types of injuries. When or if your case gets to court, the judge would set the amount of compensation for your injuries using something known as the ‘Judicial College Guidelines’. The easiest thing is to use these guidelines to estimate the value of your injury. You can find the relevant guidelines in the appendix of [Guide to Making a Claim](#), starting on page 53.

Most injuries in the guidelines offer an amount between £x and £x. You have to honestly assess where you think you are in the range based on how serious your injuries are compared to the injuries at the top and bottom of the range. For example, if you received minor cuts and bruising to your face which healed in 10 days and left no scar, you would look at the minor injuries section of the judicial college guidelines. The correct range for you would be the middle one – where there is a complete recovery within 28 days, so you could expect to be awarded between £650 and £1290. But because 10 days is a lot closer to 8 (the bottom of the range) than it is to 28, you could expect to receive approximately £715.

How to
value your
claim

Where there is a complete recovery within three months	£1,290 to £2,300
Where there is a complete recovery within 28 days	£650 to £1,290
Where there is a complete recovery within seven days	A few hundred pounds to £650

If you have two or more injuries that aren't whiplash (for example, a bruised knee and broken wrist) the amount you will be offered in compensation will be an amount that combines the total – not one amount for your knee and another for your broken wrist.

We don't yet fully know how judges are going to deal with cases where a person receives whiplash injuries and another type of injury, or injuries. It may be that the compensation amount will be an amount that combines the total as it is for other types of injury, or if it will be an amount for your whiplash and minor psychological injury, and another amount for your broken wrist, for example. Until we do, you should expect any offer you receive to offer an amount for your whiplash injuries and your other injury or injuries separately.

If you fully recover from the injury within months, you also need to look at the minor injuries section of the Judicial College Guidelines, starting on p53 of [Guide to making a claim](#).



How to estimate how long your injuries will last

It is often hard to know how long injuries will last. The best thing to do is base your valuation on the length of recovery time that the doctor at the hospital, your GP or any other doctor you have seen about the injury has said. If it gets better quicker or slower than expected, you can change the amount you are claiming for at any point before you accept an offer. If the amount you can claim for increases so much that it takes you beyond the personal injury limit (£5,000 for accidents that happened on or after 31st May 2021, or £1000 for accidents before then), or the £10,000 total limit, your claim will simply get moved to another track (the fast-track or the multi-track). If this happens, you will be able to get advice and representation on a 'no win, no fee' basis. See [Is it a small claim?](#) and [How to find a good personal injury lawyer](#).

Anything that is expected to take more than 24 months to heal, or will never heal, will be valued at over £5000 – so will not count as a small claim (no matter when the accident occurred). See [Is it a small claim?](#) and [How to find a good personal injury lawyer](#).

Extra costs and loss of earnings – Special damages

You can also claim for any extra expenses or loss of earnings caused by the accident or your injury or injuries. These amounts don't come under the personal injury limit (£5,000 for accidents that occurred on or after 31st May 2021 or £1,000 for accidents before that date). Instead they come under the £10,000 in total limit.

Extra costs

You can claim for any additional costs caused by either the accident or your injury, as long as you can prove that 1) you paid them and 2) they were caused by the accident or injury. The law calls these extra costs 'losses'. You will need receipts or other proof of payment. For example, you can claim for prescription charges, or travel to or parking at hospital appointments connected to the injury. If you were unable to drive because of the accident and had to pay for taxi fares to get your children to and from school, you can add the costs of those to your claim. If your mobile phone or anything else was smashed in the accident and you had to buy a new one, you could claim for that. If you were unable to look after your children in the way you normally would, and had to pay for child care as result, you can add that to your claim. If you always use childcare for the same number of hours, you cannot add it to your claim as it was not a direct result of either the accident or the injury.

Loss of earnings

You can claim for the money that you lost if the amount you could earn was reduced, or if you could not work at all, because of your injuries. You can also claim if you were unable to work because your car was damaged. Again you will need to prove the amounts you lost and how long it lasted for – you could use your payslips or a letter from your employer if you have one, or your work schedule and bank statements (both of the time you couldn't work and for comparative months when you could to show what you normally earn) if you are self-employed.

Costs associated with your car

There are two types of costs associated with your car and they are treated a bit differently:

- 1 ones that you or a friend or relative has paid on your behalf (the law calls these 'protocol costs') and
- 2 ones that another company paid on your behalf (the law calls these 'non-protocol costs')

Costs that you or a family member/friend has paid on your behalf are included in your claim. Again, you will need receipts or other proof of payment. They might be:

- the cost of car repairs
- the excess you had to pay on your car insurance
- the cost of hiring a car while yours was mended
- any vehicle recovery and storage charges.

To this figure, add the amount the car's value has reduced as a result of the accident. You get this by taking the value of the car immediately before the accident occurred (look online for how much similar cars sell for), and subtracting the amount the car was worth after the accident. This is probably the write-off value your insurer gave you.

Costs that a company has paid on your behalf, (for example, your insurer who paid for repairs to your car, or a credit hire organisation lent you a replacement car) cannot be included in your claim at this stage, but that company will have a right to claim costs from the other side's insurer themselves when the case ends. If you need to go to court about how much compensation you should get, you do then add these costs to your claim.

How to
value your
claim

Fees

You can claim back your court fees, or fees for a police report, medical records, medical report (if you had to pay for it) and for an expert whose report you need for your claim (up to a maximum of £750) at the end of your case, but you don't include that in the valuation of your case at the start. So ignore that for now.

How to estimate the total value

We created the table below to help ensure that you don't leave out any amounts that you may be entitled to. Don't panic if you realise you have left something out, you can change the amount you are asking for at any time before you create the court pack.

Amount for	£
Whiplash, or Whiplash plus minor psychological trauma	
Whiplash – Exceptional circumstances	
Other injury or injuries (amounts taken from judicial college guidelines)	
Total for personal injury	£
Loss of earnings	
Cost of repairs to car (if you paid them yourself)	
Excess to pay on car insurance	
Cost of hiring a car	
Vehicle recovery or storage charges	
Other costs – for example, prescription charges, or travel to hospital, taxi fares for necessary journeys, replacement of any items damaged in the accident, extra childcare. Use a new line for each item.	
Total for extra costs	£
Total for personal injury and extra costs	£

Remember – if your total for personal injury comes to more than £5000 (if your accident was on or after 31st May 2021, or £1000 if your accident was before then) or your overall total comes to more than £10,000, your claim is not a small claim. This means that you can get a lawyer to help you with your case and only pay for their help if you win. See [Is it a small claim?](#) and [How to find a good personal injury lawyer](#) on page 7.

If you think that your claim might be more than £5,000 for personal injury or is close to being more, we would suggest you take advice. See [How to find a good personal injury lawyer](#) on page 7 and look for firms who will offer free initial advice.

If your accident was before 31st May 2021 and the amount of your claim was below £1000 for personal injury and under £10,000 in total, you can make a small claim using the old rules. See the other guides in the [How to take a claim in the civil court series](#), particularly [How to start a claim](#).

If your accident was on or after 31st May 2021, and the amounts came to £5000 or less for personal injury, *and* less than £10,000 in total, you must use the new Official Injury Claim service (sometimes called OIC or the Official Injury Claim portal). See next section for details.

How to
value your
claim



The Official Injury Claim service

The Official Injury Claim service

OFFICIAL INJURY CLAIM

English | Cymraeg Sign in

Make a personal injury claim

If you've had a minor injury as a driver or passenger in a road traffic accident and it wasn't your fault, you may be able to claim compensation using the Official Injury Claim service for free and without legal help.

Find out more

OFFICIAL INJURY CLAIM

Account Management Logout

Tell us about the accident

[Back](#)

Note that all fields marked with * are mandatory.

Date and time of accident *

Day Month Year Hours Minutes

-- -- -- -- --

Key information

- ▶ What if I am uncertain about the exact time of the accident?
- ▶ Your description of the accident
- ▶ How can I upload photos and dashcam footage?

This is a new online service from the Motor Insurance Bureau and the government. It is sometimes shortened to OIC. The idea is that this service is simple to use and easy enough to do by yourself, without a lawyer. You don't have a choice – you have to use the Official Injury Claim service.

As it is a new service, we don't yet know how well it works for everyone, or which bits (if any) people need more help with. If you use this service, please let us know what you think and particularly if there were any confusing, stressful or tricky bits via [our survey](#). We will use your feedback to improve this guide for others.

How it works

Before you can go to court on most issues, there is a procedure you have to follow to see if you can resolve the problem between you first. This is called 'the pre-action protocol'. The Official Injury Claim service is an online process which takes you through all the things you need to do to in the pre-action protocol, step-by-step. At the end of the process, you will either have resolved the issue or be ready to go to court.

There are five steps to the process – once you have opened a claim, you can use the 'claim overview' screen to keep track of where your claim is in the process.

- 1 You start your claim by providing details about you and about what happened in the accident, who you think is to blame, and what your injuries are. The service then checks your identity and sends these details to the insurer of the other driver for you. The service calls them the 'compensator' as it is the insurance company that will pay you compensation (or not) at the end of the case. If they cannot identify an insurer for the other driver (perhaps it was a hit and run, or the other driver was not insured), the Motor Insurance Bureau (MIB) acts as the 'compensator'.
- 2 The insurer of the other driver (or the MIB) then investigates the accident to see if they agree that the other driver was to blame, or partly to blame, and gives you an answer within 30 working days from the date you started your claim (or 40 working days if the Motor Insurance Bureau acts as 'compensator'). If they do not agree that it was the other drivers' fault, or agree that it was only partially the other drivers' fault, you can negotiate. They may also agree that it was the other driver's fault, or partly their fault, but disagree that the accident caused your injury. See the [Liability](#) section below for more help with this stage.
- 3 Then you are asked to get a medical report through the online system, via an organisation called [MedCo](#). You can make an appointment to be seen at a convenient time. The Official Injury Claim service automatically generates details of your injuries (from the information you provided) for the medical expert so that they know what they are looking for, and the insurer of the other driver pays for this report. The medical report is uploaded to the online service by the medical expert and you have the opportunity to ask for changes if there are mistakes or things have been left out. See the [Getting and challenging your medical report](#) section below.
- 4 Next the compensator will make you an offer to compensate you for the accident, or the parts of the accident that they accept weren't your fault. If you accept the offer, that is the end of the process and you will be paid soon (there is no law that says how quickly they should pay you, but usually within a month), but if your injury gets worse in the future you can't ask for more money. If you think you should be entitled to more than you have been offered, you can make a counter offer. Or you can reject all their offers and go to court. See [Asking the court to decide](#) for more information about how to do this and what you should consider.
- 5 Close case – your case on the Official Injury Claim service will be closed, either because you have accepted an offer to settle the case, or because no agreement can be reached and you wish to take the issue to court.

For an indepth guide as to how to use the service and what to expect at each stage, please see [Guide to Making a Claim](#). This guide is concerned with just the complicated bits where we think people without advice are likely to get stuck, or might do something which harms their case, rather than helps them.

Insurers breaking the rules

All contact with the other drivers' insurer is supposed to happen through the portal. But some insurers do seem to be contacting people who have made a claim outside of the portal, despite this being against the rules.

Some people also seem to be being made an offer before the medical assessment has happened which is specifically banned under the new rules.

If this happens to you, be suspicious. Why would the insurer not want to wait for the report into your injuries? It may be that they think you will accept a lower offer before you understand how severe your injuries are or how long they may take to heal.

If you have experienced either of these things, please tell us via [our survey](#).

Portal Support Centre

If you need extra help to use the Official Injury Claim online system, you can get it from the Portal Support Centre. Portal here just means the online system. They can help if:

- you are a foreign language or Welsh speaker (they can help with translation into Welsh and the top 10 most common foreign languages in England and Wales), or
- you are not able to or are not comfortable filling out a claim form online, or you have accessibility needs because of a disability).

They will either help you by enabling you to start a claim using a paper application form or to complete the claim process over the phone with the help of a customer care agent and/or a translation service.

They cannot advise you on your claim or whether you should accept an offer.

Call them on **0800 118 1631**
Monday to Friday 9am-5pm

We would like to hear about your experience of using the Portal Support Centre (good or bad) so that we can share your insight with others and argue for improvements if necessary. Please tell us via [our survey](#).

Time limits

There are time limits to making a claim in court, which are fixed by law. Usually you have 3 years from the date of an accident to start a court case (unless a child was injured in the accident, in which case the time limit is 3 years after their eighteenth birthday). Starting a claim on the Official Injury Claim system does not count as starting a court case.

If at any point it becomes clear that 3 years will pass before you can finish the Official Injury Claim service, you should select 'Go to court' on the portal and start court proceedings.



Time limits

Liability

'Liability' is about who caused the accident and therefore who is responsible for the injuries and damage to the car. The person who caused the accident (who is 'liable') is the person who pays compensation to the other injured parties (or rather their insurer does).

After you have started a claim on the Official Injury Claim service, the insurer of the other driver (or drivers), will decide if they agree that the driver they insure caused the accident or not. They will either:

- say that the driver they insure was wholly responsible for the accident – the law calls this 'admitting liability in full'.
- say that the driver they insure was partly responsible for the accident – the law calls this 'admitting liability in part'. If they do this, they will express how much their driver was to blame by way of a percentage. See 'Partly to blame' below.
- say that the driver they insure was responsible for the accident but that they don't think the accident caused your injury – the law calls this 'admitting fault (in full or part) but disputing that the accident caused injury'. See 'Didn't cause injury' below.
- say that the driver they insure was not at all responsible for the accident – the law calls this 'denying liability'. Usually this means that they think you caused the crash. Obviously, if they don't think it was their driver's fault, they won't offer to pay you any compensation. See 'Not to blame' below.

Partly to blame

If the other driver's insurer says that their driver was only partly to blame ('admits liability in part' in legal speak), it might be for a good reason but it is also important to remember that they might just not want to pay you.

They will express how much the think their driver was to blame as a percentage. For example, they may say he was 60% to blame by pulling out in front of you, but you were 30% to blame as you were driving too fast given that it was raining, and that contributed to the accident as you were unable to stop in time.

It is important not to agree that the accident was partly your fault if you don't think it was. That is because if, for example, you agreed it was 30% your fault and 70% the other drivers' fault, you would only receive 70% of the compensation.

The first thing you should do is ask them what evidence they have that you are partially to blame. It may be that they don't have much. When thinking about who was to blame and how much, you need to consider

- if what they said you did or didn't do is correct,
- is it something that fell below the standard of driving that could have been expected, and
- did it cause or contribute to the accident and your injuries.



If you disagree that the accident was partly your fault too, or accept that it was partly your fault but don't agree with the percentage split, you can suggest a different percentage split. They can then agree or not agree.

You can do this up to three times. Each time you have to get closer to agreeing with each other. For example, if they said it was 60% their driver's fault and 40% yours, you could suggest that it was 90% theirs and 10% yours the first time, but the second time you would need to suggest that the blame was more than 10% yours.

Didn't cause injury

If the other driver's insurer says they don't think the crash caused your injury, or didn't cause any injuries, you can just go on to the next stage – the medical report. The medical report always includes details of your injury and whether the medical expert believes it was caused by the accident.

Alternatively, you can withdraw your claim, but don't do this unless it is true that you weren't injured or that it cleared up very quickly.

Not to blame

If the other driver's insurer says that the other driver is not to blame for the accident, you should first look to see why they have decided that. You can do this by selecting 'View more details' on your claim overview screen. Be aware that insurers often argue that their clients were not to blame if they think there is any chance you or the court might agree, because they don't want to pay if they can avoid it. The first thing you should do is ask the insurer what evidence they have that it was not the other driver's fault.

You have three options.

- 1** Agree with them and close the claim (don't do this unless you really agree).
- 2** Challenge their decision. You will need to explain why you think their decision is wrong. Think about how the accident happened and explain why it was caused by the other driver's actions. Think also about whether the other driver did something wrong or unexpected, something that fell below the driving standard you would expect.

You can do this by adding your side of the story and sending it back to them through the online system. Include any evidence that supports your argument, for example, dash cam footage, or photos of the scene, or maybe a witness you are in contact with saw what happened. They might agree with you, or they might agree that their driver was partially to blame.

- 3** You can go to court – and ask the judge to decide. You can request this through the online service. You will need to pay a fee to start the court case, and another fee before the hearing. See the [guidance on GOV.UK](#) for details of how much. (If you are on a low-income or receive benefits you may get help to pay a court fee or not have to pay it at all. See [Getting help to pay a court fee in a civil or family case](#)). You will also need to do a 'court pack'. The system will produce one for you but you need to carefully check it includes everything that you want the court to know. Include all the evidence you have that supports your side of the story. See [Asking the court to decide](#) on page 29.



Pre-medical offers

Some people seem to be being contacted by the other side's insurer outside of the Official Injury Claim system, and made an offer before the medical assessment has happened which is specifically banned under the new rules.

If this happens to you, be suspicious. Why would the insurer not want to wait for the report into your injuries? It may be that think you will accept a lower offer before you understand how bad your injuries are or how long they might take to heal.

If you have experienced either of these things, please tell us via [our survey](#).

Interim payments

If the insurer agrees that their driver was partially or wholly to blame, or that their driver may have caused the accident but not your injuries, you can ask for an interim payment. This is a small amount of the money that you may be owed to help you while the case continues.

You can ask for the interim payment to cover additional expenses caused by the accident (not those caused by your injury), so for example the excess on your car insurance, the cost of replacing or mending any property broken in the accident, and travel to your medical examination (you will need to prove the amount and that it was reasonable that you needed to do it). But not things like loss of earnings, or prescription charges caused by the injury.

You ask for an interim payment by selecting 'my other actions' from your claim overview screen, and selecting 'request an interim payment'. The insurer of the other driver should respond within 15 working days (three weeks if there is no bank holiday). If you go on to lose the case, you will have to pay back any payment you have received.

If the other driver's insurer does not respond to your request for an interim payment, you can choose to go to court. It might be best to ask why they haven't first though. See [Asking the court to decide](#).

Sometimes the other driver's insurer (the 'compensator') will make an interim payment to you of their own accord. This might be for a specific item or it might be a payment which will just be offset against any money owed at the end of the case. If it is made for a specific item (for example, to cover the excess on your insurance policy, or the value of your car if it was 'written off' by the insurer), the law sees the issues to do with that item as settled, so you can't make any further claims about that item. They might for example, pay the value of your car so that you can buy a new car, and so that they won't have to pay the costs of you hiring a car anymore.

Interim
payments

Getting and challenging your medical report

Once you press 'proceed to medical', the online system automatically generates instructions for the medical expert, based on your described injuries and what you and the other driver have said about the accident. You then say your preferences about when you would like your appointment, how far you are willing to travel, if you'd like the medical expert to be of a particular gender or if you have any accessibility needs.

You are also asked if you want to be examined by a 'Direct Medical Expert' or a 'Medical Reporting Organisation'. The advantage of choosing a medical reporting organisation is that they will be able to offer you more choice about when your appointment will be, but you won't know who the expert will be, unlike a direct medical expert. It could be a physio, an orthopaedic surgeon, or for whiplash injuries it might be a GP.

If you have a whiplash (soft-tissue in neck, shoulder or back) injury you have to be examined and you cannot accept an offer to settle the claim without one.

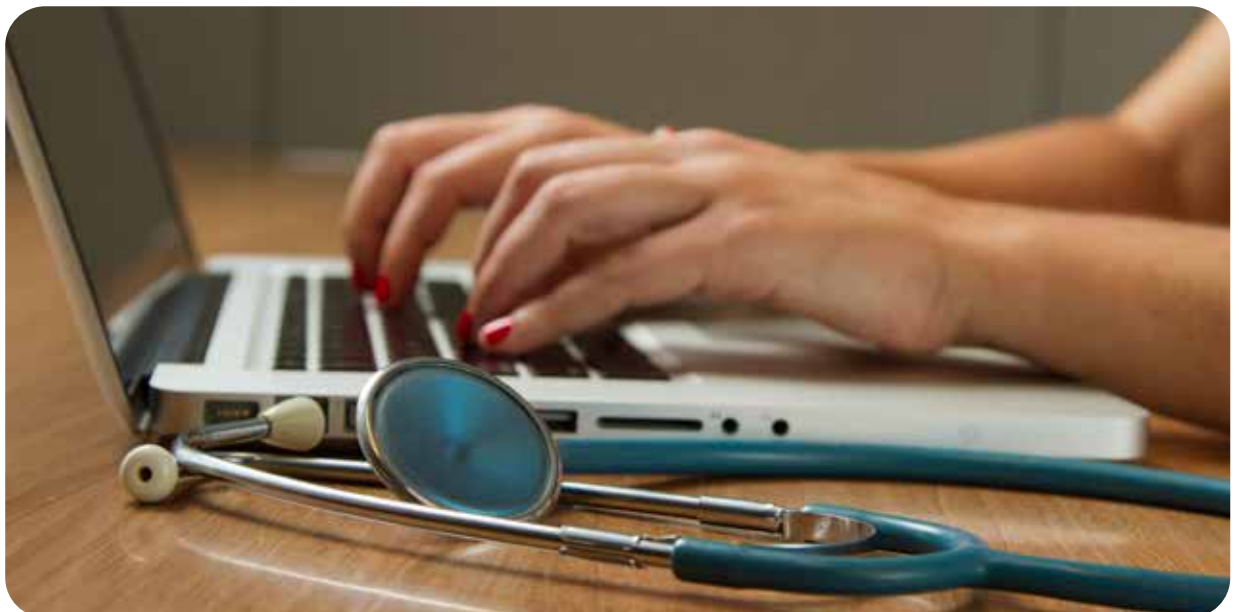
If you don't have a whiplash type injury, you can sometimes agree with the other driver's insurer to settle the claim without a medical report, but most of the time insurers want to see a medical report before they settle.

Do I have to use MedCo?

If you live in England and Wales and are taking a small claim for injuries following an accident on or after 31st May 2021, yes. If you don't, you may be able to source your own medical expert – [Guide to Making a Claim](#).

We would like to hear about your experience of using a 'Direct Medical Expert' or a 'Medical Reporting Organisation' (good or bad) so that we can share your insight with others. Please tell us via [our survey](#).

Getting and challenging your medical report



At the Assessment

When you go to the medical assessment, make sure you explain how bad your injuries were, and what you went through. If you can, give examples of how the injury affected you. For example, my neck was stiff so I found sitting at my computer for work very painful. I needed more breaks and I couldn't manage a full day. If you are claiming that your injury was exceptional, or that your circumstances increased the pain, and inability to move as you normally do, make sure you tell the medical expert why it was.

You must do your best to be completely accurate. If it looks like you have been exaggerating your pain, the other driver's insurer is likely to argue that you are being fundamentally dishonest and that will hurt your claim a great deal (If a court think you are 'fundamentally dishonest' about one element of your claim, you will also lose your compensation for areas they believe you in).

Checking and correcting the report

After you have been examined, the medical expert uploads their report about your injuries to the online system. You see them before the other driver's insurer, and say whether you believe the report to be complete and correct. If they have left out or misrepresented something important (like the amount of pain, or how far you can move your head), you need to say so now. If you gave examples of how the injury has affected you, make sure they are in the report. If you gave examples of why your injury or circumstances were exceptional, they need to be in the report too.

If you have a whiplash injury that was unusually severe or if your circumstances increased the pain,

suffering and inability to move as you normally do, it is vital that this is included in the report.

If they have missed something out or got something wrong you need to explain what they have got wrong. You can only correct the 'facts' (for example, your date of birth, or something about the accident) and not the medical expert's opinion on your injury or how long it will take to heal.

Your comments will be sent back to the medical expert who may change their report if they agree, or may not. If they choose not to change the report, you can tell the other driver's insurer what they have left out or what you think they have got wrong.

Your medical report won't be shared with the other driver's insurer until you agree for it to be. But they cannot (if your claim involves a whiplash injury) or are unlikely to (if your claim doesn't include a whiplash injury) make you an offer until they receive it.

Further medical reports

For most people one medical report is enough. But sometimes, another report is needed. That might be because:

- the first report recommended that another medical expert give their view, or that you be seen again as it was too soon to tell how long it might take for the injuries to heal, or
- you are receiving continuing treatment, or
- your injury has not got better as quickly as expected.

You can ask for an extra report (which the other drivers' insurer will pay for) through the online system. You need to select one of the reasons above and explain why it is needed.

Getting and challenging your medical report

Fundamentally dishonest

Sometimes insurers accuse people of being 'fundamentally dishonest' about an aspect of their claim, usually their injury. If the other driver's insurer accuses you of being dishonest, you should challenge this accusation. But first you should ask for the full details and evidence of why they think that. It may be that they have reason to question your version of events, but do be aware that it might just be a way of avoiding paying you fairly. You will need this explanation to take to a solicitor.

You should get advice. See [How to find a good personal injury lawyer](#). Where someone is accused of fundamental dishonesty, the case can usually be moved to the fast-track and this would enable you to get a solicitor who can deal with the case for you on a 'no win, no fee' basis.



Getting and challenging your medical report

What to do when you receive an offer

After you have sent all the necessary documents to the other driver's insurer (see [Guide to Making a Claim](#) for details) they will make you an offer of compensation. You don't need to accept this, you can either say no and make a counter-offer (suggest another, higher, amount – the law calls this 'disputing the offer'), or you can choose to wait and see if your injuries all get better in the timeframe the medical expert said they would (and the insurer's offer is based on) – this is called 'waiting out the prognosis'.

If you are still experiencing pain or loss of movement we would advise you to wait and see if your injuries get better when the doctor expected them to or not. Do not accept an offer or make a counter offer if you don't yet know when your injuries will get better.

Deciding whether to accept or not

When deciding whether to accept their offer or make a counter-offer, it is important to consider if it is similar to the amount a court would award you. Look back at the amount of compensation you originally thought you might be entitled to, or read [How to value your claim](#) again. Start with that figure and then consider:

- 1 Did your injuries heal as quickly as hoped or did it take longer?
 - If it took longer, what amount might you be entitled to now?
 - If they healed more quickly, what amount do you have a claim to?
 - If they have not yet healed, do not accept an offer. If you accept an offer you will not be able to make another claim if the injury gets worse or never heals. It is much better to 'wait out the prognosis'. See section on [page 27](#).
- 2 Have they taken full account of the extra expenses and loss of earnings caused by the accident and the injuries you sustained? Sometimes, they may not have included all your extra expenses – particularly if they don't think you have provided enough evidence of them. Is there more evidence you could provide now?
- 3 Were there exceptional circumstances that made the impact of the accident and the injuries worse than it might have been for other people/at another time? Unfortunately few things count as 'exceptional' but if your injuries meant you missed out on a once-in-a-lifetime experience, it might meet the threshold and is worth a try at this stage. For example, if you could not care for your newborn baby, or if you are an athlete and it meant you missed an important competition or put back your training.

What to do when you receive an offer

- 4 It is also worth thinking about how much the court fees are that you would have to pay if you took it to court. If the amount they have offered you is not far off what you thought you might be entitled to, minus the court fees, it won't be worth your while taking it to court.

Beware – Deductions

When thinking about whether you want to accept an offer, you also need to think about the deductions that will be made from the amount before it is paid to you. The amount you are being offered is before deductions are made, which is confusing. Deductions will be made for:

- Any interim payment you have already received
- Any percentage reduction because you agreed that you were partially responsible for the accident. If you agreed that you were 25% responsible for the accident, 25% will be taken off the amount you are offered.
- If you received state benefits while you couldn't work because of your injury, that needs to be paid back. The other driver's insurer pays it directly to a part of the DWP called the [Compensation Recovery Unit](#).

So the amount they are offering may seem like a lot more than you will actually receive.

If the offer they have made doesn't come close to what you think a court might award you, you should go back to the insurer with a counter-offer (an amount you suggest).

Making a counter-offer

You need to explain why the amount you are suggesting is fair and reasonable. You should refer to the judicial college guidelines, the set amounts for whiplash and 'minor psychological injury' (if you had whiplash and suffered from shock or anxiety following the accident), the additional expenses and loss of earnings (and the evidence you have of those).

If, following the medical report, the insurer does not believe your injuries were as you described, you will need to explain that they were, and select the amount of compensation you believe you are entitled to depending on how long it took to get better. Don't agree that there was no injury if there was, as you won't be able to go back on this later.

If you are not good with writing things like this, ask a friend or family member if they can help you write your offer and explanation of why you think that amount is fair. Show them this section and [How to value your claim](#) on page 8.

You can make up to three counter-offers

Each offer you make after the first has to get closer to agreement with the other side, so if for example, you made the counter offer that came to a total of £8,700, your second offer would have to be £8,700 or below. We would not advise you to make a reduced counter-offer unless the evidence you have does not support the amount you asked for to start with.

Likewise insurers cannot make a lower offer on their second offer than they did on their first, but they don't have to increase it – they could offer exactly the same amount as they did before.

What to do when you receive an offer

When to stop negotiating

At any point in this stage you can decide to stop negotiating and go to court and ask them to decide how much compensation you should get. However, unless you need to hurry because of the deadline to take the issue to court (usually three years from the date of the accident) or if the insurer is really unwilling to budge, it is best to use this process to see if the insurer will make you an offer that you would like.

Taking a small claim to court is not too bad (we have guides that will help you) but it is definitely a hassle and many people find it quite stressful. Most people also have to pay a court fee.

If the insurer makes you three offers and you reject them all and they reject your third offer, you will have to go to court.

Waiting out the prognosis

If your injuries are not all better, we would strongly advise you to wait and see if your injuries get better in the timeframe stated in the medical report. If you do this, your claim will essentially be put on hold until you know.

If you do recover within the timeframe, you can then move to the offer stage (press 'proceed to offer'). Follow the advice above about how to decide whether to accept the offer, make a counter offer, or go to court.

If your injury continues to trouble you when the expected timeframe has finished, you should ask the other driver's insurer to arrange a further medical examination for you. The insurer will need more information to make you a higher offer.

While you were waiting to see if your injury got better, you will probably have had more extra expenses because of your injury. You can add these to your claim now, before the insurer makes you an offer.

Withdrawing offers

When either you or the insurer make an offer it stays 'open' and available for the other side to accept for 10 working days (two weeks if there are no bank holidays). After that, if the other side hasn't responded, you can withdraw the offer. If you do that, it won't count as one of your three offers.

We suggest you wait for the full 10 working days to be up before you do anything else like preparing the court pack – offers are often accepted at the last minute.

Changing your mind

If you rejected an offer that you now want to accept, you can do that either on the online system (if it hasn't yet been withdrawn), or by sending a message via the online system or an email to the insurer confirming you have changed your mind.

We would like to hear about your experience of the offer stage of the process and particularly any difficulties you had, or things you didn't understand, so that we can improve this guide for others and argue for improvements if necessary. Please tell us via [our survey](#).

What to do when you receive an offer

Fees

At the same time that you receive your first offer from the other driver's insurer, they will make you an offer to compensate you for any fees you have had to pay. You only deal with this after you have accepted an offer. If you don't accept an offer, and choose to go to court, these will be dealt with as part of the court process.

Make sure all the fees you have paid are on the system and that you have uploaded evidence of amounts.

If the offer they make you doesn't cover all the fees that you have paid, you can make a counter offer about the fees – just as you did above. They can accept or reject your offer, but if they do reject it you will have to go to court to get anymore. If the difference is quite small, it is probably not worth it.



Asking the court to decide

If you have chosen to go to court, either so that they can decide who was responsible for the accident (see the [Liability](#) section on page 18), or so that they can decide how much compensation you are entitled to you will now need to start that process.

The court process is outside of the Official Injury Claim online system, but the system will give you the court pack you need to start your court case. It is important to fill the court pack out correctly. [Guide to Making a Claim](#) provides more details.

You need to start your case in the county court money claim centre. [Guide to Making a Claim](#) shows you how to find the right court.

You will find Advicenow's [How to take a claim in the civil court series](#) very helpful. It shows you how to manage the court process and things like witness statements and hearings. You have completed the things you have to do before you go to court (the 'pre-action protocol') and so can jump straight to [How to start a civil claim](#) (number 9 in the series).

If you are asking the court to decide who caused the accident, it is likely that you will have to go to a hearing. This might be where you actually go to a court building, or it may be done online. If you are asking them to decide what amount of compensation you should be paid, there may not be a hearing.

You will usually have to pay a fee to start the process. See the [guidance on GOV.UK](#) for details about how much you will have to pay. If you are on a low-income or receive benefits you may get help to pay a court fee or not have to pay it at all. See [Getting help to pay a court fee in a civil or family case](#) for more information.

Asking
the court
to decide

What does it mean?

Compensator – the insurer of the person found to have caused the accident. We have used the phrase the ‘other driver’s insurer’ instead.

Damages – this just means the extra costs and loss of earnings you have had because of either the accident or injury. See [Extra costs and loss of earnings](#) on page 10 for more information.

Fundamental dishonesty – this means untrustworthy, that your version of events should not be trusted. Sometimes insurers accuse people of being ‘fundamentally dishonest’ about an aspect of their claim. They might have reason to believe you are lying about what happened, or your injuries, but be aware that it might just be a way of trying to avoid paying you fairly. See [page 24](#) for details of what you should do if you are accused of fundamental dishonesty.

Interim payment – a payment that may be made by the other driver’s insurer after liability is agreed but before the end of the case.

Judicial college guidelines – these are the rules that set out how much compensation the court might award for different kinds of injuries. The bits you need are in the appendix to [Guide to Making a Claim](#), starting on page 53. You will need these to work out the value of your injuries.

Losses – this is the legal term for the extra costs and loss of earnings you have had because of either the accident or injury. See [Extra costs and loss of earnings](#) on page 10 for more information.

Loss of amenity – this means how your life has been affected by the injury. For example, you may not be able to turn your head, or you may be left unable to pick up your children for three months.

Loss of earnings – this means the amount you would have earned if it wasn’t for the accident, minus the amount you did earn.

Non-protocol vehicle costs – these are the amounts your insurer has paid on your behalf for things like repairing the car or scrapping it, or if you were lent a hire car paid for by your insurers. You don’t need to include these costs when valuing your claim because you didn’t pay them. You will sometimes hear these called NPV costs.

Pain, suffering and loss of amenity – Lawyers sometimes shorten this to PSLA. This is a legal term which means the injuries and psychological impact caused by the accident, and the effect these have on your life.

Pre-action protocol – also called the Road Traffic Accident Small Claims Pre-Action Protocol. This is the process and rules you have to follow before you can start a court case about your small claim. You will complete the protocol by using the Official Injury Claim online system.

Prognosis period – this is the amount of time it is expected to take for your injuries to heal.

Protocol costs/Protocol damages – these are the amounts you can claim under this law. They are the loss of earnings and extra expenses that you have had as a result of either the accident or your injury.

What does it mean?

RTA – Road traffic accident. Any accident that occurs on the road.

Waiting out the prognosis – this is when you choose to wait and see if your injuries all get better in the timeframe the medical expert said they would (and the insurer’s offer is based on). If they don’t you will be entitled to more compensation. See [page 27](#) for our advice on waiting.

Whiplash injuries – this means the soft-tissue injuries to the neck, back, or shoulder that are commonly caused by road accidents. These are injuries to the muscles, tendons and ligaments, but not breaking or fracturing a bone.

Whiplash tariffs – these are the set amounts that the law says people who have a whiplash injury (see above) caused by a car accident that occurred on or after May 31st 2021 can claim. See [page 8-9](#) for more details.

Write off/written off – this is insurance industry jargon for a car that has either been damaged so badly it cannot be mended, or it would cost almost as much to repair as it is worth. The other driver’s insurer might pay you the value of your car if it was ‘written off’ before the end of the case. An ‘interim payment’.

What does it mean?

The information in this guide applies to England and Wales only. The law is different in Scotland or Northern Ireland.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law. We recommend you try and get advice from the sources we have suggested.

advice**now**.org.uk

Making sense of the law and your rights

If you would like this guide in another format please email guides@lawforlife.org.uk

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This is just one of our guides to help you take or respond to a claim in the civil court. We have plenty more and most are free. Find them all at www.advicenow.org.uk/guides/going-civil-court



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Can you help us?

We are always trying to improve our service. The Official Injury Claim service is new and we can't yet be completely sure which bits of the procedure people without advice are finding difficult and where further help is needed. If you have used the service we would love to hear about your experience and the outcome of your case – we will use these insights to improve this guide for future users. Please tell us via [our survey](#).

If you liked the guide it would help us enormously if you left [a review](#). Thank you.

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