

5 Ways to Avoid Losing Money on Your Personal Injury Claim in Moray

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Help with personal injury compensation claims from accredited specialist solicitors in Elgin, Moray



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Personal injury compensation is not a windfall; it's the money you need to get your life back on track after an accident. The problem for you, as an injured person in Moray, is that - if you have a successful compensation claim - you will often lose around 25% of your compensation in paying a "success fee". Can that be avoided? Read on.

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Introduction

Personal injury compensation is not a windfall; it's the money you need - all of it - to get your life back on track after an accident.

The problem for you - as an injured person in Moray - is that, if you have a successful compensation claim, you will often lose around 25% of your compensation in paying a "success fee".

We are accredited specialist solicitors in Moray and we usually succeed in providing a personal injury claims service to local clients in such a way that there is no such fee to pay - i.e. where you receive 100% of the compensation to which you are entitled and which you need to get your life back on track.

Avoiding losing money...

In this eBook, we will cover 5 ways you can protect yourself financially at various stages of a personal injury claim - including before you start, during the claim and at the end.

We hope you find this eBook helpful. We'd be delighted to answer any questions you may have.

Peter Brash

Peter Brash, Solicitor, Moray Claims and Grigor & Young LLP

About The Author



Peter Brash has worked as a solicitor at Grigor & Young LLP's Elgin office since 1992.

Moray Claims has been the trading name of Grigor & Young for personal injury claims since 2012.

Our expertise

We hold accreditations from the Law Society of Scotland and the Association of Personal Injury Lawyers in relation to Personal Injury Law. These are renewed annually and are based upon continued demonstration of experience in personal injury cases, as well as a commitment to ongoing learning.

We're passionate about securing access to justice for anyone who has been injured. If it turns out that we are not best-placed to help you with a claim, we will always do our best to help you identify your best option for help to make a successful claim.

Outside the law

Peter's main hobby is playing the fiddle. He has been a member of the Scottish Fiddle Orchestra - which is a bit like his second family - since 1982.

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Don't miss out on making a claim at all.

When you consider what is the greatest killer in the sea, one thought springs to mind: the Great White Shark. The ocean's ultimate predator.

In fact, it's not.

Though they grow to a length of up to 15 feet and can weigh up to 2,500 kilos (as a slightly overweight adult male, I weigh about 85 kilos), the ultimate predator in the seas is not a fish.

It's actually a dolphin.

Around the Moray Firth, we are well-acquainted with dolphins.

But we're not talking about the bottle-nosed dolphin.

Instead, the ultimate predator is the orca. Also known as the Killer Whale, orcas belong to the dolphin family.

The likely reason they're called killer whales is that, at one time, they were called whale killers – especially hunters and killers of **baby** whales. Somewhere along the line, that terminology got reversed and they became known as killer whales.

We know and respect their hunting prowess in these northern parts of Scotland.

And yet, no one had seen an orca attack a great white until footage appeared in October 2017. This film was obtained on a whale-watching tour in the eastern Pacific Ocean, off San Francisco.

Yes, an orca attacking a great white shark.

As dramatic as it sounds, the reality was surprisingly mundane.

There was complete silence on the surface of the ocean above the clash of the titans for 15 minutes.

During that time, no one above the water knew what was going on exactly.

Then, suddenly, out burst the orca, with the great white in its jaws.

A great white shark is less than half the size of an orca.

A great white is about half the length and a quarter of the weight of an orca, on average.

But how did the orca do it and why was there quiet for 15 minutes?

It turns out that great whites are only killing machines if they are the right way up.

Flip them over and they go into a state of tonic immobility – a state of paralysis. That’s what the orca did here and the great white could not breathe. After a while, the great white shark drowned and, somehow, the orca knew that would happen – that the great white would end up “stuck” forever.

And this is how it is with the first of our five ways to avoid losing money on your personal injury claim.

You don’t want to end up “stuck forever” but that’s what will happen if you miss the time bar for your personal injury claim.

Like the great white in the jaws of the orca, your claim will have expired.



Avoidance Factor One

Make your claim in time.

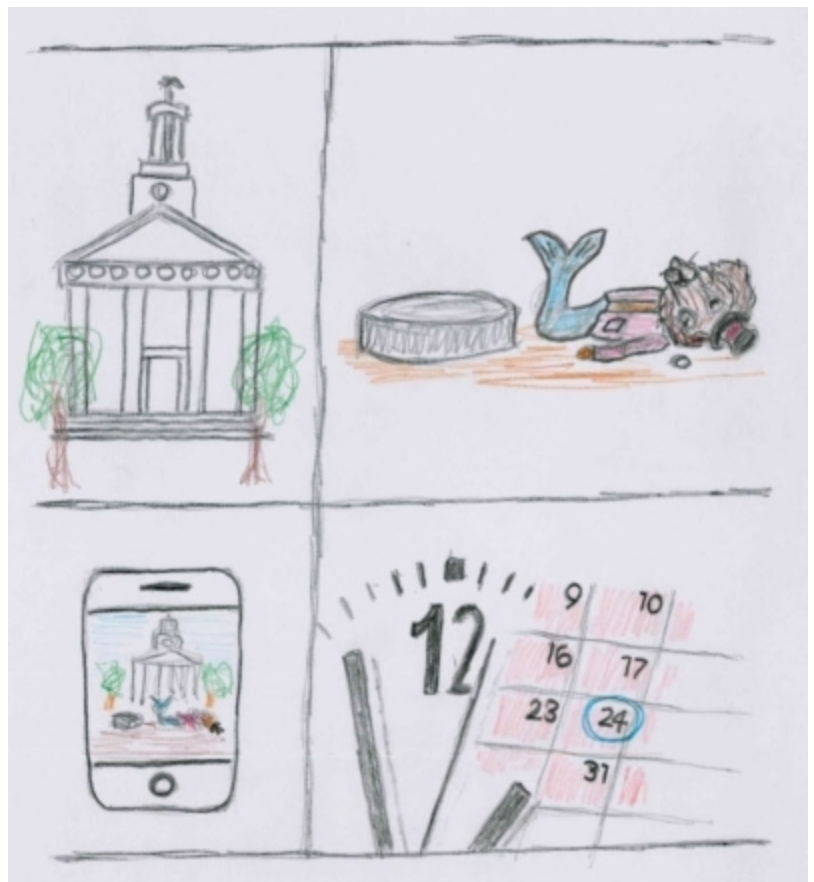
The money you will lose on your personal injury claim if you miss the time bar will be “all of it” – in other words, complete failure of your personal injury claim.

So when are you too late to claim compensation for personal injury?

Generally, you have 3 years from the date of the accident before any claim becomes time-barred. You should get specialist advice as soon as possible.

Children, for example, have a longer time within which to claim.

On the other hand, in certain circumstances, the time bar period can be two years or less (e.g. personal injury claims arising out of accidents on ferries or aircraft).



Avoidance Factor Two:

Avoid Contributory Negligence.

In Scotland, personal injury claims are generally based on negligence.

In other words, someone who owed a duty to you to take reasonable care (e.g. another motorist or your employer), was to blame and caused you to be injured.

The general principles of this area of law are pretty similar across the world and they have their root in a Scottish case: Donoghue -v- Stevenson (the case of the snail in the bottle of ginger beer).

Contributory negligence arises where, yes, someone else is to blame for causing you injury but there is also an allegation that you did not take proper care for your safety.

This could be, for example, where someone else ran into the back of your car while you were waiting to enter a roundabout (i.e. their fault), but you weren't wearing your seatbelt.

Or, where something falls on your head at work but you're not wearing the hard hat which would have at least reduced the severity of the injury.

How does contributory negligence affect your compensation?

It reduces the amount of money you receive by the percentage level of your contribution to the injury – as negotiated with insurers or decided by a court.

In some areas of the law, deductions for contributory negligence have become standardised – e.g. 15% to 25% for failure to wear a seat belt in a road traffic accident.

Contributory negligence cannot go up to 100% (i.e. it cannot cause your claim to fail completely). The onus is on the other side to establish contributory negligence; it's not up to you as the injured person to establish that there should be no contributory negligence.

Using “gut feeling” to determine whether contributory negligence should apply in the circumstances of your case is dangerous. You need to get specialist legal advice.

That's been a look at time bar and contributory negligence and now we move to look at the practicalities of dealing with insurers and the effect that can have on a claim.

Avoidance Factor Three:

Get advice from a specialist, local solicitor.

With a personal injury claim, it is very easy to end up not using the services of a solicitor at all.

This is where the insurers of the other party contact you directly and try to persuade you to resolve matters directly with them.

Insurers call this practice “Third Party Assistance”.

Personal injury solicitors refer to it as “Third Party Capture”.

Why is "direct help" from an insurer important?

Insurers want to promote the idea that, if you deal with them directly and are reasonable with them, you will get a reasonable outcome to your claim.

Sometimes that is true – but not always.

As soon as an insurer receives notification of an accident where they think their insured is probably to blame, if they have your contact details, they will get in touch with you immediately.

In a motor vehicle accident, they will offer you a courtesy vehicle while your car is being repaired.

They'll check if you've been injured. (If you haven't, you probably don't need a solicitor and the insurers' involvement is to be welcomed).

If you do have injuries, they will probably make you what is known as a “Pre-Medical Offer”.

Organisations such as APIL campaign against third party capture.

They argue that insurers put on the niceness as a front.

In reality, insurers are taking advantage of many accident victims.

Examples of unhelpful assistance from an insurer.

- The Association of Personal Injury Lawyers (APIL) have an example involving Zurich Insurance contacting an accident victim direct and offering £4,000 in full and final settlement. After a solicitor was involved, the case settled for £35,000.
- From our own files, there's the case of a scaffolder in his mid-40s, injured when a scaffolding pole fell on his head while he was working at a distillery in Moray. He suffered a fractured skull and needed an operation to remove a blood clot from his brain. He had a permanent brain injury which in fact prevented him being able to return to work as a scaffolder. He was only a few days out of hospital when he was visited at home by a representative of his employer's insurers, Quinn Direct. They offered him £10,000 in full and final settlement of his claim. The case eventually went to court in Scotland's highest civil court - the Court of Session - and the final settlement figure was in excess of £400,000.

Please note that third party insurers are not on your side.

It is Third Party Capture, not Third Party Assistance.

It is best to think of the insurers as hunter and you as their prey.

To the insurers, you are just a number – preferably NIL.

You need to have a local, specialist personal injury solicitor on your side to make sure you don't get ripped off by the third party insurers.

So, we've looked at how you can lose money on your claim by not claiming in time, by accepting unjustified contributory negligence and by failing to get proper legal advice.

We're now going to look at the law and a way you can lose money by operation of the law.



Avoidance Factor Four:

Do not exaggerate your symptoms.

Claims for personal injury are valued generally on the basis of the severity of the injury and the length of time the symptoms last and how debilitating they are.

In this section, we discuss something you might do in the months and years following your injury which can have a catastrophic effect on your claim.

It applies mostly to serious injury cases. In other words, cases where you have been injured to an extent that you are either unable to get back to work at all or your future earning capacity is at least reduced.

In those cases, you can expect every aspect of your life to come under scrutiny.

If you say the effects of your injuries prevent you lifting shopping or other heavier items, or playing football, or walking your dog in the sand dunes, these claims will be tested.

Your social media accounts will be examined. You will be the subject of video surveillance. Your full medical records will be scrutinised.

This question of exaggeration is important because it won't necessarily just reduce the value of your claim; it might extinguish it completely.

The argument the other party's insurers will run is that, if you've not been wholly honest about the effect of the accident upon you, why should we believe your account on more fundamental issues - such as how the accident happened and whether the other party was to blame?

Exaggeration disaster examples.

- A lady with very serious ankle fracture – she fell through the floor in an attic at her work – claimed she could walk no further than 100 yards and could not lift heavy weights. She was filmed walking from her home on the outskirts of a town in Moray into the centre of town and, separately, chopping wood in her garden and bulk-carrying it into her home.
- A man with hip fracture who claimed he could only walk with the assistance of a crutch and could not climb stairs was filmed in Edinburgh – on his way to and from a medical examination arranged by the insurers – walking unaided and climbing a flight of steps.
- A woman with hand injury who claimed she could not use her hand to hold items for any length of time because of the risk of dropping them was filmed walking over about a quarter of a mile holding her mobile phone in that hand and having a phone conversation.

You may claim that the surveillance video gives a false impression.

For example, you may say that, on that day, you were having a “good day”.

You may say that you were in agony for the next few days.

It won't save you.

The damage will have been done.

A summary of the avoidance factors we've covered so far...

Right – so we've considered how you can avoid losing money on your personal injury claim in the following ways:

- Make sure you make your claim in time;
- Don't accept unjustified contributory negligence;
- Get proper legal advice – from a local, specialist solicitor, if possible.
- Don't exaggerate the symptoms caused by the injuries you suffered in the accident

We now move to the final – and, arguably, most important – factor.



Avoidance Factor Five:

The "hidden" cost of personal injury claims.

How would you feel if, say, your personal injury claim was successful and settled at £75,000 but you only received £60,000 - a loss of 20% of your compensation - to pay legal costs?

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 injured people consider this matter at the outset of a claim.

That'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.

On top of that, your own insurers or brokers may direct you to a particular firm of solicitors to handle your claim, as if that's "normal".

Be aware that it's open to you to choose a different solicitor, if you wish. Why might you want to do that?

Your solicitor aims to maximise your compensation.

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 – or other - fees. Ideally, you want to pay nothing at all though, these days, a deduction in the region of 25% is common.

Many personal injury claim service providers will emphasise how they maximise the value of your claim and often get their clients 2 or 3 times the initial offer by the time the claim settles.

Fair enough - but we say that's only half the story.

You must always look carefully at what will be taken away from your compensation at the end, before any balance is paid to you. It may not be a "fee" to the solicitor, but it's still a cost to you.

As a matter of policy, we try to conduct personal injury claims for you, as our client, in a way which will mean you losing none of your compensation to pay legal costs.

If you had a cake that represented the whole value of your personal injury claim - like the one in the picture below - losing a quarter of it to pay legal (or other) fees at the end of your claim would not be unusual. But is it reasonable?



Summary

The Five Avoidance Factors.

Here is a summary of the five ways to avoid losing money on your personal injury claim -

- Don't miss the time bar for your claim.
- Don't accept partial blame for your accident unless it's justified – get specialist legal advice.
- Use a local, specialist solicitor so as to maximise the chances of your claim succeeding – and maximise your claim's value.
- Don't exaggerate your symptoms.
- Avoid the “hidden cost” of personal injury claims – i.e. avoid having to pay a “success fee” to your lawyer unless it's justified by the difficulty / risk associated with your claim.



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Contact us if you have any questions about making a personal injury claim.

All initial enquiries are free of charge and without obligation.

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MAKE A FREE ONLINE ENQUIRY

