

# Catastrophic Injury and Road Traffic Compensation Unit

## Your Guide to Road Traffic Compensation



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“Although I survived an accident from June 2003 it seemed that my injuries had stripped most of my life away. This was until Jill Greenfield from Field Fisher Waterhouse helped us reach a settlement that has helped me to put my life back on track.”

## Nathan's case

Nathan was a student when he was involved in a serious road traffic accident when he was knocked off his bicycle by a car. He suffered a spinal cord injury which has left him partially paralysed with a serious brain injury. Throughout, liability was denied by the Insurers of the Defendant vehicle. The Defendant argued that Nathan had pulled out directly in front of his car. We argued on behalf of Nathan that the car had been travelling at speed. To clarify issues, an Accident Reconstruction Expert was used to prepare a useful report. The Defendant sought advice from their own Accident Reconstruction Expert. The Trial on liability was due to take place in July 2006. Instead, at a round table meeting, a compromised settlement was achieved in respect of liability only. This claim has now been settled, Nathan recovering a seven figure sum.

“Although I survived my accident from June 2003 it seemed that my injuries had stripped most of my life away. This was until Jill Greenfield from Field Fisher Waterhouse helped us reach a settlement that has helped me to put my life back on track. I now know that I will be taken care of. I can try new forms of leisure and hobbies that are catered for my disability such as hand cycling or kayaking. The litigation has opened up many doorways that were closed upon my accident and it has helped me to rebuild a life that is once again very valuable.”

# The Personal Injury Department at Field Fisher Waterhouse LLP

## Catastrophic injury and road traffic accident expertise

Field Fisher Waterhouse LLP (FFW) has long been recognised as a leading Personal Injury Practice.

Whilst based in the City of London, we act for clients throughout the UK and abroad.

We have a dedicated Road Traffic Accident Unit thus allowing the lawyers within that unit to be true experts in the field of law and road traffic accident and catastrophic injury. We understand the devastating effects of serious injury on you and your family. We are committed to providing a highly specialised legal service.

Given our expertise, we have strong links with professionals such as spinal injury experts, rehabilitation experts and associated charities such as the Spinal Injuries Association and Headway. We receive cases from both.

### **We receive recommendations from the following organisations:**

- Headway
- Spinal Injuries Association
- Roadpeace
- Association of Personal Injury Lawyers
- Law Society
- AvMA (Association for Victims of Medical Accidents)
- London Cycling Campaign

### We give you:

- Specialist advice from dedicated professionals
- Commitment to investigate and progress the case as speedily as possible
- A free initial consultation, wherever you may be
- Advice on funding your case, including “no win no fee”
- An approachable and friendly service

“A pleasant team to deal with ... it has the experience ... and ‘just gets on with it’.”

*Chambers*

## Road traffic claims – the facts

Throughout the world it is estimated that there are over one million road deaths each year. In addition, over 10 million people are permanently disabled as a result of road traffic accidents.

Road traffic accidents are the leading cause of death/disability for those aged under 40 in the UK. Pedestrians and cyclists account for one in three road deaths and it is estimated that 10 people are killed everyday on the roads in the UK. Of course, many more suffer very serious injuries.

The effects of road traffic accidents can be devastating. The impact between a car and a human being is all too apparent. We are used to dealing with both the physical, psychological and financial consequences that follow and seek to help you to seek proper and adequate compensation.

We act for: Pedestrians, motor car drivers, cyclists, motorcyclists and passengers.

We see a whole range of injuries following road traffic accidents but the most serious incidents include:

- fatalities
- spinal cord injury involving paraplegia and tetraplegia
- brain injury
- serious orthopaedic injuries including amputation
- psychiatric difficulties



## Can I claim compensation?

If the brain injury has been caused by the fault of another, a civil claim may provide you with a lump sum or periodical payments, for example, to travel, for rehabilitation, loss of earnings and the cost of care. This may enable you to improve your quality of life by allowing you to access specialist services that will help you to adapt to the realities of living with a brain injury.

There are three elements to a successful personal injury claim:

### 1. Duty of Care

It is necessary to show that a duty of care was owed to you, the injured person, by the person or organisation who caused the brain injury.

For example, if the injury was caused by a road traffic accident, there should not be any difficulty in establishing that the motorist owed a duty of care. Similarly, all employers owe a duty to their employees to take reasonable care. In most cases, establishing a duty of care will be straightforward.

### 2. Breach of Duty of Care

The second element is to establish that there has been a breach of the duty of care. We must be able to show that, for example, the car driver made a mistake that was negligent. The facts of each case must be examined carefully. We have wide experience in investigating all types of accidents to ascertain whether the perpetrator was at fault. Establishing breach of duty of care is often the most difficult aspect of the claim.

### 3. Causation

The third element is to prove that catastrophic injury was caused by the accident. We must show that the harm was caused or materially contributed by the accident. Again, this is usually straightforward save in cases where there is an injury pre-dating the accident and in medical negligence cases.

## Our clients say

“A combination of commitment, intuition and creativity within the legal scope.”

“A very necessary interpersonal manner.”

# Funding the case

## We will do the initial investigation

Legal costs can be a real concern when you are considering bringing a claim. Once we have more information about the accident, we will advise you as to the best method of funding available. Your funding options are:

### 1. Conditional Fees

**If we don't win, you don't pay.**

This is a “no win, no fee” system in respect of the Claimant's lawyer's fees. If we think your case is suitable for this, then we will discuss this with you in detail and give you our *Client's guide to conditional fees*. We will also advise you about the availability of insurance to cover your disbursements and the other side's costs if you lose the case. Often, the premium for such insurance can be deferred until the conclusion of your case.

**There are no hidden costs and no “case handling” fees.**

**This arrangement protects your damages settlement. Specifically, we do not take a percentage of your damages as part of our fees.**

### 2. Legal expense insurance

We will check whether you have a policy of insurance, which covers you for legal costs. This is often included, for example, within household insurance or motor insurance. **This will be at no cost to you, your legal fees being indemnified by your insurer.**

## How can Field Fisher Waterhouse LLP help me?

- We will investigate your case
- We will ensure that you have funds (where liability is admitted) to cover the cost of Rehabilitation, often the key to your recovery.
- We understand that you need to concentrate on your rehabilitation and that your family will need to adjust to that.

- We appreciate that litigation can be a daunting prospect and are committed to handling the legal process for you.
- We understand that these are highly complex cases and we regularly work with Specialist Care Assessors, Case Managers, Accommodation Specialists and medical experts. This means that we can go beyond just legal advice and ensure that you have the best possible care available.

### Interim payments

In cases where liability is not disputed or is unlikely to be disputed, we can usually obtain interim payments that will allow you to:

- Set up a proper care regime, including appointing a Case Manager;
- Arrange for any rehabilitation that you may need to be paid for privately;
- Consider and assess the possibility of a return to work;
- Ensure that you have sufficient funds to meet your needs; and
- Ensure that you have proper financial advice in respect of the use of Trusts and other means that may ultimately protect any award that you may receive.

## Limitation

Generally, you have 3 years from the date of an accident in which to formally instigate proceedings.

The Court has discretionary power to override this 3-year limitation period but such instances are rare.

With children and persons under a disability (i.e. those who are incapable of managing their own affairs), the rules are different. The 3-year period does not start to run until the child's 18th birthday or until the person ceases to be under a disability.

“The only City firm with a genuine commitment to Claimant Personal Injury work.”

*The Legal 500*

Whilst 3 years sounds like a long time, in fact there can be a great deal of preparatory work to be done before proceedings are commenced and we would recommend that advice is taken as quickly as possible after an injury has taken place.

We will give you advice if we think that limitation is likely to present a problem and we will take action immediately if necessary to protect your position as far as possible.

## What will we do for you?

In some cases, we cannot say initially whether or not there will be a successful claim but we will advise you if your case warrants further investigation. Our investigations will include:

### Contact the police

The police investigation may take some weeks to complete. We will normally be in a position to speak to the police about your accident and find out whether or not the intention is to prosecute the driver of the other vehicle. This is an important time and we regularly work with road traffic police in ensuring that all aspects of the incident are properly examined. Generally, it will be several weeks before the finalised report is available. If the third party driver is to be prosecuted, the report may not be available until after that prosecution has gone ahead.

### Inquests

If the incident led to a fatality, there will be an inquest. We are able to guide you through the inquest process and ensure that you have representation at the inquest hearing. This can often be a daunting and upsetting time for the family and we do our utmost to make sure that you have as much support as possible, but in addition, that you are properly represented before any coroner. (Please see our separate booklet on inquests and how we can help.)

### Obtaining statements

We will see you to take a detailed statement. This must include as much as you are able to remember about the circumstances in which you were injured. This statement will also include details of the treatment you have had to have because of your injury, and its impact upon your daily life.

“ ‘...an excellent team’ agreed observers.”

*Chambers*

We will also contact any witnesses that may be available and prepare full and proper statements.

### Obtaining your medical notes

We will take an initial statement/instructions in the case. The next step is for us to obtain copies of all your medical records from all the places you have ever received treatment or care. We will ask you to sign forms authorising the release of your notes to ourselves. It can take some time for all of these to be collected, organised and read by us.

### Obtaining a medical report

We will obtain a full and detailed medical report by an expert who specialises in the type of injury that you have been caused. This report should be able to establish the severity of the injury and its current and future impact on your life. This will be used to establish the level of damages that you can expect in order that you can continue to live a full life.

### What happens next?

Once we have gathered together all of the relevant evidence, including reports and witness statements, we will consider the case carefully with you whether or not you have a case which is worth pursuing. In some cases, we will seek the advice of an experienced Barrister to give you a detailed opinion on the merits of your claim.

As well as investigating whether you have a claim for an injury, we will consider the likely amount of damages that a Court would award.

Once we have established that you have a claim worth pursuing, we must notify the other side of a claim and of the amount of compensation, which you seek. This notification is termed a “Letter of Claim”. It provides the other side (the Defendant) with an opportunity to investigate your case and the possibility of avoiding the issue of Court proceedings by either agreeing they are liable for your injuries or by offering you compensation to settle your claim. The Defendant has 3 months to respond to this Letter of Claim before we can generally issue Court proceedings.

## Some examples of our cases



### Japanese road traffic victim wins £5million

Rodney Nelson-Jones conducted the claim of a 19 year old Japanese girl who sustained serious brain and spinal injuries in a road crash in England.

After nearly four months in-patient treatment in an English hospital, she was transported by air ambulance back to Japan where after another six months in hospital she returned to her parents' home. Three interim payments totalling £1 million helped to pay for the air ambulance, a new house which was built around her needs and a team of professional carers.

Her claim was eventually settled for £5 million, with the balance of £4 million paid into a Japanese trust.

## L v P

Richard Earle acted on behalf of Miss L who was involved in a road traffic accident on 10 July 1999. L was travelling as the back seat passenger in a car that lost control. L sustained multiple injuries including traumatic brain injury and severe spinal injuries including a number of thoracic fractures and other orthopaedic injuries.

A seatbelt expert confirmed that notwithstanding L's failure to wear a seatbelt and the fact that she was thrown from the vehicle, she probably would have sustained equally, if not

more serious injury given that the vehicle turned over several times and was severely damaged. The Defendant, via his insurers, subsequently admitted liability.

The Defendant made a payment into Court of £750,000 including repayable DSS benefits of just over £25,000.

Following a settlement meeting in March 2005, terms were agreed in the sum of £975,000 gross damages, together with payment of L's legal costs.

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## Pedestrian wins an initial £750,000 in the High Court

A pedestrian who suffered a serious brain injury when run over by a vehicle won an interim award of £750,000 at the High Court this week before Mr N Wilkinson QC sitting as a Deputy High Court Judge. The defendants had offered just £100,000. The Claimant, who now requires 24 hour care, will be able to use the money to purchase alternative accommodation and allow carers to be with her 24 hours a day. It is expected that the Claimant will ultimately recover several million pounds when the case ultimately settles.

Jill Greenfield the Claimant's solicitor said, "*It will be some time before my client's claim can be fully quantified. This does not however mean that my client should have to wait for her damages. Her rehabilitation is key and it was felt that money was needed now to implement rehabilitation properly and to give her the best possible chance of living a fulfilling life. I was pleased that the High Court agreed that such a high figure was required at such an early stage in the case.*"

# Notes

## Notes



## Contacts



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Paul has specialised in personal injury and medical negligence claims on behalf of victims for over 15 years. He has acted for claimants in the Clapham, Southall, Ladbroke Grove and Potters Bar rail accidents. Paul is a member of the AvMA and the Law Society's Clinical Negligence Panels. He is also a member of the Association of Personal Injury Lawyers and ATLA.



**Jill Greenfield, Partner**

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Jill has over 14 years' experience of acting for claimants. Jill is recognised by Headway as a specialist in dealing with brain injury claims. She sits on the Committee of Headway North London. She has a specific interest in catastrophic injury cases which includes brain and spinal injuries. Jill has acted on a number of high-profile claims, including Tom Dowling v Bowman Farm, The Australian hostel fire cases, the Hatfield train crash and the family of a high profile murder victim. She is described in The Legal 500 as "committed and efficient". She is a member of the Association of Personal Injury Lawyers.



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Sam joined the firm in 2003. She specialises in clinical negligence claims and is on the specialist Action Against Medical Accidents (AvMA) panel. Sam has attained the accredited level of Senior Litigator for APIL. She has given talks on clinical negligence issues. Her cases have featured in the law reports. The Legal 500, 2005 reported that, "Samantha Critchley is considered a rising star in view of her successes in 2004, including the settlement of a misdiagnosis of breast cancer case and an ophthalmic surgical claim".



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Richard has a wide and varied practice covering clinical negligence and personal injury across the spectrum ranging from cases of maximum severity, such as cerebral palsy, obstetric negligence to oncology, ophthalmic, general and plastic surgery as well as claims against GP's. Richard is also a member of both the AvMA and the Law Society's Clinical Negligence Panels.



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