

# Spinal Injury

A client's guide to spinal injury

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“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.”

### **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. A large interim payment was obtained for Nathan and steps are now being taken to quantify the claim, on his behalf.

“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

## Spinal Injury 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 are recognised as true experts in spinal injury cases and are referral solicitors for the Spinal Injuries Association.

We have a dedicated Spinal Injury Unit thus allowing the lawyers within that unit to be true experts in the field of law and spinal injury. We understand the devastating effects of spinal 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

We receive referrals from the following organisations:

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

## 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”

Our clients say,

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

*“A very necessary interpersonal manner.”*

Amongst the legal profession, we are recognised as,

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

The Legal 500

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

Chambers

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

Chambers

## Spinal injury - the facts

The spinal cord plays a pivotal part in the body's central nervous system. It carries signals to and from the brain, which control almost every function of the body. Once the spinal cord is injured, the signals can no longer be carried so that the injured person loses control of sensory and muscle functions. The effect of the injury will depend on which part of the spinal cord is damaged. Injuries higher up the spine result in more disability than those lower down. If the cord is damaged in the neck and shoulder area, this will result in paralysis of the arms and legs. If the cord is damaged lower down, this results in loss of control of leg muscles.

In the UK, approximately 40,000 people are paralysed through spinal injury every year. It is also estimated that, on average, a further three injuries occur everyday which affect the spinal cord.

Given the fundamental importance of the spinal cord in controlling the body, an injury can instantly change a person's life. The impact will vary for each individual, depending on the severity of the injury and how they, themselves are coping with it. It is likely that hospital treatment and ongoing rehabilitation will be required to enable each person to adapt to the injury.

### We will:

- Come and see you wherever you are to discuss your case in detail, face to face;
- Allow you to concentrate on your rehabilitation whilst we concentrate on your case;
- Investigate your case thoroughly;
- Arrange for a case manager to be appointed to organise your rehabilitation;
- Advise you as to the merits of your claim and its value;
- Obtain interim payments (providing liability is admitted) to fund care and rehabilitation; and
- Use our expertise to maximise the value of the claim.

## Can I claim compensation?

If your spinal injury has been caused by the fault of another, you may be able to bring a civil claim that could provide you with damages. 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 spinal cord injury.

There are three basic 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 your spinal 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.

## Funding the case

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 Aid

If your spinal injury has been caused by medical negligence, you may qualify for legal aid through the Legal Services Commission. We will advise you if we believe that you should make an application to the LSC.

### (3) 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.

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.

## Criminal Injuries Compensation Scheme (CICS)

If you have suffered injury during an assault, your claim may be to the Criminal Injuries Compensation Authority (CICA). This is a government-funded scheme, which provides financial support to the victims of crime. Our lawyers are experienced in dealing with the CICA and will ensure that your claim is properly valued by the CICA. We will ensure that the CICA is fully aware of the devastating effects of the injury and obtain specialist reports when required.

This may mean that a formal hearing is necessary and we will represent you at that hearing.

You must make your claim to the CICA within 2 years of an assault having occurred. It is therefore imperative that you seek advice as soon as possible after your assault.

### 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:

- **Obtaining statements**

We will travel to meet 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.

We will also contact any witnesses if this is appropriate to your case. For example, if you were injured in an accident, we will seek to contact any witnesses who can support your case.

- **Obtaining your medical notes**

We will obtain copies of all your medical records. 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 suffered. 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 lead a full life. It may be, depending on the level of your injury that a number of reports will need to be obtained.

### 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 to advise 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 a brain 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. 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.

## An example of some of our cases

### C v T

Jill Greenfield acted for C who was knocked off his motorbike by an oncoming car. The car was overtaking another vehicle on a bend. The defendant did receive a custodial sentence. The defendant insurers admitted liability. C suffered paraplegia. In addition this was complicated by very severe spasms, and a baclofen pump had to be used permanently.

C required new accommodation, various adaptations and equipment and sought compensation for the loss of his career in the RAF. This was to include his loss of income and pension. An initial offer of £1 million was rejected on the basis that it did not reflect the extent of the injury and the level of loss and care that C would require in future years.

After negotiations, the claim ultimately settled for £1.4 million.

### L v P

Richard Earle acted on behalf of Miss L who was involved in a road traffic accident. She was the back seat passenger in a car. L sustained multiple injuries including severe spinal injuries and a brain injury.

A seatbelt expert confirmed that notwithstanding L's failure to wear a seatbelt and that 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, admitted liability.

The Defendant made a payment into court of £750,000. Following a settlement meeting in March 2005 terms were agreed and a settlement achieved of £975,000.

### 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. A large interim payment was obtained for Nathan and steps are now being taken to quantify the claim, on his behalf.

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## Notes

## Contacts



Rodney is head of the group. He has specialised in asbestos disease claims for over 25 years. A leading legal directory commented that Rodney has "achieved a fantastic amount for people with occupational diseases". In 2002, he received the Association of Personal Injury Lawyers' annual Award for Outstanding Achievement.

### Rodney Nelson-Jones, Partner

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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.

### Paul McNeil, Partner

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Jill has over 14 years' experience of acting for claimants. Jill is the firm's referral solicitor for Headway. 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.

### Jill Greenfield, Partner

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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.

### Richard Earle, Legal Executive

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Mark specialises in medical negligence and personal injury claims. He has a particular interest in cases involving cyclists and is a member of the London Cycling Campaign. He is a member of the Association of Personal Injury Lawyers.

### Mark Bowman, Solicitor

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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, Solicitor

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*"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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