

Claims against Professionals – Frequently Asked Questions

Making a claim against a professional adviser can be a complex process. In practice the best course is to instruct solicitors experienced in bringing this type of claim. This note answers several of the FAQs about making a claim against a professional.

- ***Should I make a complaint to the adviser before bringing a claim?***

Generally it is best to make a complaint. This is because the professional's complaint handling process may lead to the resolution of your claim, or failing that it may at least provide you with some explanation about why things went wrong.

However it may not be possible to initiate a complaint and complete the complaint process before the expiry of the time limit for bringing the claim. In that situation it is necessary for steps to be taken to meet the time limit, and if appropriate the complaint process can then be completed.

- ***Should I complain to the adviser's professional regulator before making a claim?***

Again, generally it is best to take this step. The regulator will normally have powers to investigate the complaint and to award compensation to you. Information that is disclosed through the investigation might also be of assistance if you later bring a claim.

- ***What do I need to prove in order to succeed with the claim?***

If a complaint process does not resolve the claim and it is necessary to pursue a formal claim through legal process, you will have to show that:

- the adviser owed you a duty of care – ie to advise you with the skill and care that could be expected of a reasonably competent expert in the relevant field;
- the adviser has breached their duty of care to you; and
- you have suffered loss as a result

DIRECTORS

John Rubinstein Martin Lewis Jacques Smith Pui Yee Tang

CONSULTANTS

Peter Phillips Imran Mian David Herbert

ASSOCIATE SOLICITORS

Blair Gould Phyllis Charteris-Black Tessa Manisty Bhavini Nakeshree Louise O'Farrell

- ***How will my compensation be calculated?***

This may depend on the precise legal basis of your claim. There are two alternative ways in which compensation is calculated:

- An amount equal to the losses that were reasonably foreseeable at the time that the mistake was made; or
- An amount necessary to put you in the position that you would have been in had the adviser given you correct advice.

Calculating compensation can be a complex aspect of the claim. For example you cannot recover losses that are deemed to be too remote, and it may be that your advisers will have included terms in their contract with you designed to limit the compensation they are liable to pay you.

- ***Do I have to take steps to restrict the losses I am suffering as a result of the adviser's mistake?***

Yes. You are expected to take reasonable steps to restrict your losses, although you are not normally expected to take steps that involve undue risk or cost to you.

- ***Who are the professionals who would become involved in pursuing the claim for me?***

You will need to engage solicitors to pursue the claim. It will probably be necessary to also engage one or more experts to give evidence demonstrating that your advisers were in breach of their duty of care to you and supporting the calculation of the compensation you are claiming. The experts will be recommended to you by your solicitors, who will also liaise with the experts to obtain their formal opinions.

If the case proceeds towards a final trial at court it will also be necessary for a Barrister to be instructed to appear on your behalf at the trial. The Barrister will also normally become involved in the preparation of the case prior to trial. Again your solicitors will deal with the selection and instruction of the Barrister.

- ***What is the procedure for bringing the claim?***

In a nutshell:

DIRECTORS

John Rubinstein Martin Lewis Jacques Smith Pui Yee Tang

CONSULTANTS

Peter Phillips Imran Mian David Herbert

ASSOCIATE SOLICITORS

Blair Gould Phyllis Charteris-Black Tessa Manisty Bhavini Nakeshree Louise O'Farrell

- Pre-action claim letter – this sets out the claim in detail and invites your advisers to admit liability and agree settlement terms
- Settlement negotiations – attempts will normally be made to resolve the claim through negotiation
- If there is no settlement: commence proceedings
- Exchange of statements setting out the basis of your claim and your adviser’s defence
- Exchange relevant documents
- Exchange witness statements
- Exchange experts’ reports
- Trial

In addition you will be required, at an appropriate stage of the process, to try to settle the claim through a form of alternative dispute resolution – such as mediation.

- ***Are there any time limits for making a claim?***

Yes. There are strict time limits for bringing a claim. If the time limit is missed it is only possible to go ahead with the claim in limited circumstances. The question as to when time starts to run for the purpose of working out the expiry of the time limit can be complex. This means that it is important to get advice about the applicable time limit as soon as you think that you may have a claim.

- ***How long will the process take?***

If your claim is resolved through the initial pre-action negotiation stage, this is likely to take at least 6 months. If it is necessary for the claim to be pursued through court proceedings the overall time frame will be a lot longer but will be influenced by the complexity of the claim and the approach taken by the other side. If the claim is contested through to conclusion at trial the timeframe will normally be at least 18 months and is normally longer than this.

- ***What are the usual fee arrangements for this type of claim?***

Solicitors specialising in bringing claims against advisers will normally offer alternative fee arrangements. There are three main alternatives – standard fees based on time spent, conditional fee agreements (where all or part of the fees are conditional on the success of the claim) and damages based agreements – where fees are calculated as a percentage of the amount recovered, and are conditional on recovery.

Your solicitors will advise you in detail about these options.

DIRECTORS

John Rubinstein Martin Lewis Jacques Smith Pui Yee Tang

CONSULTANTS

Peter Phillips Imran Mian David Herbert

ASSOCIATE SOLICITORS

Blair Gould Phyllis Charteris-Black Tessa Manisty Bhavini Nakeshree Louise O’Farrell

- ***Can I get funding for my fees?***

Funding is now widely available from specialist litigation funders. Generally the funder will advance the money needed to pay the legal fees of the case on the basis that the funder will receive an agreed percentage of the compensation recovered. Again your solicitors will be able to advise about funding options.

- ***Will I have to pay the other side's fees if my claim fails?***

Probably. Although the court has a wide discretion over the award of fees (known as "costs"), the general principle in claims against professionals is that the loser is required to make a payment in respect of the winner's costs.

- ***Can I get insurance against the risk of having to pay the other side's fees?***

Yes – insurance is available to cover this risk. Various types of cover are available and the amount of the premium, and when it is payable will depend on the chosen product. Again this is something that your solicitors will be able to advise you about.

This note is intended for general guidance only. We recommend that specific legal advice should be taken in relation to any particular claim.

DIRECTORS

John Rubinstein Martin Lewis Jacques Smith Pui Yee Tang

CONSULTANTS

Peter Phillips Imran Mian David Herbert

ASSOCIATE SOLICITORS

Blair Gould Phyllis Charteris-Black Tessa Manisty Bhavini Nakeshree Louise O'Farrell