

United Kingdom

1. Actions to take immediately after road traffic accidents

After a traffic accident, the driver must make his/her particulars available. If this does not occur for any reason, the accident must be reported to the police within 24 hours. If death or injury occurs, and the driver cannot produce his/her insurance papers on the spot, these must be produced for the police within 7 days of the accident.

In the case of a road death, there will be a post mortem (autopsy). You are entitled to representation at the post mortem by a medically qualified representative, provided you notify the Coroner. A coroner is a public appointed official who has certain duties in connection with sudden death. You also have the right to request a second post mortem, as does anyone accused of an offence in connection with the death. You are entitled to consult a lawyer, although you will have to pay him/her yourself. It is worth pointing out that police and coroners are often less formal and more helpful to the family themselves than if they deal through lawyers.

Police: alert the police in case of injury or death: phone number 999 or 112.

In the case of a death, there will be an investigation by the police and two files will be prepared for the Coroner and in connection with the criminal law. A police investigation manual sets out a standard procedure. In most cases, there will be a family liaison officer.

In the case of an injury, the police investigation will be minimal and they may only send out questionnaires to witnesses, the driver responsible and victim. If the questionnaires are not returned, there may be no further action.

The police Reports will not be available to you until the Inquest and any criminal proceedings are over. You may then apply to purchase copies and this will be expensive.

If the police are not called to the site of the accident, for example, when the accident involves material damage only, you are strongly advised to use the European Claim Form which can be obtained from your insurance company. It is important that both parties involved in the accident sign the form because the form is normally used as evidence. It is also important to take down the names and addresses of any witnesses as well as to give information on the facts of the accident. It is also advisable to take a photograph of the scene of the accident.

NB: Do not sign the European Claim Form if you do not understand the content! The same applies to other statements on who is to blame for the accident. You should not sign the form if there are differences of opinion on the facts of the accident. In such a case it is advisable to contact the police, even if the accident only involves damage to property.

2. Legal procedure

Civil law

Fault liability applies and no form of strict liability exists regarding road traffic accidents.

Claims are dependant on proving fault, although if the victim is considered partly at fault, it may be possible to claim for a percentage of the loss. Claims must be lodged against the other party or the party at fault. For personal injury claims of up to EUR 15,000.00, the parties concerned are obliged to attempt to reach an amicable settlement pursuant to the Free Action Protocol.

Specialist personal injury solicitors should be consulted and many will take on a case on a 'no win, no fee' basis and offer a free initial consultation but it is vital to check this beforehand.

Criminal Law

In the UK, civil claims cannot be submitted in criminal proceedings. However, a guilty verdict in criminal proceedings is proof of fault. The standard of proof in civil courts is lower than in the criminal courts so that even if the driver is found not guilty or not prosecuted in criminal proceedings, a civil claim may still be successful.

In the case of a death, there are a number of offences that are heard by a judge and jury and carry a possible 10-year prison sentence. However, in 90% of cases, the death is a result of a minor traffic offence that relates only to the standard of driving: driving without due care and attention. Such charges must be brought within 6 months of the crash, whereas no time limit applies to more serious charges.

In the case of an injury, the most serious charge, Dangerous Driving, is very rare and carries a maximum sentence of 2 years. Prosecutions for Driving without Due Care and Attention are also uncommon. Currently, the police decide on the charge, in most cases, in consultation with the Crown Prosecution Service, the state prosecuting agency, that reviews the charge in the light of the evidence. They are prepared to meet bereaved families to explain their decision.

The Coroner

In the case of death, there will be an inquest held by a Coroner unless the charge is one of the serious ones to be heard by a judge. An inquest is a public enquiry, presided over by a coroner to decide how death occurred and not to apportion blame. The inquest should be held before the criminal hearing and within 3-4 months of the death, but may be delayed.

You are entitled to be told the time and date of the inquest but are advised to keep in touch with police and the coroner's office in order to ensure that you are kept informed of developments.

At the inquest, you may question witnesses or employ a lawyer to question them on your behalf. The inquest may provide further evidence.

3. Compensation for damages/time limits

Claims for compensation must be submitted to the party at fault. UK residents may not submit claims directly to the insurer of the party at fault. Claimants must wait for the accident report submitted by the insured to his/her insurer. Under the 4th Motor Insurance Directive, however, foreigners have the right to submit claims directly to the insurer of the party at fault.

Civil law

A claim for damages must be brought within 3 years of death or injury. In case of material

damages only, the claims must be brought in England within 6 years of the date of the accident, and within 5 years in Scotland. A charge of reckless and negligent driving must be brought within 6 months. However, no period of limitations applies to a charge of dangerous driving.

4. Damages to be compensated

Loss of income and pension are compensated. Compensation for personal injury is usually paid out as a capitalised amount. The amount varies according to the cost of future care and loss of earnings.

Compensation for pain and suffering and loss of quality of life is determined based on various criteria. Small claims for psychological suffering may be made in very limited circumstances, where immediate family saw the victim within about 2 hours of the death and suffered a recognized psychological illness as a result.

Damages for death are limited to actual financial loss so that there will be a large claim for a high earning spouse but only funeral expenses, in case of a child over 18, unless the parents were financially dependent on the child. Parents of a child under 18 and spouses are entitled to a single statutory grant of GBP10,000.

Reasonable funeral expenses (including travel of relatives to the funeral, headstone, and flowers.) Occasionally, insurers have queried the costs of a headstone as unreasonable

General Damages.

For the actual costs incurred in treatment, care, traveling, the costs of clothes and the vehicle as well as housekeeping and gardening.

Payments

If proceedings are brought regarding physical injury due to a road traffic accident, from the date of the accident, interest of 6.5% per year can be calculated over the claim for material damages (excl. loss of earnings) and 2% over the claim for pain and suffering, for loss of quality of life.

Once liability is established, it is often possible to obtain one or more interim payments. This would normally apply to larger claims, where it may be difficult to make an early estimate of future needs.

Medical

Emergency medical treatment is free under the National Health Service (NHS) but the cost of treatment may be reclaimed by the NHS from any payment by insurers. Similarly, some benefits paid can also be deducted from the payments. The area of state benefits is complex and we would not attempt to summarise.

5. Accidents abroad

With effect from 20 January 2003, the 4th Motor Insurance Directive has been in force regarding traffic accidents outside your own country. Victims of traffic accidents can now claim compensation in a simple manner from the insurer of the party at fault. Such claims are submitted to the representative of the foreign insurer in the country of the victim: the claims

representative. Addresses of claims representatives are available from the Information Centre. The centre can also provide information on the compensation body that will make payment if the insurer fails to designate a claims representative or does not respond to a victim's claim.

You can find additional information on this procedure at this website.

6. Useful addresses

a. Emergency services telephone numbers: Police, ambulance, and fire brigade: 999 or 112.

b. FEVR organization:

Road Peace (National Charity for Road Traffic Victims)

PO Box 2579

London NW10 3PW

Helpline: 020 8964 1021; General: 020 8838 5102

e-mail brigitte.chaudhry@roadpeace.org Website: www.roadpeace.org

(For detailed written information and contact with other bereaved or the families of injured persons)

Campaign Against Drinking and Driving (CADD)

CADD TBAC Business Centre, Wantage Oxon OX129FF

Tel: +44 1235 277261 Fax: +44 1235 277262

e-mail Jane@caddhq.freeseve.co.uk Website: www.cadd.org.uk

c. Motor Insurers' Information Centre (MIIC)

(For accidents in another member state as described in the 4th Motor Insurance Directive)

Linford Wood House

6-12 Capital Drive

Linford Wood/Milton Keynes - GB MK14 6XT00

tel. 44 87 02 41 67 32

www.miic.org.uk

d. Motor Insurers Bureau (MIB)

(For claims for damages caused by an unknown, stolen or uninsured motor vehicle)

152 Silbury Boulevard

Central Milton Keynes

GB – Milton Keynes MK9 1NB