

Commonly Held Myths in Road Traffic Collisions

Personal injury advice with strength and sensitivity

There are many myths around road traffic collisions that often cause unnecessary emotional confusion for victims and their families. As a result, some victims and their families may not wish to consider the possibility of pursuing compensation to help with their future care, rehabilitation and support needs.

Here we highlight the top ten common myths that many of our clients have previously asked us.

1. The Police did not prosecute so there can't be any compensation claim?

This is not true. There are many circumstances where there is insufficient evidence for the Police to prosecute for a criminal offence but there is sufficient evidence to bring a civil claim for compensation. These issues are dealt with in different Courts and there are different thresholds for proving the claim. Therefore never assume that because there are no criminal charges that there is no claim for compensation.

2. The driver was uninsured so how can I progress a claim?

This is also not true. In every situation where someone is injured or killed in a road traffic collision involving a vehicle, whether that vehicle is insured or not, an innocent party will be able to pursue a claim. There are three possibilities:

- The driver is insured – in these circumstances a claim is brought against the driver which will then be dealt with by his insurance company.

- The driver is uninsured but there is a valid Policy of Insurance for the vehicle that was involved in the collision. Where the driver is uninsured but there is valid insurance on the vehicle that he is driving at the time, then that insurance company has to deal with any claim brought by another person as if the driver was insured.
- Neither the driver nor the car has any valid insurance – in these circumstances a claim has to be brought against the Motor Insurers' Bureau (MIB) Uninsured Driver Agreement. The MIB will appoint an insurance company to deal with the claim as if they were the insurers of the driver at the time of the collision.

In all of the above circumstances an innocent third party who is injured in a road traffic collision can pursue a claim, and if their claim is proven can obtain full compensation and full payment of their legal costs.

3. The driver did not stop and I haven't been able to trace them so there is nothing that I can do?

Not true. There is another branch of the MIB which is the Motor Insurer's Bureau Untraced Driver's Agreement. Under this Agreement a claim can be pursued by an innocent victim of an untraced driver. The scheme is a little more limited than the Uninsured Driver's Agreement and therefore, whilst compensation can be awarded, there are some limitations to this. In addition there are limits on the amount of costs that can be recovered; however, a claim can still be pursued.

4. I wasn't wearing a seat belt so it's all my fault?

The wearing, or not, of a seat belt can be relevant to whether you will be considered to have contributed towards your injuries. If the accident was not your fault, you will still be awarded compensation. In many cases, the failure to wear a seat belt will result in more serious injuries being suffered. If this is the case, then the most you could lose from your claim for compensation is 25% of the full amount you could have received if you had been wearing a seatbelt. In some cases however, if it is determined that the failure to wear a seat belt had no relevance to the severity of injuries; in those cases nothing should be lost from the value of your claim.

5. The car was being driven by a family member/my spouse so I cannot claim against them?

Again the relationship that you have with the driver is irrelevant. If the driver is responsible for the collision and drove negligently, then whilst it may not be ideal for family relationships, there is no reason why you cannot pursue a claim. An insurance company will deal with the claim in exactly the same way as if you were injured by a stranger and any restrictions are therefore from an emotional point of view rather than from a legal perspective.



6. I knew the driver was drunk or under the influence of drugs at the time so I cannot claim?

Knowledge of the competency of your driver is a relevant consideration that the Courts will consider. There are many occasions when even in circumstances where a driver has taken alcohol or drugs, a claim can still be pursued. Legal advice should always be taken in these circumstances and we will always give you an honest, straightforward opinion.

7. The collision took place sometime ago now so its probably too late to claim?

In most cases, the time limit for starting a personal injury claim is 3 years from the date of the collision. In some very limited cases, such as where children under the age of 18 are injured and for people who are not able to manage their own affairs, the Court can decide that the normal time limits will not apply,

8. The driver was foreign and was insured through a foreign insurance company? Or the collision occurred abroad, so how do I progress a claim?

In both these scenarios your legal rights are exactly the same. Whilst it can be more complicated to pursue a claim and there may be foreign jurisdictional elements (which may involve different time limits for pursuing a claim), the fact that a driver is foreign or the fact that the collision occurred abroad, does not in itself prevent you from pursuing a claim. Early legal advice is recommended in these circumstances given that different countries have different timescales within which to bring to claim.

9. My Solicitor was great when I moved house and/or made my will so they will know what to do for my road traffic collision, won't they?

Many Solicitors now specialise in a particular area of work and whatever legal advice you are looking for, you should always ensure that your Solicitor has the necessary experience and expertise to

properly advise you. This is even more important in circumstances where you are seriously injured, as someone who is not a specialist may well miss opportunities to access an early admission of liability; early access to interim payment funds and maximise the compensation recovered. Always make sure that you make a full enquiry as to the expertise of the Solicitor that you intend to proceed with and always remember that you can take a second opinion.

10. I did take advice at the time of the road collision and was told that there was no claim. I now think that advice was wrong, but can I do anything about it?

Solicitors, just like any other professional, can get it wrong and, if they do get it wrong then a claim for professional negligence can be made against them. If you are no longer able to pursue a claim that was valid because of the advice that you received from a Solicitor, then you can make a claim against that Solicitor and recover compensation that would otherwise have been awarded following the road traffic collision. Solicitors are required by their professional body to carry insurance to cover such claims and therefore you should have no qualms in pursuing this remedy if it is available to you. Again, making a claim against a Solicitor is a specialist area and you should ensure that you go to an appropriate specialist who has experience in professional negligence claims.

Guidance with strength and sensitivity

At Irwin Mitchell, we understand the real impact of road traffic collisions with our team of specialists having the skills and experience to guide you through a road traffic collision claim. We are renowned for our understanding of the issues affecting you and your family, and we know what

positive action to take to make a difference. At Irwin Mitchell we will fight fearlessly to give you the greatest chance of winning your case, with the best possible outcome, and we will support you every step of the way.

Useful contacts

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"I am writing on behalf of all my family and myself, to thank you for all the hard work and difficulties you dealt with on our behalf. We are really most grateful for all your efforts and compassionate understanding of our worries and hope you will convey our thanks to all your staff!"

- Ellen

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