

A Guide to Road Traffic Accidents



EMAIL

info@lynchsolicitors.ie



WEBSITE

www.lynchsolicitors.ie



TEL

052 6124344

This pack is for information purposes only and does not constitute a legal document. It represents the position as and from the date of first publication.

CONTENTS

List Of Items To Be Attended To By You	5
Report It To The Gardai!	5
Get The Other Person's Insurance Details!	5
Get Names And Talk To All Witnesses!	5
Do A Detailed Statement Of How The Accident Happened!	6
Record Your Injuries!	6
Report To Your Own Insurers!	7
Take A Picture!	7
Record Your Out Of Pocket Expenses!	8
Get An Estimate For Repairs!	8
Keep An Eye For A P.I.!	9
The Other Side Will Want To Have You Medically Examined!	9
Visit The Court Venue!	10
Frequently Asked Questions	10
The Court System - Civil	14
The Difference Between Criminal And Civil Law	14
The Court Structure	15
Court Procedure	15
The District Court:	15
Barristers And Solicitors:	16
The Circuit Court:	16
The High Court:	17

The Adversarial System:	17
Fixing A Date For Hearing:	18
Court Documents - High Court	18
Summons	18
Plenary Summons.....	19
Statement Of Claim	19
Defence.....	19
Notice For Particulars	20
Discovery	20
Pleadings Closed.....	21
Circuit Court	21
Civil Bill	21
Appearance.....	21
Notice For Further Particulars	22
Defence.....	22
Discovery	23
Notice Of Trial	23
District Court	23
Civil Process.....	23
Notice Of Intention To Defend	24
Diagram Outlining The Stages In Your Action	25
Running Your Case	26
Starting The Legal Machine:	26
The Court Day:	35

After Hearing - Settlement.....	38
Glossary Of Legal Terms.....	38
Witness Questionnaire Form	44
The Cost Of Going To Law	45
Before You See A Solicitor	45
How A Solicitor Charges For His Work.	45
1. Charges	45
2. Disbursements.....	46
3. V.A.T.....	47
How A Solicitor's Charge Is Calculated.....	47
Bringing Or Defending Civil Proceedings	50
The Importance Of Winning.....	50
For More Information	51

LIST OF ITEMS TO BE ATTENDED TO BY YOU

REPORT IT TO THE GARDAI!

You are obliged by law to report all road traffic accidents. As a matter of practice the Gardai will only fully investigate an accident where there are personal injuries. This does not mean that they will not attend the scene but simply that they may not take measurements or make a sketch. However, in most instances the investigating Garda, if he is contacted early enough, will be of assistance.

If the Gardai investigate the accident, find out the name of the investigating Guard and what station he is from. In any case you should immediately arrange to take photographs of the scene of the accident, the vehicles in the accident and also measure the road - you should include any skid marks in both your measurements and your photographs.

GET THE OTHER PERSON'S INSURANCE DETAILS!

Anyone involved in a Road Traffic Accident is obliged by law to exchange names and Insurance details. You also should make sure you obtain these details about the driver (and owner, if different) of the car. You should also obtain details of the registration number of the other vehicle.

If there is any doubt about the real identity of the other person report the matter to the Gardai, they will investigate it further on your behalf.

Under the present law which obliges people to put an insurance disc on their windscreen there should be no difficulty in getting the other parties insurers - you just simply read the details off his windscreen.

GET NAMES AND TALK TO ALL WITNESSES!

If there were any witnesses to the accident be sure to obtain their names and addresses and, if possible, their telephone numbers. Talk to them and see if they will talk to us. Try to secure their attendance at our office, and eventually at court. If you can obtain a written statement from the witness, do so- an independent witness is always valuable to your case.

If witnesses are reluctant to come to our office you should ask us to go and see them.

DO A DETAILED STATEMENT OF HOW THE ACCIDENT HAPPENED!

It is most important that you write down in the fullest detail how the accident happened and what injuries you suffered. You should set out the time, date, weather conditions, road conditions and the mechanics of the accident and why you consider the other party is at fault.

We have a standard form which includes questions which should assist you in completing this statement. It is important that you complete this statement at the earliest date - You should include as much detail as you can remember, no matter how trivial. You have no way of knowing at an early stage what will prove to be important as the case progresses. You should make sure that you keep a copy of this statement in your own file when you have given us the original.

RECORD YOUR INJURIES!

After the accident even if it has only been a minor one you should always see your doctor for a check up. It is not recommended for you to ignore this as it may cause difficulty at a later stage if you fail to attend your doctor. Make sure that you tell the doctor that you were involved in an accident and also detail all injuries - no matter how trivial. Make sure that he makes a note of these details. It may be advisable for this reason to have someone present with you at this initial attendance.

It is very difficult to remember some months or years after the accident how you felt in the "early days." Buy a DIARY and keep a record of present symptoms and thereafter record your condition on a regular basis.

You should also record all your medical examinations - you should make a note of what they said and what examinations they carried out and what opinions they offered.

Sometimes an injury is exclusively psychological. The sort of warning sign which might indicate a problem is difficulty with sleeping, headaches, problems coping with simple everyday situations, constant tiredness and loss of memory. If any of these become obvious then you should bring them to our attention and to the attention of your doctor - ask him to refer you to a specialist who will be able to give us a full report.

REPORT TO YOUR OWN INSURERS!

If you are the driver or owner of a vehicle you should inform your own Insurance Company immediately, even if you consider that it was not your fault. The Insurance Company will ask you to complete an accident report form for their file. Failure to report the accident to your insurer could mean that your insurance company would not cover you at a later date should someone make a claim against you.

Should you need assistance in completing the form we will be happy to assist.

Ensure that you give us a copy of your completed claims form.

TAKE A PICTURE!

It is also a good idea to have photographs taken of (by a professional photographer) both the scene (especially skid marks) of the accident and of the damage to your vehicle and also the other person's vehicle - these photographs should be taken by a professional

photographer. You need evidence as to what the place looked like at the time of the accident and this must be done immediately.

You should also arrange to have photographs taken of any visible injuries you have suffered - this provide a useful historical record if the case is to be settled or heard at a later stage when you have made a recovery from these particular injuries.

RECORD YOUR OUT OF POCKET EXPENSES!

You are going to have expenses such as doctors fees, travelling expenses, prescriptions, hospital fees, as a result of your accident. Make sure that you keep all receipts and record all such expenses in your diary. If you have a loss in wages, furnish our office with your social welfare number and any P60's/P45's in your possession, together with a letter from your employer setting out your weekly loss, nett and gross.

You should use a diary to record details of all these expenses.

You should keep copies of all invoices or receipts received - you could use your diary for this purpose.

GET AN ESTIMATE FOR REPAIRS!

If your car has been damaged as a result of the accident you need to establish whether or not the car is a write off - i.e. uneconomical to repair compared to the cost of replacement or whether or not it is repairable.

You should bring it to a garage to establish the repair cost in comparison to the pre-accident value of the car - if the pre-accident value is less than the repair cost the car will be written off and you will be allowed the pre-accident value less the scrap or salvage value of the car.

If the car is repairable you are entitled to depreciation @ 10% of the pre vat repair figure in addition to the repair cost. You are also entitled to hire an alternative vehicle while your car is being repaired and, if it is undriveable, for the period of time that it is undriveable.

Even if you do not hire a car, you may be able to claim a sum of money for the loss of use of your car - i.e. the inconvenience of being without it.

You should be careful in this as you are only entitled to a reasonable amount for car hire - usually three weeks for a write off and two weeks for a repair.

You should ask us to arrange to have your car assessed by the other parties Insurers and/or by your own Assessor.

KEEP AN EYE FOR A P.I.!

It is becoming increasingly the practice of Insurance Companies to employ private investigators to keep an eye on people taking cases.

If you are saying that because you have a bad back you cannot clean windows - they would be happy to have a photo of you out cleaning your front window! It is important therefore that we are told accurately how your injury affects you. Such investigation by the Insurance Company will be to no effect if we disclose full and accurate details to the other side.

THE OTHER SIDE WILL WANT TO HAVE YOU MEDICALLY EXAMINED!

The Defendant's Solicitors may request you to attend a medical examination arranged by them. You should make sure that you are paid your expenses from the other side prior to attending such medicals.

Prior to attending any medical you may wish to discuss with us the format of the medical and what questions you are obliged to answer. As a general rule the other doctor is not entitled to enquire into how the accident happened but is simply entitled to enquire into what injuries you received as a result of the accident.

Make sure that you give the doctor details of all injuries - no matter how trivial. It may be advisable to have someone present with you at these medical examinations.

VISIT THE COURT VENUE!

Preparation and experience are two key elements to the successful presentation of any court case, however, experience of court is something very few lay people have. This is why it is a good idea to visit the court a week or two before the case and watch how other cases are presented. Visiting a court before your case allows you to see what happens and will help you to be less nervous when your day in court comes.

You should remember that the day you attend the Court for your case is the only chance of seeing you that the judge will have and hearing your evidence. It is essential therefore that you create a good impression. - you dress in a manner which shows proper respect for the court; you behave in a respectful manner at all times. In giving your evidence you should make sure that the judge can hear you properly and understand what you are saying. You should answer to the best of your ability any question put to you but remember not to give any hasty or confused replies as these may only prejudice your case.

We would also suggest that you bring along someone to give you moral support on the day - a member of your family or a good friend.

FREQUENTLY ASKED QUESTIONS

Q. WHAT IS THE DIFFERENCE BETWEEN CIVIL LAW AND CRIMINAL LAW?

A. Civil actions are brought by individuals. People who have suffered a wrong will usually be claiming financial compensation.

Criminal actions are brought by the State and result in the offender being punished as a deterrent.

A crime is against all of us. A civil wrong may be against all of us but must also be against an identifiable individual.

Q. WHAT CIVIL COURT WILL MY ACTION BE BROUGHT BEFORE?

A. This depends on the potential value of your case.

Warning:- This does not mean that your case in fact is worth the upper limit of the jurisdiction - e.g. if we take a case in the Circuit Court the maximum which you can be awarded is £30,000 - but this does not mean that the Court could not award less than £5,000.

Q. HOW MUCH WILL MY CLAIM BE WORTH?

A. The big problem with personal injury is that you frequently do not know at the beginning the exact value of your case, ultimately it is up to the court to fix the value of your claim. It should be remembered that judges vary in the amount that they award.

Q. HOW LONG BEFORE MY CASE WILL BE HEARD?

A. Most people are aware that it will take a certain length of time before a case comes up for hearing in the courts.

These delays are due primarily to the fact that there are only a limited number of judges.

Another reason is that some cases are not ready to be heard by the court for a time and this is particularly so where the injuries have been severe - it can take time for the person to recover and until he has recovered sufficiently or his condition has stabilised the case should not be heard.

District Court - 6 months;

Circuit Court - 2 years;

High Court - 2 years.

Q. DOES THE CASE HAVE TO GO TO COURT?

A. As a rule, cases are often settled prior to the hearing date. However, they are only settled provided that you are agreeable to accepting the figure that is offered in full and final settlement of your claim.

Q. WHAT EXACTLY WILL I BE COMPENSATED FOR?

A. You will be compensated for your special and general damages.

Q. WHAT ARE GENERAL DAMAGES?

A. General damages are damages payable to a person for their pain and suffering, injury to health, personal inconvenience, and future suffering.

Q. WHAT ARE SPECIAL DAMAGES?

A. Special damages are your actual out-of-pocket expenses as a result of the accident.

This would include medical expenses, loss of earnings, travelling expenses, cost of medical care, physiotherapy expenses, pharmaceutical expenses, hospital fees, cost of scan, repairs to car (loss of use and depreciation), loss of clothing and your potential future loss of earnings.

It is important that you retain all receipts and vouchers. If you have suffered a loss in wages, furnish our office with your Social Welfare number and any P60's/P45's in your possession. *An award is a payment for all time, there is no further recourse to get any further amount cannot come back later and claim more even if your injuries do get worse.*

Q. ARE MY SOCIAL WELFARE PAYMENTS TAKEN INTO ACCOUNT IN MY CASE?

1. Disability Benefit and Pay Related Benefit:

- These benefits are deductible from the loss of earnings element of an award in road traffic act cases for a period of five years from the date of the accident.
- In any other case disability benefit and Pay Related Benefit are not deductible.

2. Occupational Injury Benefit or Disablement Benefit:

- Injury Benefit (the initial 26 week payment) given to an employee when he has an accident at work is deductible from the loss of earnings element of any award.
- Disablement benefit which is paid after injury benefit usually by way of a gratuity or lump sum is deductible for a period of five years from the date of the accident.

3. Employment Sick Pay:

- One has to be careful where an employee who was involved in an accident is paid by his employer for any period while out of work as a result of the accident.
- In the case of Civil Servants such sum is usually recuperable from the employee in the event of the employee making a claim against a third party.
- Accordingly a Plaintiff should ensure that the said payment by the employer is claimed for as loss of earnings in the proceedings.

Q. WHAT IS A BARRISTER?

A. A lawyer who will present your case before the Circuit or High Court. In the eventuality of the case being settled he/she may assist in negotiating the settlement.

THE COURT SYSTEM - CIVIL

THE DIFFERENCE BETWEEN CRIMINAL AND CIVIL LAW

Without attempting to be unduly academic about the difference, the key difference is the involvement of the Garda Siochana. If you are involved in a criminal case the action will be by the Gardai.

If, however, you are involved in a civil case the action will be by private individuals. In a legal text book the difference might be illuminated in terms such as - the criminal law involves a wrong against society while a civil action involves a wrong against an individual.

A criminal action involves such things as murder, larceny, and even that bald tyre on your car which you meant to replace last week. A civil action, on the other hand, involves the individual who drove into the side of your car on your trip from Dublin.

The civil action involves your taking him to Court in an effort to oblige him to pay you for the cost of repairing that front bumper which he damaged when he crashed into you while you were parked at the traffic lights in Naas.

The complications arise where the Gardai also arrive on the scene and discover that the same individual who drove into the side of your car causing damage also was driving dangerously thereby committing a "crime" against the public at large.

The wrong against you personally is the Provenance of the civil law while the wrong against the public at large (the dangerous driving) is the Provenance of the criminal law.

You should be aware of the fact that there can be two separate and distinct cases arising out of the same accident - one a prosecution in the District Court ; the other a Civil action in the District Court, Circuit Court or High Court. They are not inter connected, even though they involve the same facts.

THE COURT STRUCTURE

COURT PROCEDURE

Court proceedings in all courts require the preparation of documents by both parties which are filed in Court and copies given to the other side. The purpose of this is that both sides will be fully informed of the basis of the case against them. It is also of assistance to the Judge in understanding the issues between the parties.

For example, a High Court summons will be supported by a statement of the claim being made by the Plaintiff and in response the Defendant will furnish a defence which will contain a denial of the Plaintiff's claim with perhaps reasons for the denial and a counterclaim. The documentation prepared by both sides is called the Pleadings.

While Pleadings tend to be written according to long standing rules and precedents, nevertheless the proceedings cannot go outside what is contained in the pleadings and there is no doubt about the importance of pleadings. It is therefore important to your case that we have all the facts that support your case so that we may include them in the pleadings.

For practical purposes there are three courts which you will primarily be involved in - the District Court, the Circuit Court and the High Court. There are other Courts and Tribunals which you may be involved with but for the purpose of this explanation I will limit myself to these courts.

THE DISTRICT COURT:

The District Court is the court at the lowest level in the Court system and it is presided over by a District Judge. A District Judge is appointed from the ranks of solicitors, barristers and administers the law in the District Court unaided - that is to say, without the assistance of a Jury or panel of experts.

The practical difference between the various courts is the amount of compensation which they are entitled to award. In the case of the District Court the maximum award that may be made is £5,000.00. Accordingly, as you can imagine, the District Court and more specifically the District Judge would be dealing with the lower end of the civil actions.

BARRISTERS AND SOLICITORS:

I should possibly at this stage digress to explain the difference between a Solicitor and a Barrister. From the point of view of the general public the Barrister is the individual who is seen to wear a wig and gown. From a practical point of view the barrister is the most conspicuously vocal branch of the legal profession who argues cases before the Higher courts. The solicitor on the other hand has direct contact with the general public and prepares the paper work which is necessary for the barrister to present the case in court.

Before moving to the next Court I would point out that, as a rule you, are unlikely to meet a barrister in the District Court. This Court is the arena for your unwigged and ungowned solicitor. However, it is nonetheless formal, and is subject to the same rules of evidence as the Higher Courts.

THE CIRCUIT COURT:

The next court up the line is the Circuit Court. This is presided over in civil actions by one Judge - a Circuit Court Judge. The Circuit Court Judge is usually a former barrister. Accordingly, before he was elevated to the bench he would have been a practising barrister before the Circuit and High Courts. The situation in the Circuit Court is similar to the District Court in so far as there is one Judge presiding.

All civil claims for compensation in the Circuit Court are greater than £5,000.00 and less than £30,000.00.

THE HIGH COURT:

The High Court is again presided over by one Judge - a high court Judge. In the High Court we have two barristers - one senior counsel and one junior counsel. The difference can be best explained by referring particularly to the terms senior and junior. There is a pecking order within the bar (namely among barristers).

Senior counsel are the barristers who have the experience and clients to acquire senior status. Junior counsel on the other hand is anyone from a beginner to a seasoned veteran who, for one reason or another, has decided or is obliged to remain at junior status.

The monetary limit for compensation in the High Court is any sum in excess of £30,000.00, the sky is the limit! I should point out, for the sake of accuracy, that the relevant upper limits in the three courts does not mean that a court is bound by the lower limit - the District Court has no lower limit; the Circuit Court could award less than £5,000.00; the High Court could award less than £30,000.00 or £5,000.00. However, if this happens, the person bringing the case will be penalised in costs.

THE ADVERSARIAL SYSTEM:

The civil action system is based on a for and against system. The Plaintiff is the person who takes the action against a defendant who defends it. Both parties are normally represented by legal advisers - solicitor and barrister. When both sides present their case it is the function of the Judge to decide the issues between the parties.

During the running of the case in the Court these legal advisers may call upon experts to assist the Court in deciding on the extent of the person's injuries and therefore facilitate their assessment of how much the Plaintiff should receive in money for his injuries. You should bear in mind that it is the function of the legal advisers on the

opposing side to attempt to either wholly or partially discredit such expert testimony. This goes to the very root of the adversary system.

FIXING A DATE FOR HEARING:

All courts have a system of fixing a day when your case is to be heard. Each court has a queuing system and until such time as you complete all your paperwork you will not even begin to queue for hearing. When all the pleadings are closed and Notice of Trial has been served you will then come into the queue.

You will reach the top of the queue when your case is listed for hearing. This usually involves the court office taking a number of cases and putting them in for hearing before the judge. As the courts do not sit every day or even every week, when you will reach your hearing date will depend very much on the number of cases that are due for hearing.

Even when your case is fixed for hearing there is no guarantee that it will be heard on the date that is fixed by the court. As you might understand, a case can take anything from half an hour to four or five hours depending on the issues involved. Therefore, although a judge will list a number of cases for a particular hearing date there is no guarantee that your case will be reached unless it is first on the list.

This is by far the least understood part of the court system and we will be happy to go into the details of your individual case.

COURT DOCUMENTS - HIGH COURT

SUMMONS

The format of a Summons is a call to a defendant by order of the Chief Justice to answer the claim of the Plaintiff in a particular case. This form of originating document has its roots in medieval times inasmuch as it reflects the form of the old writs issued in the name of the Lord Chancellor on the authority of the monarch.

PLENARY SUMMONS

A common type of action in the High Court is a claim for personal injuries, pain and suffering and monetary loss sustained by a person by reason of another person's negligence and breach of duty including statutory duty such as the Road Traffic Acts. A standard plenary summons will read as follows:

"The Plaintiff's claim is for damages for personal injuries, loss and damage suffered and sustained by reason of the negligence and breach of duty including statutory duty of the Defendant".

STATEMENT OF CLAIM

A detailed statement of the Plaintiff's claim will be required in support of the Plenary Summons. This statement will set out details about the parties to the proceedings, the accident, the surrounding circumstances, particulars of the injuries and particulars of the negligence and breach of duty. As already stated, it is important that it is accurate and complete.

DEFENCE

The information contained in the Plenary Summons and the Statement of Claim may be sufficient to enable the Defendant to prepare and file his Defence. The Defendant may deny every aspect of the Plaintiff's claim and claim that the Plaintiff also contributed to the accident. A few standard excerpts from a typical defence are as follows:

1. It is denied that the alleged accident occurred as alleged or at all.
2. It is denied that the Plaintiff was injured in the manner alleged or at all.
3. It is denied that the Plaintiff suffered the alleged or any personal injuries loss or damage as alleged or at all.

4. Each and every particular of negligence and breach of duty including breach of statutory duty as alleged against the Defendant is denied as if the same were herein set out and traversed seriatim (denied individually).
5. If the alleged accident occurred (which is denied) the said accident was caused solely by or alternatively was contributed to by the negligence or breach of duty including statutory duty of the Plaintiff.

The Defence will then go on to list any possible particular of negligence such as failure to exercise care and obey the rules of the road.

NOTICE FOR PARTICULARS

If the Defendant considers that he requires further particulars relating to the Plaintiff's claim he may serve a Notice for Further Particulars on the Plaintiff. The questions raised in the Notice for

Particulars are restricted to the issues and cannot seek particulars of the evidence to be put before the

Court by the Plaintiff. The Jurisdiction for requesting further particulars is that without same the Defendant would be unable to complete his defence.

DISCOVERY

Any party to a Court action may apply to the Court for an order directing any other party in the action to make discovery on oath of all the documents which are or have in his possession, power or custody or in the possession power or custody of his solicitor or agent or any other person on his behalf. Documents include any deed, account, book of account, book of account voucher, receipt letter, memorandum, paper or writing or any copy of extract from any such document or any other document whatsoever relating to the matters in question in the court action. It does not extend to communications

between a client and his legal advisers in the particular Court action in question.

PLEADINGS CLOSED

When the parties have been provided with all the particulars they require and the defence has been filed it is said that the pleadings are closed and the case is set down for trial normally before a judge sitting alone. There are certain actions, as in defamation, where a trial before a Judge and jury is heard.

CIRCUIT COURT

CIVIL BILL

The fundamental originating process in the Circuit Court is the Civil Bill and the civil bill goes back in Ireland to the thirteenth Century. This is the first document which starts the action and it sets out in detail the claim for personal injuries, negligence and out-of-pocket expenses. It must be served within three years from the date of the accident.

APPEARANCE

Within ten days of service of the Civil Bill the Defendant must lodge an Appearance with the County Registrar and send a copy to the Plaintiff or his solicitor.

NOTICE FOR FURTHER PARTICULARS

If the Defendant considers that he requires further particulars relating the Plaintiff's claim he may serve a Notice for Further Particulars on the Plaintiff. The questions raised in the Notice for Particulars are restricted to the issues and cannot seek particulars of the evidence to be put before the Court by the Plaintiff. The Jurisdiction for requesting further particulars is that without same the Defendant would be unable to complete his Defence.

DEFENCE

The information contained in the Civil Bill may be sufficient to enable the Defendant to prepare and file his Defence. The Defendant may deny every aspect of the Plaintiff's claim and claim that the Plaintiff also contributed to the accident. A few standard excerpts from a typical defence are as follows:

1. It is denied that the alleged accident occurred as alleged or at all.
2. It is denied that the Plaintiff was injured in the manner alleged or at all.
3. It is denied that the Plaintiff suffered the alleged or any personal injuries loss or damage as alleged or at all.
4. Each and every particular of negligence and breach of duty including breach of statutory duty as alleged against the Defendant is denied as if the same were herein set out and traversed seriatim (denied individually).
5. If the alleged accident occurred (which is denied) the said accident was caused solely by or alternatively was contributed to by the negligence or breach of duty including statutory duty of the Plaintiff.

The Defence will then go on to list any possible particular of negligence such as failure to exercise care and obey the rules of the road.

DISCOVERY

Any party to a Court action may apply to the Court for an order directing any other party in the action to make discovery on oath of all the documents which are or have in his possession, power or custody or in the possession power or custody of his solicitor or agent or any other person on his behalf.

Documents include any deed, account, book of account, book of account voucher, receipt letter, memorandum, paper or writing or any copy of extract from any such document or any other document whatsoever relating to the matters in question in the court action. It does not extend to communications between a client and his legal advisers in the particular Court action in question.

NOTICE OF TRIAL

When the Defendant has filed his Defence the Plaintiff lodges a Notice of Trial with the County Registrar. This puts your case on a queue for hearing. There are three dates during the year when Circuit Court cases are heard in Clonmel - January, May and October. How soon your case will be heard depends on where it is on the list, and whether or not there are criminal trials on at the time.

DISTRICT COURT

CIVIL PROCESS

This is the first document which starts the action. It must be served within three years from the date of the accident. Civil Proceedings can be brought where the Defendant or one of the Defendants

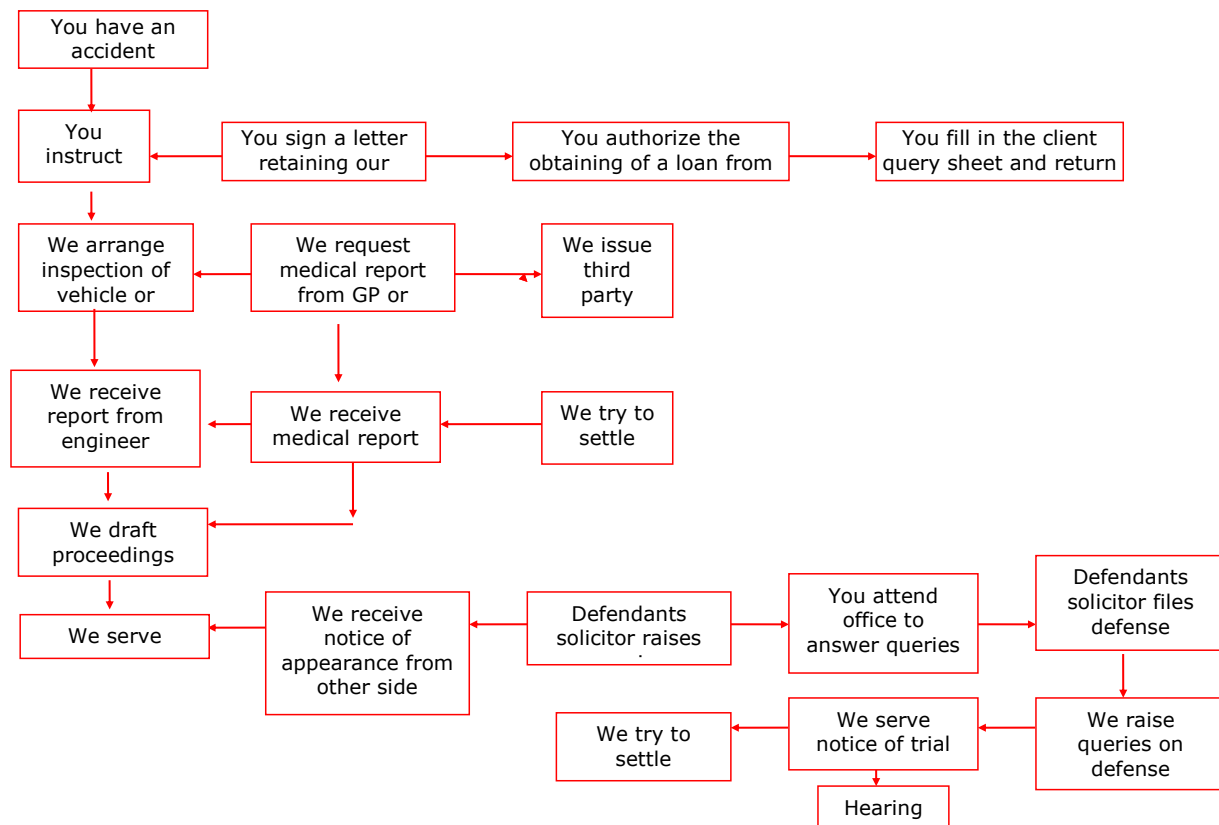
ordinarily resides or carries on any profession, business or occupation.

NOTICE OF INTENTION TO DEFEND

Whenever a Defendant intends to defend a civil process he shall send to the District Court Clerk a notice in writing of his intention at least four clear days before the day fixed for the hearing.

DIAGRAM OUTLINING THE STAGES IN YOUR ACTION

We hope that this gives you a visual picture of the stages of your case. This is by no means a complete picture but merely a simple illustration. We wish it were that simple.



RUNNING YOUR CASE

STARTING THE LEGAL MACHINE:

Having dealt briefly with the court structure I would like to explain, by example, the legal system and how it involves you in the running of a civil action. Allow me to illustrate this by a fictitious example:

On a Monday morning at 10.00 p.m. a 45 year old married man named John Doe with a family of seven children ranging from 4 years to 18 years comes into my office. He tells me that he was involved in a road traffic accident some ten weeks previously. He was driving his car which was involved in a collision with another vehicle. He was taken to Richmond Hospital in Dublin where he was in intensive care for ten days. He was then released in the care of his GP who had monitored his progress since then. He tells me that he has had severe headaches, dizziness and poor concentration since the date of the accident. He also tells me that in the accident he struck his head against a pillar in the front of the car. He also tells me that he was treated by a "headman and shrink" while in hospital.

I must now begin to assemble my experts who will tell me the extent of my client's injuries. I ask my client who is treating him and he tells me that he is presently under the treatment of a GP and cannot remember who treated him in the hospital. Accordingly, I write to the GP and ask him to furnish me with a medical report; I also write to the hospital and ask for medical reports from the relevant specialists.

I also employ an engineer to inspect the scene and prepare a report and photographs for my file. I also talk to the Gardai and any witnesses to establish supporting evidence. Thankfully, these investigations confirm what Mr. Doe tells me - that the other car without warning drove out of a side road into the side of my client's car.

Like any other claim for compensation for injuries there are essentially two things that you have to prove:

1. that you are injured either physically, mentally or both,
2. that it is someone else's fault.

Let me deal with the second element first! I say that it is the second element because if you fail to establish that the accident is the other person's fault you will not recover compensation no matter how serious your injuries.

Subject to proving fault the more serious the injury the more substantial the amount of compensation awarded.

Many people who are involved in an accident either as a pedestrian, cyclist, passenger or driver are so shocked at the time of the accident that they do not know what to do, they react in a state of shock. Some time later they realise that they should have said or done something which would have been of great assistance to them in making their claim.

The first thing you should do if you are to come upon the scene of an accident is to stop your vehicle at the scene of the accident, if someone has been injured you should always call for an ambulance if you are in a fit condition to do so. If there have been personal injuries you should report the matter to the Gardai.

If there is damage to the car only there is no legal obligation on you to report the accident to the Guards, however, it might be a good idea to have them carry out an inspection of the scene of the accident as this information could be useful when your case comes to court. If you are driving your car at the time of the accident then you should exchange details with the driver of the other car. Give him your name and address and also let him have the name and address of the owner of your car if you are not the actual owner.

You should also give details of the registration number of your car and your insurance policy particulars. You should make sure to obtain the same details from the other driver and be sure to write them down.

If there is any doubt about the real identity of the other person or if you think that he is uninsured then do not let him leave the scene of the accident without reporting the matter to the Gardai, they will investigate it further on your behalf.

There is no reason why insurance details should be a problem nowadays in view of the fact that all cars have to have an insurance disk on view. All you have to do is to copy the details off the disk. Apart from exchanging the information, you are not obliged to comment on the accident, or to admit liability, or to sign any documents or pay money.

Even if you think you caused the accident you should not sign any statement or make any admission at the time of the accident. If there were any witnesses to the accident be sure to obtain their names and addresses and if possible their telephone numbers. If you can obtain a written statement from the witness by all means do so, an independent witness is very useful in subsequent proceedings.

After the accident even if it has only been a minor one you should always see your doctor for a check up. Never ignore this and always be sure to bring all your complaints to the attention of your doctor.

If you are the driver or owner of a car that was involved in a car accident you should inform your own insurance company immediately, even if you feel that it was not your fault. The insurance company will ask you to complete an accident report form for their file. Failure to report the accident to your insurer could mean that your insurance company would not cover you at a later date should someone make a claim against you.

Above all, you should contact us as soon as conveniently possible after the accident. Apart from claiming damages on your behalf we will be

able to help you fill out the insurance report form, and also help you to prepare a statement for the Gardai if necessary. Your solicitor will help you in preserving the evidence which will be needed later on.

This may mean having an engineer or assessor examine your car and perhaps an engineer prepare a map with measurements showing the exact position of your vehicle at the time of the accident. It is also a good idea to take photographs of the scene of the accident.

These photographs should be taken by a professional photographer so that they can be used in court later on, this is particularly so because it is not unusual for the scene of the accident to change by the time the case comes on for hearing.

For this reason you need evidence as to what the place looked like at the time of the accident and this must be done immediately. If the Gardai investigate the accident try to find out the name of the investigating Guard and what station he is from.

When you talk about injuries you always think of physical injuries such as broken bones, scars, loss of a limb, back pain or whip-lash. However, injuries to the person may be both physical and mental and often there is a combination of both. Frequently the psychological aspect of the injury is overlooked because it is more difficult to pinpoint.

Sometimes the injury is exclusively psychological. Just because the injury is a psychological one does not mean that it is a less important one. In fact, while bones may set and scars gradually become less noticeable psychological trauma and post traumatic stress disorders can linger on indefinitely and can ruin a person's career and social life.

People have difficulty with sleeping, headaches, problems coping with simple everyday situations, constant tiredness and loss of memory. If any of these become obvious then you should bring them to your doctor's and solicitor's attention and have further investigation undertaken and report send to us.

There is no such thing as a 100% claim. This is because the person against whom you are claiming might raise a defence saying that for some reason the accident or the injury is not his fault.

Alternatively, he might say that you partly contributed to the accident and that the level of compensation awarded to you should be reduced accordingly.

Contributory negligence is the expression used to say that the accident or the injury was partly your fault. In a car accident situation you may have been partly responsible for causing the accident if you were driving too fast, or if your brakes were worn or if you did not sound your horn to warn the other driver of your approach. Even where the other driver caused the accident you may have been partly responsible for your injuries, an example of this is where you fail to wear a seatbelt.

This might mean that you would receive far more severe injuries from an accident than you would otherwise have. It is not unusual for a court to reduce your compensation by 20-25% if you fail to wear a seatbelt.

The law recognises a number of defences that are available to the other side. These include consent, necessity, act of God, voluntary assumption of a risk and the Statute of Limitations. Of these perhaps one of the most important one is the Statute of Limitations.

The Statute of Limitations 1957-1991 provides a period of time in which actions for compensation for personal injuries must be taken, after that period the claim becomes statute barred, clearly it would be a good defence to plead that a case is statute barred if it is commenced after the period of 3 years allowed, if you had knowledge of your injury and knew that it was as a result of the accident.

So remember do not delay in bringing a claim, you must begin proceedings within 3 years of receiving the injury or of discovering the injury. The rule is modified somewhat in relation to children under the age of 18 but it is still good practical advice to say that the sooner you contact us the better.

Even where a person appears to have a good case he must bear in mind that he will have to establish his claim clearly before the court. It is not unknown for a good case to be lost in court because of lack of concrete evidence.

Indeed, sometimes cases are lost because the opposite party tells lies in court. This means that there is no such thing as a guaranteed case and every action brought to the court involves some risks.

Another problem with personal injury claims is that you frequently do not know at the beginning the exact value of your case, ultimately it is up to the court to fix the value of your claim.

While the amount of the claim decides in what court level the case is brought, the place where the defendant resides or the place where the accident happens will decide the location of the court where the case is to be held - so if the accident happened in Galway and that is where the defendant resides then that is the place where the case should normally be heard.

Most people are aware that it will take a certain length of time before a case comes up for hearing in the courts. These delays are partly due to the fact that there are only a limited number of judges. Another reason is that some cases are not ready to be heard by the court for a time and this is particularly so where the injuries have been severe.

It can take time for the person to recover and until he has recovered sufficiently or his condition has stabilised the case should not be heard.

Usually your total compensation is made up of special and general damages. The term Special Damages refers to specific items of loss such as the cost of buying a new jacket or pullover if it was damaged in the accident. You may have suffered loss of earnings and perhaps you have some medical or physiotherapy expenses.

These out of pocket expenses or money which you have lost form part of the Special Damages, so also do future losses of earnings.

The term General Damages means the amount paid as an appropriate sum to compensate for the pain, suffering and inconvenience of the injury. This sum is difficult to quantify, however, a good lawyer will be experienced in predicting how much a judge would normally award in a similar type of injury.

I should point out that when a claim is finalised and when the compensation is paid you cannot come back in two or three years time and say that your injury has got worse and look for further compensation. The award for compensation is full and final and therefore an injured person should be careful not to settle his claim or to request judgement from a court until he knows the full extent of his injury. He should also be reasonably certain that the injury will not get worse and it is for this reason that it takes so long before many personal injury cases are finalised.

Frequently awards which are made by a Court are appealed. Both parties can appeal a result. You can appeal a District Judge's award to the Circuit Court, which appeal is final; A Circuit Court case can be appealed to the High Court; and a High Court case can be appealed to the Supreme Court. The higher Court can reduce an award or increase it; it can reverse the decision of the lower court.

Not all cases go to court, frequently we are successful in negotiating settlements out of court. This is good because the client receives compensation quickly and it reduces the risk, necessity or worry of you going into court. It is important for you to be satisfied that the offer of compensation made to you is fair and reasonable in all the circumstances of your case.

You must realise that if you accept the money, you do so in full and final settlement of your claim and you cannot come back later and claim more even if your injuries do get worse. So if you feel your injuries have not sufficiently improved or stabilised then you should not settle your claim.

If the settlement cannot be agreed between the parties then the defendant is allowed to pay money into court. Payment into court in satisfaction of a claim is called lodgement. What this means is that the defendant will estimate what is a fair settlement sum. If you do not accept this he will pay the money into the court.

You can then accept the lodgement within a certain time limit. If you do not accept the money lodged into court but decide to proceed with the action you take a certain risk. If you are not awarded more than the amount of money paid into court then you will be penalised. If the amount of money lodged actually exceeds the amount of money awarded by the court then the excess is repaid to the defendant and only the amount awarded by the court is handed over to you. You will also have to pay the costs incurred by the Defendant since the date of the lodgment.

These could be substantial if they include the costs of the hearing. You should remember that there is always the possibility of a lodgement being made and that you will have to make a decision fairly promptly and be in a position to give us instructions. Anyone who is considering accepting an offer of settlement or a lodgement should remember the implications.

The most important thing to be sure of is that your injury is not getting worse and your condition should either have stabilised or be improving. If there is any doubt about this you should obtain an up to date medical report. The doctor will give you his opinion or prognosis concerning your injury. If there is a likelihood of further problems (such as arthritis) then these should be carefully considered before accepting any money. It is also important to make sure that you have claimed for everything. If you overlook your physiotherapy bills then you will not be able to come back and claim these later. Make sure that you advise your solicitor fully on all of your expenses and your loss of earnings.

In serious cases an injured person may not be able to work in the future. The future loss of earnings are calculated by an expert - an actuary.

The actuary will prepare a report estimating the value of future lost earnings based on the person's job, trade or profession as well as the individual's age and sex.

Although the progress of a case brought in the District Court, the Circuit Court or the High Court will vary there is a basic similarity in the proceedings involved. Normally a case will be commenced with a warning sent by us to the other side claiming compensation for your losses and injuries and warning them that you intend to go to Court if they do not pay compensation immediately. The warning letter is followed by a court summons. After that the other side may request further information about your injuries. After this they will file a written defence and the case will be set down for hearing.

Presenting a court case is a team effort, one of your team members is your barrister. In a High Court case it is usual to have two barristers. While we look after the day to day administration of your case it is the barrister who actually stands up in court to give the verbal presentation. It is usual for us to set up a pre-trial consultation with your barrister either a couple of days before you go to court or on the same day as the hearing. This pre-trial consultation allows you to meet your barrister and for him\her to hear you explain your case in your own words. Up to then the barrister will probably only have received a written statement of the facts.

The barrister will normally let you and your witnesses know in what order you will be giving your evidence, he will also tell you what type of questions he will be asking.

Preparation and experience are two key elements to the successful presentation of any court case, however, experience of court is something very few lay people have. This is why it is a good idea to visit the court a week or two before the case and watch how other cases are presented. Visiting a court before your case allows you to see what happens and will help you to be less nervous when your day in court comes.

You should remember that this is the only chance of seeing you that the judge will have and hearing your evidence. It is essential that you dress in a manner which shows proper respect for the court. In giving your evidence you should make sure that the judge can hear you properly and understand what you are saying.

You should answer to the best of your ability any question put to you but remember not to give any hasty or confused replies as these may only prejudice your case.

THE COURT DAY:

Mark Twain: "If you tell the truth you don't have to remember anything."

Presuming that I do not go to the insurance company armed with reports and settle the case for a specific figure the case will then come up for hearing. On the day in question you will be asked to come to court to give evidence on how the accident happened and say how the injuries have affected your lifestyle.

It is quite possible that you may have a doctor on the other side who states that you are not as you say or that the opposing barrister may ask you questions which cast doubt on the truth of what you say. This should not surprise you as it is the function of an opposing lawyer in an adversarial system to try to establish that your evidence is less believable than the evidence of their own witnesses.

However I would impress upon you my Golden Rule that when giving evidence always make sure that your testimony is your own testimony based on your own honest beliefs. Do not stray from the truth and do not try to guess why the other side are asking the question.

I would like to deal specifically with your time in the courtroom. - I am presuming that you have already been in the courtroom prior to the

hearing date and seen how things are done. It is always a good idea to bring along someone to provide a bit of support - a family member or friend.

Presuming you apply a little bit of relaxation therapy to yourself and await your turn you will eventually be called to give evidence under oath in a small little chair in a small box at a remote and apparently isolated part of the courtroom. You may be forgiven for wishing that the system was less formal and more friendly. As a rule you are quite entitled to read extracts from your diary or file and give direct evidence in this way.

Again I would emphasise that it is most important that you make notes in your diary in such a way that they are clearly explicable in hindsight to yourself. To put it briefly you will be asked firstly by the lawyer on your side how the accident happened and what your injuries were and how the effect you. When you have given this evidence you will be "cross examined" by the lawyer on the other side. If you keep in mind that it is his function to cast doubt on your evidence you should not be intimidated by his questions.

If I could make some general observations about the day in court:

- you will be first be "called" by your lawyers (you will have met these in advance on the morning of the hearing day when you will be asked about your case);
- when you go up to give your evidence you will be asked to take an oath or affirmation;
- having seated yourself you are first asked questions by your own side. The rules of evidence will allow you to refresh your mind from a written document where that note was contemporaneous with the event being recorded. You should, however, tell your own legal team in advance that you are referring to the diary;

- the next phase of your stay in the witness box is by far the most notorious i.e. CROSS EXAMINATION and sometimes it can be very cross;
- I believe that the best advice that you could have is to turn to face the Judge, address all answers to the Judge, and never look at the person asking the questions;
- speak slowly and clearly and try to be heard (particularly by the Judge);
- think before you answer a question ;
- give yourself time to answer and make sure the understand the question;
- do not involve yourself in an argument with either the lawyer or (and especially) the Judge;
- if you do not understand the barrister ask him to clarify the question;
- if you do not hear him tell him and ask him to repeat the question
- if you are not being allowed to answer questions or your replies are being restricted you should insist on being allowed to clarify your reply - "Your Lordship I would like to clarify my reply!"
- try to avoid yes\no replies by prefacing it with your opinion;
- ignore antagonistic remarks or aggressively phrased questions and answer the question or restate your opinion.

At the end of the day if you are dissatisfied with the decision reached in your case you may decide to appeal to a Higher Court, if you do you

must make the decision promptly and let us know so that we can put in the appeal within the given time limit.

AFTER HEARING - SETTLEMENT

When a case is settled or an award is made by a Judge the question of costs payable by the other side arises. If you are successful in your case the other side are obliged to pay party/party costs. We would refer you to our letter of retainer which set out the costs which are payable by you to us.

However, the other side are obliged to pay an additional sum in costs to us and also to discharge or pay off any outlay that you have incurred in running the case. We enter into negotiations with them in order to agree these costs and in the event of not reaching agreement there is a mechanism whereby the costs are decided by an arbitrator known as the taxing master.

In essence, we draw up a listing of all of our expenses incurred on your behalf and send it to the other side. If they are not happy to discharge all of the costs as set out and we are not in a position to agree them with them we can then refer the matter for a decision to the taxing master.

This procedure can take up to three months in that you have to get a hearing before the taxing master who will then make the final decision. In the event of the taxing master not accepting all the costs that we have submitted the balance costs will have to be discharged by you out of your settlement monies.

GLOSSARY OF LEGAL TERMS

ADVICE ON:

PROOFS

Counsel are sent papers and they advise on what evidence, witnesses and documents should be available at the trial.

BARRISTER

Also called Counsel. A barrister will often be engaged to present your case in court.

BRIEF

An extract from a solicitor's file sent to a barrister to draft proceedings, appear in court or offer necessary second opinions.

CENTRAL OFFICE

An office in Dublin that handles all the paperwork for the High Court

CONTRACT

An agreement enforceable at law.

COUNSEL

Barrister

DAMAGES

Money compensation paid to a person if successful in an action.

GENERAL DAMAGES

A general figure which is to compensate a person for pain and suffering since the

date of the event / accident and into the future.

SPECIAL DAMAGES

Actual out of pocket expenses (already paid out or which will have to be paid out in the future) incurred by the person as a result of the accident or loss. This would include medical expenses, loss of earnings, travelling expenses, cost of medical care, hospital fees, scans and car repairs.

DEFENDANT A person against whom a case is brought.

DISCOVERY Where the Court orders a person to disclose particular documents that they have relevant to a particular aspect of the case.

EX PARTE An application by one party in the absence of the other.

JUDGMENT BY DEFAULT This is where a Plaintiff wins an action because of the failure of the Defendant to lodge a pleading e.g.

judgment by default of appearance,
or judgment by default of defence.

LITIGATION This is the general term to cover the area of law which deals with taking cases to court.

LODGEMENT Money paid into Court by the Defendant with the Defence in satisfaction of the Plaintiff's Claim. The Plaintiff must accept this sum unless he considers that it is not enough. If, on the hearing of the case, the Judge agrees that it is enough then the Plaintiff is penalised by having to pay all costs after the date of Lodgement.

MOTION A Court application directing something to be done in your favour which can be either by written notice to the other party or 'ex parte', e.g. an application asking the Court to order a Defendant to lodge their Defence.

NOTICE FOR PARTICULARS A written request for information about the claim. The Defendant is entitled to ask 'Particulars'. These are questions that will clarify the Plaintiff's claim. The Plaintiff does likewise to clarify the Defendant's defence.

PARTY / PARTY COSTS*

The legal, medical, witness (including expert witness) costs you are entitled to receive from the Defendant as a result of winning your case. Please note that while these costs are ultimately to be paid by the other side, the primary duty to pay us rests with you as a result of engaging our services. For this reason, you will be liable to pay all our fees if the other side fails to do so. *(We would refer you to our authority and retainer.)

PERSONAL SERVICE

Engaging a Summons Server to serve a copy of a Court document with someone after showing him/her the original.

PLAINTIFF

The person who brings an action.

PLEADINGS

This is the name for all the documents which have to be used by the Parties in an action. e.g. Summons, Appearance, Statement of Claim, Defence.

RESPONDENT

Another name for a Defendant.

SOLICITOR / CLIENT COSTS * Costs which a solicitor charges directly to the client to cover costs not covered by the other side, e.g. contribution towards professional fee in respect of directly referable client work, certain advices, undertakings, client related travelling expenses, etc. *(We would refer you to our authority and retainer.)

SUBPOENA A document obliging a person to attend Court to give evidence.

SUMMONS SERVER An individual appointed to Server serve documents.

TORT A wrong committed by one person on another which gives rise to a claim for compensation e.g. defamation; negligence, trespass, nuisance.

WARNING LETTER A letter warning a party that unless he deals with the case within say 21 days the other party will seek judgment against him.

* In litigation, a solicitor is not permitted to charge fees as a percentage of damages or compensation recovered for the client. We must charge you according to the time we spend on your case.

WITNESS QUESTIONNAIRE FORM

OUR REF:

PARTIES:

OUR CLIENT:(Name)

(Address)

1. Did you witness the accident?
2. How far away were you and from what position did you see it?
3. Please state the circumstances and exactly what it was you saw?
4. Who do you consider was to blame and why?
5. Do you consider the injured person was in any way to blame?
(If so please state in what respect)
6. If you know of any other person who saw the accident please give their names and addresses.
7. Whether or not you did witness the accident, do you know of any facts or circumstances which will throw some light on the occurrence? (If so please state these in detail.)

Dated this DATE **day of** MONTH **20**

Signed:

Witness'Name:

Address:

Occupation:

THE COST OF GOING TO LAW

BEFORE YOU SEE A SOLICITOR

Once you have selected a solicitor there are several things you should do before going to see him. Firstly, you should make an appointment. This way you will be dealt with when you go to the solicitor's office without wasting a lot of time waiting. Secondly, as solicitors are busy people the better you present your enquiry the more likely the solicitor is to be able to deal with it quickly and effectively. If there are any letters or documents involved, bring them with you. If the facts are complicated or if dates are involved, make a note which you can give to the solicitor. It is also helpful to make a note of the questions you may want to ask the solicitor. If you follow these steps it will help to keep down the cost as a solicitor basically charges for his services according to the amount of time involved - the more time you waste through being disorganised the more the solicitors bill will come to.

HOW A SOLICITOR CHARGES FOR HIS WORK.

A solicitor's bill is usually divided into three parts:

1. Charges

This first part of the bill covers the work carried out by the solicitor himself and is usually called "the solicitors charge", or "profit costs". the bill should include a reasonable statement or description of the work, such as the number of appointments (often referred to as attendances) between the solicitor and the client, phone calls made in relation to the work, letters written, documents drafted etc.

These items will not be costed separately but a lump sum will be charged. The principles on which this sum is calculated are discussed later, but this sum is normally based on the number of hours spent by the solicitor or other members of his staff on the work, multiplied by the hourly rate at which these services are charged. This sum will also include something for the solicitor's special skill, care and attention and may include something to reflect the urgency, importance of other aspects of the matter.

The hourly rate charged by a solicitor may appear high but it should be noted that this rate does not just represent the solicitor's salary as comprises several factors. It is estimated that only about 60 % of the available working hours per year are spent by a solicitor in dealing with client's business.

The remaining 40 % is taken up by statutory and annual holidays, organisation and administration of the office, sickness and non-chargeable work. The hourly rate charged must cover this non-earning 40 % of time. In addition the hourly rate must cover the various expenses incurred in running an office.

These include rent, rates, electricity, professional insurance, stationery, wages for other employees such as typists, book-keepers, cleaners, contributions to pensions etc. Thus, if a solicitor charges £30 for an hour's work only a small proportion of this actually represents the solicitor's salary.

2. Disbursements

Disbursements (sometimes called “outlays”) are “out of pocket” expenses which have been paid by the solicitor on behalf of the client. For example, in the course of doing the work the solicitor may have to pay various fees for experts’ reports, sworn documents, counsel’s opinion etc.

All these disbursements should be itemised separately in the bill. The solicitor pays these fees as they arise, and then recovers them from the client when the bill is finally settled. These disbursements are quite separate from the solicitor’s charge for the work which he himself has done.

3. V.A.T.

Solicitors must charge V.A.T. at 21 % for their services and this sum should be shown separately.

HOW A SOLICITOR’S CHARGE IS CALCULATED

1. The skill, labour, specialised knowledge and responsibility involved therein on the part of the solicitor.

- **Skill** - The type of work involved in legal transactions varies in difficulty and complexity. Routine or simple matters may be dealt with by a legal executive (i.e. an unqualified but experienced clerk). More important, complex or difficult transactions will require the attention of an experienced solicitor. Where additional skill is required this will normally be reflected in the rate charged per hour.
- **Labour** - This is usually taken to refer to work done by office staff in relation to the transaction such as typing or copying.

- **Specialised Knowledge** - A solicitor is expected to have the knowledge necessary to deal with the types of business which he normally transacts. But some transactions call for specialised knowledge which a reasonably competent solicitor cannot be expected to have. In such cases the solicitor may charge more to reflect this factor, much in the way that a private medical specialist will charge a higher fee than that charged by a general practitioner in private practice.
- **Responsibility** - This factor is closely linked with the value of the property involved and the skill and specialised knowledge required of the solicitor. The greater the responsibility the solicitor bears the more he will charge for his services.

2. The complexity, importance, difficulty, rarity or urgency of the questions raised.

- **Complexity** - This matter is closely connected with skill and time. If the facts are complicated more time will have to be expended and greater skill will be required in dealing with them.
- **Importance** - This factor is closely linked with skill, specialised knowledge and time. Where difficult legal issues are involved the transaction will probably call for the attention of a senior partner who will charge more than a junior solicitor.
- **Rarity** - If a transaction involves issues which rarely arise, the solicitor may be required to engage in research, involving additional time for which the solicitor will charge.
- **Urgency** - If the business requires urgent attention in the interests of the client, or if the client requests that the

business be dealt with quickly, the solicitor will take this into account when charging.

3. The time expended by the solicitor.

This is generally the most important factor in the solicitor's charge. Some, but not all, solicitors record the amount of time spent in work for each client in relation to most types of business.

This involves keeping a record of each interview (attendance) with a client, time spent on the phone dealing with the client's business, time spent drafting or studying documents, writing letters, carrying out any specialist research relating to the client's business and any consultations the solicitor may have had with other experts.

The rate charged per hour or part of an hour depends on whether the work was done by a senior solicitor or assistant solicitor or legal executive. Those solicitors who do not keep time records will use their experience to estimate the amount of time spent on each transaction.

4. The importance of the matter to the client.

If a transaction is of particular importance to the client the solicitor may take this into account when charging.

To repeat, the most important factor in arriving at a figure for the solicitor's charge is usually the time involved. Most transactions, such as drafting a will, administering the estate of a deceased person, or conveyancing, are straightforward, involving few complications. However, difficulties and complications when they arise will increase the solicitor's charge.

It is, therefore, difficult to indicate the cost of the various transactions which a client may ask a solicitor to conduct. but a solicitor should be

able to give some indication of the cost (exclusive of disbursements and assuming no unforeseen difficulties or complications arise) of any particular transaction before he does the work. Indeed, local solicitor's associations have drawn up guidelines of costs for various routine transactions; these guidelines are based on the average amount of time for the transaction and on there being no complications.

Thus a solicitor should at least be able to quote the *minimum* fee for various transactions such as drafting a will, administering an estate or conveyancing in a house purchase or sale. But he will have to add that if anything out of the ordinary arises the charge will have to be increased, and he is therefore unlikely to give you a clear and definite figure.

BRINGING OR DEFENDING CIVIL PROCEEDINGS

The Importance of Winning.

The single most important rule in relation to bringing or defending a civil case in court is that in most cases "costs follow the event". This means that whoever loses usually has to pay not only his own costs but also most of the costs incurred by the winner. It is important, therefore, for a person to consider two things before bringing or defending proceedings; first, his chances of success, and secondly, whether he is entitled to legal aid.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,

51



Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie



www.twitter.com/LynchSolicitors



www.facebook.com/LynchSolicitors



www.linkedin.com/company

ATTENTION

The information in this pack is for guidance only and is not intended as a legal advice.