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The 7 Immediate Steps I must take if I'm involved in a Road Traffic Accident

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The 7 Immediate Steps I must take if I'm involved in a Road Traffic Accident

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Preface

Making a personal injury claim*, especially after a road accident, can be very stressful and difficult, particularly when you are at your most vulnerable. This Guide provides you with the 7 immediate steps you must take following your accident.

If you've just had an accident, you may be facing the following problems...

You may have sustained serious injury and may not feel capable of attending to the steps outlined in this Guide. If you cannot do so, then ask a loved one or a friend to assist you. **These immediate steps are very important and will affect your Civil Claim for compensation in the long term.**

You may have been left without transport, unable to get to work. You could be struggling to meet your financial, employment, and family responsibilities. You may be feeling overwhelmed at the thought of processing a Claim with an insurance company, or completing an Injuries Board claim on your own to get the compensation to which you are entitled.

You may have been unable to access the appropriate medical care for your injuries, or experiencing anxiety and guilt about taking a Claim. You could be worried that it will take you years to get your compensation.

A lot of vital evidence can be lost within a very short period following an accident. You will require experienced professional help to assist you in preserving this and advising you on how to protect your interests. This can make all the difference later on.

Bear in mind that a claim arising out of an accident may take months or even years to be resolved. Unless the evidence is recorded carefully by people who know what they are doing when it is fresh, facts that seemed as clear as a bell to you at the time of the accident may be muddied by the passage of time. And remember also that not everyone involved in the accident will be interested in highlighting those aspects of the facts that may support your case.

That is why you need to consult a solicitor, who can take immediate action to protect your rights. Again, if you, because of the severity of your injuries cannot make immediate contact with your solicitor, then ask your loved one or friend to make immediate contact: your solicitor will be happy to visit you if required.

Some Definitions:

Sorry to get legalistic, but it is best to get these terms out of the way before you start on this Guide:

“**Claimant**”: that is **you** – the Road Traffic Victim (sometimes also referred to as the “*Plaintiff*”);

“**Respondent**”: that is the other driver whom you will be suing (sometimes also referred to as the “*Defendant*”);

“**Liability**”: that is, who was responsible for the accident – remember, you can only recover compensation against a Respondent if you can prove the other driver was either fully or partly responsible for the accident;

“**Court Pleadings**”: Before your case gets to a Court Hearing or settlement, it will be necessary for your Solicitor to deliver a number of Court Pleadings. To start the Court Proceedings, it is necessary to issue a *Personal Injury Summons*. Subsequently, a *Reply to Particulars* will be delivered where the Respondent’s solicitors seek further particulars of your Claim, and at various time *Notices of Further Injuries* are delivered as updated Medical Reports are received.

“**Respondent’s Insurers**”: Just as you have taken out a Policy of Insurance for your motor vehicle, so also the other driver will have done so. You may get the impression from this Guide that the Respondent’s Insurers are on the “dark side” but they are representing their insured’s interests and it is in their interests to minimize your Claim and even at times suggest that you are exaggerating your Claim. It’s just business; so don’t take it personally – but, so that we can keep you right, do please take note of these very important **7 Steps**

1. Don't leave the accident location without identifying all relevant information

Get the Identity of the other Driver / Owner

You should phone immediately for the Gardai to attend at the accident scene. Do not rely on the other driver's assurance that he admits responsibility and that he will see you right: people change their minds!

Whether or not a Garda is present at the scene of the accident you must get:

- The name and address of the other driver;
- The address where the other driver's car is kept;
- The name and address of the car owner;
- That car's registration number
- Motor insurance details (name and address of the Insurance Company, including expiry date of the policy).

Even where a Garda is present, do not rely on the Garda's assurance that this information will be gathered and delivered to you. You will need this information immediately, in order to make contact with the other driver's Insurers to arrange repair of your vehicle. If the Garda is not able to give this information at the scene to you then take a written note of the other driver's Insurance Cover from the Insurance Disc on his Windscreen. Better still, photograph it on your iPhone!

Other important matters

Get the names, addresses and telephone numbers of any witnesses as these may be required if there is a question of liability.

Take photos of the scene of the accident. These should include photos of the cars before they are moved. Examples of photographs which will be of assistance include:

- The number plates of each of the vehicles involved.
- The insurance disc displayed in the windscreen of each of the vehicles.
- The positions of the vehicles relative to one another and relative to the centre of the road. (Try and get a photo of these positions before the vehicles are moved immediately after the accident, but only if it is safe to do so.)
- Any dents or other signs of damage to any of the vehicles.
- Any skid marks or other road markings.
- Any broken glass or other debris lying on the road.

Do not rely on the Garda to do this. Again, this information may not become immediately available. Furthermore, the Garda is gathering information for the purpose of a possible Road Traffic Prosecution. That could include a Prosecution against you, if there is a suspicion that you were partly to blame! You need to take photographs to support your account of how the accident occurred.

You should obtain the name or number of the Garda to whom the accident is reported. Your solicitor will require this information.

You should write down an account of all relevant facts connected to the accident as soon as possible afterwards. You should sign and date it (including the time) when it is completed. Don't give it to the Garda however: this is for your Solicitor (reasons explained later in this Guide!).

If, due to the severity of your injuries – particularly where you have been taken to hospital by ambulance – it is not possible for you to attend personally to all of the above, then get someone else at the road traffic scene to attend to this. If you were driving alone then, as well as phoning the Gardai to attend the scene, also phone your loved one or a friend at that time as well. This person may note important details at the scene which you may have overlooked due to your shock.

Should I admit responsibility or accept that I was partly responsible?

Never: see Section 4 of this Guide - *Do not make a Garda / Police Statement without first talking to your solicitor* - below for further information.

2. Visit your Doctor immediately

If you feel any pain or stiffness subsequent to the accident then you should definitely visit to your GP as soon as possible after the accident. You may have sustained shock in the accident. Shock can often mask the gravity of what are in fact significant physical injuries requiring medical attention. If you don't get the appropriate treatment early enough this could exacerbate your injuries. Furthermore, it is important that someone who is a professional and is impartial, like your GP, takes an immediate record of your symptoms.

I know, you may think: "I'll get over this", but what if you don't? What if you are involved in a subsequent accident (sounds incredible, but it has happened!): how are you going to prove that this first accident was responsible for your symptoms: what independent medical evidence will you have?

If you suffer a back injury there may be no difficulty in relating your back injury to this accident, but what if you have always suffered from a bad back? How will you be able to prove that the aggravation of the back injury symptoms was due to this accident? Sometimes it will be very important that an MRI Scan is undertaken as soon as possible after an accident, so that the soft tissue injury signs identified in that MRI Scan can be related to that recent accident.

Need I say more?

3. Instruct your Solicitor

I know, you'll say: "*He would say that; wouldn't he!*" - here is a Solicitor telling you to immediately instruct a Solicitor! ... but there are very good reasons why you should do so.

Remember too that the other driver involved in the accident is almost certainly going to consult solicitors as soon as possible – or will be represented by his Insurers (remember those ones on the “dark side”) who will appoint their panel solicitors to represent his interests so, why should you leave yourself at a disadvantage?

Your Solicitor will advise you on immediate action you should take to strengthen your case in the long term. He will advise you as to whether you should make a Garda Statement (see Section 4 below). If liability is going to be disputed, he may advise the immediate retainer of an Engineer to visit the Road Traffic scene while there is still forensic evidence available to support your version of the how the accident occurred.

There are circumstances where, even if you've taken down all the relevant facts, drawn an accurate sketch, and taken plenty of photographs, an engineer will nevertheless be able to inspect the scene with cold detachment relying on a trained eye that may well spot relevant details that you could easily have missed. They know the tell-tale signs to look out for and will also be in a position to take

relevant measurements which could turn out to be critical ultimately at the Hearing of your Civil Claim from an evidential point of view. As weather conditions and passing traffic can result in evidence being lost from a scene it may be appropriate to ensure that the engineer attends and inspects the scene as soon as possible. Your solicitor will know when to take appropriate action on this. Time is of the essence.

You will be advised on what immediate actions you should take to ensure that you do not do anything to prejudice your Claim.

4. Do not make a Garda / Police Statement without first talking to your solicitor

At the conclusion of Section 1 I stated that you should never admit responsibility at the scene of the accident. Likewise, you should never sign a Garda Statement without talking first to your Solicitor. There are very good reasons for this advice.

Not admitting responsibility ...

Very importantly, it will almost certainly be a condition of your Motor Policy of Insurance that you must not make any admission of liability and that to do so would invalidate your insurance.

Also, the scene of an accident is neither the time nor the place to get into an argument as to who was responsible for the accident. You might feel guilty that you have in some way contributed to the fact that the other driver sustained injuries and that you are somehow to blame – but that does not mean that you were responsible for the accident! Remember also that people will often be suffering from shock or be overcome with emotion in the immediate aftermath of an accident – leave this discussion for a later date.

By all means, if the other driver apologizes and volunteers that he was responsible make sure to ensure that he also admits this to the Garda, or to your friend or a witness.

Not making a Statement ...

I know, you are aghast at the suggestion that you should not make a Statement. Remember, what I'm stating is that you should not make a Statement until you have taken advice from your Solicitor.

Just as many Road Traffic Victims feel in some way responsible for the injuries of the other driver, so also many of those Road Traffic victims feel the necessity to get down on paper their version of how the accident occurred, so that the world will know that they were not to blame. That's OK, but you don't need to give that first Statement to a Garda. Remember the Garda is coming to the case from a totally different perspective to you.

I'm sorry to tell you, but the Garda is not on your side. He is on the side of the Prosecution. He may even believe that you were responsible for the accident! Is he really the best person to whom you should relate your story?

Talk to your Solicitor first. Your Solicitor is in your corner and will look at your Statement from your perspective, making sure to point out all of the relevant data to show why you were not to blame. Bear also in mind that the Statement which you make to the Investigating Garda may very well be the Statement on which you could be hanged in a subsequent Garda Prosecution! (sometimes the Garda can be on the "dark side" also, but only because he is doing his job).

In some instances you will be advised not to make a Statement. In some instances there are very good reasons for not doing so. You are not obliged to make a Garda Statement. Your Solicitor will give you the best advice on what to do, bearing in mind all of the circumstances of your case. In some instances I actually draft the Statement for my client to bring to the Garda.

5. Don't delay

I was going to title this: “*Don't delay: claim today*”, but you don't need to move that fast! You should not however hang about. Under Section 8 of the *Courts and Civil Liability Act 2004* you are required to issue a notice providing details of the nature of the wrong alleged to a Respondent within two months of the date of the cause of action or as soon as practicable thereafter. If you fail to do so a Court can subsequently make adverse comment on this failure and this could affect the Judge's decision. I have had cases where my client has waited for over a year to instruct me; the Claim Letter is obviously therefore way out of time and the Respondent's Insurers have tried to raise issue with this delay.

There are many cases where some Road Traffic victims will not consider issuing a Civil Claim as they believe that their symptoms will resolve with time and only subsequently consult a solicitor because they then realize that their symptoms are getting worse. While this is understandable, it can also be dangerous.

The Statute of Limitations

In Ireland a Claimant has only 2 years within which to issue a Civil Claim. If you don't issue Court Proceedings within that time your Claim becomes *Statute-Barred*: that is, you can no longer issue a Claim. 2 years may seem like a long time, but remember that, before

your Court Proceedings can be issued, your Solicitor must first get Medical Reports from GP's and Consultants. Consultants particularly are very busy people and it can often take months to get appointments and then Reports. Sometimes it is necessary to get Reports from a number of Consultants and this can there give rise to further delays. 2 years can pass very quickly!

Therefore, don't delay: at least instruct your Solicitor today and we can get matters in motion for you!

6. Keep a diary of all ongoing symptoms

You'll be asking why you should need to keep a diary of your ongoing symptoms when you are going to be attending with GP's and Consultants who will record all of this for you? Well, I have a surprise for you: neither your GP nor your Consultant will record all of your symptoms, unless of course you relate your symptoms to them. This sounds simple, but it isn't. When you attend with your doctors, you won't remember all your symptoms: you'll only remember what is bothering you at that particular time! Bring your diary to your medical appointments; don't be afraid to take out your diary and recall all the symptoms which have been bothering you in summary of course: your doctors are very busy people!

Here is another surprise: your Personal Injury Claim is only worth what is recorded in your doctor's Medical Reports. Don't start telling your Solicitor subsequently about other symptoms you are suffering which are not recorded in your Medical Reports. The Judge won't want to know about them. If they are not recorded in the Medical Reports; they didn't happen!

There is another reason for keeping this diary. The vast majority of Claims (in fact about 99%) settle without a Court Hearing. However, if it is necessary for your case to go to a Court Hearing this could be 3 or more years subsequent to your accident (by the way, this is not because your solicitor has been slow – but because it has simply

taken that long for you to get a long term medical prognosis). Are you going to remember 3 or more years later just how bad your symptoms were? **No.**

The mind has a tendency to shut out the bad memories. 3 years later you'll think that it was a breeze! When you are being cross-examined by the Insurer's Barrister (who may also be on the "dark side") who is putting it to you that things weren't that bad, you are quite entitled to open your diary in Court (because you made a contemporaneous note at the time!) and put that Barrister right as to just how bad things were. You will only get one chance at a Court Hearing. You don't get to go back a second day to correct your mistakes!

Make sure you have all the necessary documentation to back up your case.

7. Be honest

I know what you're thinking: how dare my solicitor suggest that I'm anything but honest. Well, nobody is stating that you are a liar, but it is very easy to lose perspective on your case. It is important that you are straight with your solicitor and ultimately with everyone as to how the accident occurred and as to the extent of your injuries.

As to how the accident occurred ...

In your initial recount to your solicitor as to how the accident occurred you might think that your solicitor only wants to hear the good points. That couldn't be further from the truth: we want to know the unfavourable points about your case also. That way, we can take appropriate steps to ensure that corrective action is taken; e.g., by sending out an Engineer to the scene of the accident immediately – just in case you have incorrectly misinterpreted the circumstances of the accident. Remember, we are in your corner! Don't hide relevant facts from us.

More importantly, if you hide back relevant facts, do you think that these will get by the Insurer's forensic Engineer ("dark side")? Do you think that they will get by a Judge (never on the "dark side", but always very astute), who has many years of experience of these Claims? All you will do is damage your credibility and your case. Start your case right and you can't go too wrong.

As to the extent of your injuries ...

Judges can now dismiss a Personal Injury Claim where they believe that the Claimant has been dishonest about or exaggerated the extent of their injuries. This can occur, even where liability has been admitted and you might have thought that your Court Hearing was going to be a slam dunk (if you don't believe me, read my blog "[Dishonest Personal Injury Claims get dismissed](#)" on the Morgan McManus website). What's more: if the Judge believes that you really egged your symptoms and that you misled the Court, he can even recommend that your file is delivered to the DPP for consideration of a Criminal Prosecution against you. Imagine the ignominy of suffering severe injury and ending up in prison. This is all serious.

During the course of your Proceedings you will be required to swear *Verifying Affidavits*, swearing as to the correctness of the facts which you have recorded in your Court Pleadings. Extreme care is required in the completion of Pleadings and the swearing of these Affidavits. Honesty is required, not just at the Court Hearing, but throughout the course of your Proceedings. The Insurer's Barrister can and will cross-examine you strongly if he believes that you have exaggerated any symptoms.

This is where it is important that you start your case correctly from the very first Pleading. This is why I have highlighted this as the 7th "immediate" step you must take at the start of your case, even though its consequences may not become relevant until the end of your case!

CONCLUSION

The author, Benjamin Franklin, once stated: *"A slip of the foot you may soon recover, but a slip of the tongue you may never get over"*. In many ways this statement applies very aptly to how a Road Traffic victim may seriously prejudice their Claim. In this Guide I have detailed **7 Immediate steps you must take if you have been involved in a Road Traffic accident**, but they all come around to one theme: starting your Claim on the correct road (forgive the pun!). Ensuring that how the accident occurred is properly recorded. Ensuring that your injuries are properly recorded. Ensuring that you and your case are properly represented.


Take these 7 immediate steps and you won't go too wrong.

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** In contentious business a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.*

This booklet is intended to give an overview of the law only and is not intended as full legal advice. As such you should always take full legal advice before you take any decisions that may impact on matters referred to in this booklet.



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