



TRIPPING/FALLING ACCIDENTS

If a person trips or falls and sustains an injury due to flooring or a pavement which is in some way defective, that person may be able to claim compensation against whoever is responsible for the area where the accident occurred. The person who brings the claim for compensation or **DAMAGES** is known as the **CLAIMANT**. The person or authority against whom the claim is made is known as the **DEFENDANT**.

IN WHAT CIRCUMSTANCES WILL THE DEFENDANT BE HELD RESPONSIBLE?

This will depend on the nature and location of the defect. The most common type of tripping accident claims are those arising out of defective pavements normally against the local Council whose responsibility it is to maintain the pavements. There are no hard and fast rules as to when the courts will hold the Council responsible but as a very rough-and-ready rule of thumb, if the defect is more than 1 inch in depth the court will usually hold the Council responsible i.e. find that the Council was **NEGLIGENT** provided that it can be shown that there was no system of inspection or monitoring in place.

Another type of accident is slipping on flooring. In these cases it will be necessary to prove that the flooring is in some way defective eg. doesn't have anti-slip qualities. It will normally be necessary to obtain independent expert evidence to prove this eg. a surveyor's report. Such claims are usually brought under the Occupier's Liability Act.

WHAT SHOULD I DO IF I TRIP OR FALL?

If possible take several photos and make measurements of the defect - this will be vital evidence, particularly if the defect is subsequently repaired. Put a common object, eg. a coin, by the defect to show the size when you take the photographs. It is also helpful to write on the back of the photos the date the photo was taken and by whom. Draw a plan showing generally where the defect is eg. in relation to other landmarks. It is important that a Solicitor is consulted as soon as possible to ensure that proper evidence is obtained before the defect is repaired.

WILL I BE HELD PARTLY RESPONSIBLE?

In many cases that proceed as far as a court hearing, even if the court finds that the pavement or flooring was defective the Defendant may say that you were partly to blame i.e. did not look where you were going. The court may reduce the amount of compensation by a certain percentage (sometimes 25%) to take this into account: this is known as **CONTRIBUTORY NEGLIGENCE**. However, the Court does not expect you to walk about looking at the ground all the time.

WHAT CAN I CLAIM FOR?

You can claim for various categories of compensation or **DAMAGES**, some of which are set out below:

1. Damages for pain, suffering and continuing disability.
2. Past and future loss of earnings.
3. Damages for "prejudice on the labour market".
4. Past and future expenses eg. travel expenses, prescription charges, cost of nursing care and/or a home help.

Make out and keep a list of all expenses incurred together with any supporting receipts.

It is also important to note that if you have received any state benefits as a result of the injury occurring, including statutory sick pay, some or all such benefits may have to be repaid to the **COMPENSATION RECOVERY UNIT (CRU)** out of any damages. This rule is to prevent you being doubly compensated if you have had benefits which would not have been paid had it not been for the accident.

ARE THERE ANY TIME LIMITS?

YES. Proceedings must be lodged with the court within **THREE YEARS** of the accident occurring. If proceedings are not started within the three years the claim will be out of time or **STATUTE BARRED** and you will not be able to pursue the claim in the future. There are different rules relating to children as the three year limit does not start to run until the child's 18th birthday.

IS PUBLIC FUNDING AVAILABLE?

No – the Government has withdrawn public funding for cases such as these.

- Check out your home insurance policies to see if you are covered by legal expenses insurance.
- Some Solicitors are willing to take cases on a "no win - no fee" basis - known as **CONDITIONAL FEE AGREEMENTS**. This will depend upon the strength and value of the claim. See our Fact Sheet on Conditional Fee Agreements.

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