

# Guide to compensation claims against the police

This guide is designed to provide a general overview to bringing compensation claims against the police and public bodies. It will identify the sorts of claims that can be brought; give a taste of the sorts of issues that come up in such cases and looks briefly at the question of damages.

It is not meant to be a detailed consideration of any particular aspect of these sorts of cases.

## What can I claim for?

Commonly, claims against the police or other public bodies will seek damages for the following things:

Assault by police, prison staff, security guards, etc

- Breach of confidence/misuse of private information
- Breach of human rights (breach of the European Convention on Human Rights)
- Data Protection Act claims
- Discrimination
- Historic abuse/Historic sexual abuse
- Inquests
- Malicious Prosecution
- Misfeasance in public office
- Trespass to the person/property
- Wrongful arrest/False imprisonment/Unlawful detention

## Wrongful arrest/false imprisonment

As a general rule, a police officer can only arrest you if you are wanted on a warrant or if they reasonably believe that you may have been involved in a criminal offence and believe that it is necessary to arrest you.

Claims often centre on whether or not the officer should have believed a person may have been involved in an offence. Their belief at the time of the arrest can be questioned after the event and scrutinised to see whether

or not, when viewed objectively, it was reasonable for them to suspect you.

More recently, cases have looked more carefully at whether or not it was necessary to arrest. The arresting officer has to consider whether it is necessary to arrest or whether or not their enquiries can be progressed without an arrest taking place.

If your arrest is unlawful, the time you spend in custody becomes false imprisonment. How much damages you receive depends upon how long you are detained for.

## Assault

If your arrest is unlawful then any laying of hands upon you will automatically be an assault as will be handcuffing.

If your arrest is lawful, you can only claim assault if the force used to arrest you was unreasonable. Officers who know that they have used a good deal of force to arrest a person will normally offer an explanation why they used that force. They will often say that the person they were arresting had been resisting arrest or assaulting them and that is why more force than usual was used. You may dispute this account of events. If so, whether or not your case succeeds will depend upon other witness evidence and, if the case gets to trial, who the judge or jury believe.

Medical evidence of your injuries will be needed. If your case succeeds, the amount you are awarded in damages will depend upon the severity of your injuries.

## Malicious Prosecution

To succeed in a claim for malicious prosecution you need to establish that:

- you were prosecuted
- the prosecution caused you to suffer loss and damage
- the prosecution was determined in your favour

- the prosecution was without reasonable and probable cause
- the prosecution was malicious

These are not easy claims to win. Establishing that you were prosecuted and that the proceedings were determined in your favour (case discontinued, acquitted at trial, etc) is normally straightforward. Establishing that the case against you had been brought without 'reasonable and probable cause' and was done maliciously is tough. In most cases you need to prove that the police officers involved had no real reason to suspect you were guilty and brought the case against you anyway.

Another way of looking at it is that an officer cannot accidentally maliciously prosecute someone; you have to prove that they knew what they were doing.

## Misfeasance in public office

This is an action that can be brought against the police alleging that a holder of a public office (which all police officers do) has abused their position or power in some fashion.

These claims are relatively rare when considered next to false imprisonment, assault malicious prosecution and trespass claims. As with malicious prosecution claims, they are hard to win as they are hard to prove.

Similarly, you have to establish that they knew what they had done was wrong, i.e. you need to prove malice.

These are always complex issues and you should always seek legal advice before considering a claim for misfeasance in public office.

## Trespass

Commonly, cases involving trespass are where police enter a property without your consent and without a warrant. Sometimes officers claim to have a right to enter to 'save life and limb.' A number of cases have looked carefully at whether officers do in fact have that power at the time in question and some have successfully established that they did not. As a result, the officers were trespassing when they entered.

Damages for trespass are not high unless the officers behave badly when on the premises or cause damage.

## Human Right Act claims

The Human Right Act 1998 (HRA) can be used to bring claims in this country for breaches of your rights under the European Convention on Human Rights (ECHR).

In most cases, you could in theory argue that an assault, say, is also inhuman and degrading treatment under Article 3 of the ECHR. That may or may not be true but the point to understand is that HRA claims do not necessarily add anything to the normal claims that the UK law allows you to bring. The HRA is normally used when they are able to 'fill a gap' that UK law is not providing a remedy for. The scope of this guide does not allow a more in-depth analysis than this. You should take legal advice if you think you may have a claim under the HRA.

## Procedure, limitation periods and timescales

It is often possible to settle claims with the police without the need for court proceedings. If so, it may take no more than six to twelve months to settle such cases.

If the police deny that they have done anything wrong, or if they agree to negotiate a settlement but will not offer a reasonable amount, then your case will need to go to court.

You need to bring a claim as soon as possible. As time passes, memories fade and evidence can disappear. Getting on with a claim as soon as possible is always the best approach. The following limitation periods also apply:

6 months	Discrimination claims
12 months	HRA claims
3 years	Assault and claims involving a personal injury element
6 years	False imprisonment, malicious prosecution, misfeasance and trespass claims

These limitation periods govern the time frame in which you must put your case into court. The clock starts ticking once the event complained of has happened. For example, if you are arrested unlawfully and assaulted on 22nd January 2018, your limitation period for starting a claim for assault expires on 21st January 2021, the false imprisonment claim will end on 21st January 2024. This is the date by which you must file a Claim Form at court setting out what your claim is about and what you are claiming for.

If you want to bring a claim and identify that the limitation is fast approaching, you must take urgent legal advice on what you can do to protect your position.

Once your case has been issued there are certain stages that a case must pass through before it is ready to be tried.

These are:

- 1. Claim Form issued and served on the police with a statement of case setting out what the claim is about and what the Claimant is claiming;
2. the police then file a defence setting out what they say about the case and why they are defending it;
3. both parties then complete a 'Directions Questionnaire' and a 'Cost Budget' (Precedent H) which tells the court about what is in dispute, how many witnesses there may be, if there are medical experts, etc;
4. the court then gives 'directions' which is a list of tasks that the parties must comply with in order to get the case ready for trial;
  - a. first on the list is usually 'disclosure' where both sides exchange lists of the documents they have that are relevant to the issues in the case, each side then requests copies of any document on the other side's list that they want to see;
  - b. secondly, the parties prepare and exchange witness statements;
  - c. thirdly, any medical evidence that parties wish to use will be disclosed if it has not already been and, if both parties have experts, those experts may well produce a joint report setting out what they agree and disagree upon;
5. before trial, the Claimant (normally) has to prepare bundles of documents for use/reference at trial;
6. trial then takes place.

Please note that this is a simple look at what happens in a court case. It does not cover everything that might happen but most cases will pass through these stages.

Please also note that a case can be settled at any time if either party makes an offer to settle to the other side which is accepted. Not all cases where court proceedings are issued end up at trial.

## Costs

Claims against the police can be funded in a number of ways. The following are the most common:

- Legal Aid
- A 'no win, no fee' arrangement (CFAs)
- Damages based agreements
- Insurance funded claims
- Private paying

## Legal Aid

Legal Aid is still available to bring claims of this type but is becoming increasingly hard to obtain and is means tested. There is a form of Legal Aid known as 'Legal Help' that allows a solicitor to provide advice and assistance. This may include arguing and settling a claim for you out of court. If your case needs to go to court though you will need a 'Funding Certificate.' These have to be applied for and are sometimes refused if the Legal Aid Agency (LAA) takes the view that your case lacks merit or if you do not qualify financially.

This type of funding is also re-assessed at stages as the case progresses. Just because your case starts off with Legal Aid does not mean that the LAA will support your claim all the way to trial.

Legal Aid is also not free. It has to be thought of as a loan. If your case fails, your solicitor will charge their fees to the LAA. The fact that you have Legal Aid normally protects you against having to pay the police costs (the normal position is that the loser in any litigation pays the winner's costs) but the police can try to have your ability to pay their costs assessed. Usually they will not seek to do so. If you win but the police do not pay all of your legal fees then any shortfall can be taken from your damages.

So, even with Legal Aid you need to be aware that litigation can be a costly business and there is no guarantee that, if you lose, that the court won't order you to pay some of the police costs.

## 'No win, no fee' agreements – CFAs

This form of funding means that your solicitor acts for you 'no win, no fee.' If they don't win for you (i.e. get you some damages) then they do not get paid (also known as a Conditional Fee Agreement or 'CFA').

This is a risky way for the solicitor to fund the case and they therefore will only agree to do so if they think you have a good case and only if they charge a success fee. The theory behind this form of funding is that the success fees on the winning cases compensate the solicitor for the losing cases where they get paid nothing. This might seem unfair to those that win and have to pay the success fee but if it were not this way, solicitors would not offer CFA funding and clients would not have that option. Many would have no route to bring a claim at all.

Prior to 1st April 2013 the solicitor's costs and success fee were liabilities that the Claimant's solicitor charged to the Defendant in addition to the client's damages such that it was usually possible to ensure that the client received all their damages without any deductions for legal fees. This is not now possible.

From 1st April 2013 onwards, while the normal solicitor's costs in all CFAs are still recoverable from the losing Defendant, their success fee (a percentage increase that they add on top) is now something that the client must pay from their damages.

Also, when funding a case on a CFA, you do not have the protection afforded by Legal Aid in not having to pay the Defendant's cost if you lose and the normal rule of 'loser pays' applies. The only exception is in relation to claims for personal injury which can benefit from 'Qualified One Way Cost Shifting' (QOCS). This would mean you would not be responsible for the Defendant's costs even if you lost your case. To guard yourself against losing and having to pay the other side's costs, in mixed claims involving more than just personal injury, you must obtain insurance. A claim may be too risky to pursue if you cannot find an insurer to back the claim.

As with the success fee, a claimant who has a CFA signed before April 2013 can recover any linked insurance from the Defendant but with CFAs signed after 1st April 2013 that is not the case and the client will, again, have to pay it from their damages or find the money to purchase it in advance.

This makes CFAs far less attractive to Claimants than they were prior to 1st April 2013 but for many clients (not eligible for Legal Aid) this may be their only option.

With a CFA, if your case loses, the solicitor does not charge, there is no success fee to pay and the insurance should cover the other side's claim for costs. CFAs are therefore designed to make litigation as risk free as possible. In most cases, if you lose you walk away without any financial loss.

This is a brief look at CFAs and there are additional complexities that are beyond the scope of this guide. If you want to explore funding your claim on a CFA you will need to take legal advice.

## **Damages Based Agreements (DBAs)**

In a CFA, the solicitor, at the end of a successful case, charges his fees (at the normal hourly rate and for the number of hours worked) to the losing defendant. The same happens in a DBA but the difference is that in a CFA the client pays a success fee (and possibly insurance) that cannot be charged to the defendant whereas in a DBA the client pays a percentage of their damages to their solicitor in a winning case.

So, in a CFA the success fee that the client has to pay is calculated by looking at the solicitor's total costs calculated at hourly rates and the client is charged a percentage of those costs. The more risk the solicitor takes in taking on the case, the higher the percentage will be.

In a DBA the fee charged at the end by the solicitor to the client is a percentage of the client's damages which is very different. The percentage a solicitor can charge is capped to make sure that entire awards are not taken.

As with a CFA, if your case loses, the solicitor does not charge, there is no fee to pay and insurance should cover the other side's claim for costs. DBAs are therefore designed to make litigation as risk free as possible. In most cases, if you lose you walk away without any financial loss though you may have to pay for the insurance policy.

Whether a client is better off under a CFA or a DBA is something that may differ in each case. Indeed, a solicitor (for a variety of reasons) may be prepared to offer one form of funding and not the other. That is a matter for you to discuss with the solicitor you are asking to take on your case.

## **Insurance based claims**

It is possible that you may have legal expenses insurance on your home contents insurance, credit cards or via bank account benefits. You need to check this. If you have such cover and if the insurer agrees to fund your case (they are not obliged to back a hopeless case) then that will normally be the best way to fund your claim.

You need to be aware though that your insurance policy may not allow you your choice of solicitor prior to the issue of court proceedings. You may have to use a panel firm affiliated to the insurer. Once you have put your case in to court, you can then choose to switch firm at that stage if you want to.

The thing to remember is that if you have a solicitor acting for you under this type of insurance you will not have to pay success fees or a percentage of your damages to a lawyer at the end of a case. The reason for that is that the solicitor acting under insurance funding is getting paid to run the case whether it wins or loses.

## **Paying privately**

Solicitors will still happily be paid by the hour to represent you.

On this basis you will normally have to pay money to the solicitor in advance of work being done. Win or lose, you will have to pay and you do not get the money back if you lose. If you win, the solicitor will look to recover the fees you have paid from the other side. You will only be reimbursed what they recover which is rarely 100% of what you have paid.

Also, be aware, that unless you insure yourself against the danger of having to pay the other side's costs if you

lose, you could have the defendants fees to pay too if your case has been issued at court.

Clients rarely choose to fund cases in this way these days though it does still have the benefit of there being no success fees or having to pay the solicitor a percentage of your damages. If your case wins you are likely to be better off having paid privately but if you lose you will not be able to walk away without having lost money - which is what CFAs and DBAs are designed to achieve.

## Costs Summary

No one should ever embark upon litigation thinking that they are bound to win and that they will not end up out of pocket. Litigation is expensive and solicitors expect to be paid.

If you want a solicitor to take a risk in accepting your case (on a CFA or DBA) then you must expect that, if you win, you will share some of the spoils with the solicitor that has agreed to run the case for you.

The solicitor should take you through your options, confirm what manner of funding is available to you and explore with you what your best option may be. For example, if you have a claim worth one hundred thousand pounds you are likely to be better off paying a success fee under a CFA than a percentage of your award under a DBA as even a small percentage of one hundred thousand pounds is a lot of money and a success fee is likely to be much less.

## Summary

Litigation is often a risky business and clients should not start a claim without having first considered the strength of their claim and how it is best funded. That said, when you find yourself the victim of wrongdoing by police officers the impact upon you and your life can be significant. You may have suffered physical injury, detention at a police station or in prison and you may have suffered financial loss. For many, the bringing of a claim is a necessity, to secure justice for what has happened to you as well as compensation.

This guide has hopefully given you a flavour of what is involved in the bringing of these sorts of claims. It is not designed to solve legal problems and cannot replace taking direct legal advice from a solicitor on your own case.

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43 Lodge Lane, North Finchley, London N12 8JG, Tel: 020 8492 2290, Fax: 020 8445 5376, [www.gnlaw.co.uk](http://www.gnlaw.co.uk), Email [sols@gnlaw.co.uk](mailto:sols@gnlaw.co.uk)

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