



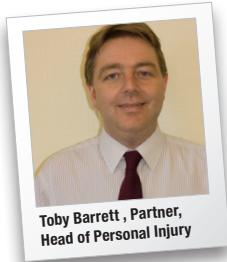
# InForm

Personal injury advice and guidance from the personal injury team at Bennett Griffin

Inform Issue No 2

“ Compassionate with our clients, tenacious with the opposition. ”

## Welcome to InForm



Toby Barrett, Partner,  
Head of Personal Injury

### Welcome to the second issue of InForm.

We had great feedback to the first issue and so are continuing with the same theme, sharing useful information about accidents, injuries and personal injury claims.

You may have read that Bennett Griffin won the Customer Care Award at the Arun Business Awards 2010 (to go with the same award at the Worthing Business Awards in 2009). These achievements reflect the attitude and ethos of customer care both within the personal injury team and across the firm. We're a firm with strong and deep roots in the local community and an unwavering commitment to delivering exceptional customer care.

I would like to give heartfelt thanks to the many personal injury clients over the years who have been kind enough to recommend us. This is, I hope, testament to the service they have received, our specialist

knowledge in an often difficult area of law and, of course, our ability to successfully conclude their claim. Now, if you recommend Bennett Griffin, your favourite charity could benefit too... find out how below.

Bennett Griffin's personal injury team is renowned for being compassionate and caring with our clients but tenacious with the opposition. Should you (or someone that you know) be unfortunate enough to have been injured in an accident that was not your fault please do not hesitate to contact us for expert advice and guidance.

#### Toby Barrett



## You have the right to choose!

If you have had an accident, have been injured as a result and you are considering bringing a compensation claim, legal expenses insurance is a must. Even the most apparently simple and straightforward claim has the potential to be disputed and if it goes wrong a personal costs liability could be the result. Legal expenses insurance provides much needed reassurance.

Many people have legal expenses insurance as an attachment to a motor or house insurance policy, and are not even aware of it until, after an accident, they suddenly start receiving calls or letters from solicitors purportedly acting for them.

What you will often find is that the apparent benefit of legal expenses insurance usually brings with it a few downsides, including a requirement to instruct solicitors of your insurer's choice, not your own. There will usually be a fee paid by the panel solicitor to your insurer, and the likelihood is that the solicitor will be many miles away and you will

never get to meet them.

However, you don't have to accept the solicitors who have been chosen for you. You have a right to choose your own. This is enshrined in both English and European law.

Every year we take on numerous cases where people have been referred to a panel firm of solicitors by their insurer and have quickly become dissatisfied with the poor and impersonal service they have experienced.

Recently, by way of example, after having an accident at work, Mrs S was given Toby Barrett's name by a former client. Mrs S had already contacted her legal expenses insurer who had insisted that she use a panel firm. Her many calls to this firm were ignored and so Mrs S contacted Bennett Griffin. We contacted her insurer who then agreed to accept her choice of legal representation. Mrs S is now receiving the high level of service associated with Bennett Griffin, and she has a lawyer who can meet her and who always has the time to understand her concerns.

#### The story does not end there however...

As a result of this referral, Bennett Griffin has made a donation of £100 to Chestnut Tree House, the former client's charity of choice. We are now operating a scheme whereby if an injured person is referred to us by an existing or former client and we can progress their claim, Bennett Griffin will make a donation of £100 to the charity of the referring client's choice. So far, Chestnut Tree House, a local fire-fighters charity and FSIDS have benefitted. We hope that more charities will benefit in the future.

Toby Barrett says "Unfortunately people think they have to put up with what their insurer tells them to do and immediately after an accident are in no mood to challenge it. The truth is you can instruct who you want, and I would ask anyone who has been injured in an accident to please contact Bennett Griffin in the first instance. We will provide you with all the advice you need to make an informed choice. If we can help a local charity as well, so much the better!"



## Why honesty is always the best policy

Toby Barrett was recently heard as a guest expert on BBC Radio Sussex commenting on a personal injury claim whose outcome received national media attention. Neither Toby nor Bennett Griffin had any involvement in the claim.

The Claimant was a woman hit by a bus in Brighton. Apparently, during the life of the claim, the Defendant's representatives undertook video surveillance of the Claimant and at trial she was shown to have inaccurately presented the extent of her injuries to medical experts, her own legal representatives and to the Court. As a result, the Claimant, even though she won her claim and received compensation, was ordered to pay a substantial proportion of the Defendant's costs. Video surveillance is frequently employed by Defendants, especially where the Claimant is claiming ongoing injuries and

substantial financial losses, and often it is only disclosed at a late stage in proceedings as an attempt to ambush and discredit the Claimant.

It is likely that video surveillance, even if disclosed against the rules, will be taken into consideration by a judge. It can affect the Claimant's credibility and if the judge finds that the Claimant has exaggerated the effect of their injuries, compensation will be lower and there is a real danger of an adverse costs penalty.

Toby says, "Video surveillance is sometimes unfair as it is selective, yet it can do real damage even to a bona fide claim. Claimants need to be careful and need always to be honest with any medical experts and with their lawyers about the effects of injuries. After serious injury, everyone has their good days and their bad days, but it is important to be clear and honest in evidence about just what you can do on the good days. Otherwise you could be caught out and it could prove expensive"

## Driving Change...

From 30 April 2010, the method by which personal injury claims arising from road traffic accidents with an estimated value of £10,000 or less has fundamentally changed.

### Here's how...

Before 30 April 2010, road traffic accident claims would be notified either to the third party driver or direct to their insurer by letter. Investigations would then be made, with the insurer required to confirm its position on liability within a 4 month period. Even if liability was admitted quickly, obtaining medical evidence and proof of financial loss meant that the average time for claims to settle was between 12-18 months.

The aim of the new claims process, introduced on 30 April 2010, was to radically speed this up and at the same time reduce costs.

The new process is in three stages:

- Stage One - The claimant's solicitor registers the claim direct to the third party insurer online via a web portal. The insurer has 15 days in which to conduct investigations and confirm that liability is admitted.
- Stage Two – If liability is admitted, the claimant's solicitor then obtains medical evidence, usually a pro-forma report completed by an appropriate medical expert, which is then sent to the insurers with a 'Settlement Pack' including details of any financial losses. Negotiations take place with strict time limits placed on the time to respond to offers. The aim is that most claims will settle at this stage and within a few months of notification.
- Stage Three – If the parties cannot agree a settlement figure the claim then proceeds to Court where a judge will determine an award based on written evidence.

Claims fall out of the new process if liability is denied or if the insurers fail to respond within the set time limits and are dealt with as per the previous system.

Bennett Griffin's new road traffic accident claims process specialist David Hawkins says, "The new process has yet to really bed down. The web portal is not particularly user friendly and there have been the usual teething problems as with any new system. Insurers are finding it difficult to comply with the time limits and there have been reports of unwanted behaviour on the part of insurers trying to circumvent the process. It will take time for everyone to get used to it, and it can only improve."



### GENERAL DAMAGES

**The elements of a settlement or award that are not easily quantifiable and have to be assessed, such as damages for the actual injury.**

# We are family

In a new regular column we introduce you to other specialist teams from Bennett Griffin. This time it's the turn of our Family Team.

**Jackie Gifford** is an experienced lawyer, trained in mediation, an option that is becoming increasingly popular with separating couples. You can contact her for an informal chat on **01903 229903**.

Says Jackie, "Our family resolution options reflect the fact that our clients are individuals with unique circumstances."

**Jackie Mensah** is an accredited Collaborative Lawyer. Collaborative Law enables you, with the help of committed, accredited lawyers, to take control of the experience of family separation. If you would like to find out more about Collaborative Law please contact Jackie on 01903 229938.

Jackie says, "Collaborative Law is a dynamic new approach to the resolution of family disputes. However, it's all about options and if the Court process is the best approach for you we will fight your case as experts and in a robust manner."



The Personal Injury Team from left to right are Amy Kenward, Toby Barrett, David Hawkins and Nick Hind

## Sofa not so good...

When you buy a new leather sofa from a trusted high-street brand, the last thing you expect is injury just from sitting on it....

In the largest personal injury consumer group litigation ever seen in England & Wales, the High Court has recently ordered that thousands of victims of "toxic sofas", sold in the UK by Argos and Land of Leather, which caused a variety of injuries including serious burns, will receive combined payouts totalling £20 million.

The leather sofas, manufactured in China, were shipped to the UK containing sachets of an anti-fungal chemical called DMF (Dimethyl Fumarate) to prevent mould forming during shipping. Unfortunately, this chemical reacts to heat forming a gas which can be harmful to the skin and which can also cause respiratory problems. Thousands of people suffered a range of injuries from serious chemical burns and chronic breathing difficulties to skin blistering and rashes that have proved hard to treat, just from doing what was intended with the sofa i.e. sitting on it.

Following High Court decisions in April and December 2010, injury victims who bought the affected sofas from Argos and Land of Leather will receive compensation of up to a maximum of £9,000, depending on the severity of the injury.

There are a number of solicitors across the UK acting for the victims of these contaminated sofas. Bennett Griffin were amongst the first to represent victims in the group litigation and to successfully secure compensation.

The EU has now banned the use of DMF, but it's likely that there are sofas still being used containing the chemical. However, if you have been injured in this way time is running out for you to make a claim. If you have been affected by burns, skin or respiratory problems and think it could be as a result of your sofa, please contact David Hawkins at Bennett Griffin for advice.

### SPECIAL DAMAGES

The element of a settlement or award that represents actual financial loss or expense incurred, such as loss of earnings.

**"My wife and I just wish to thank you most warmly for your understanding and calm professional advice throughout the litigation process. Not only were you always available to talk matters through, both on the phone and by visits to our home, but you also wished to view for yourself the site of the accident.**

**This gave both of us great confidence that you really did understand, and wished to understand, all the nuances behind my claim against the offending party.... With our very best wishes for the continued success and growth of your Firm; you certainly deserve it."**

**Mr D**

# Fancy a lift ...

Although the media would have us believe that as a nation we're in the grip of the "elf an' safety" mafia, when it comes to accidents at work there's still much room for improvement.

Approximately a million people every year complain of injuries sustained at work, with injuries to our backs being the most common. Accidents caused by manual handling are by far the most frequent cause of serious workplace injury in Britain. It's not just building sites, factories and warehouses where such accidents happen. A worker in a shop, office, hospital or care home is also at risk of injuring themselves through manual handling. It all adds up to millions of working days lost for the economy and personal misery and financial loss for the victim.

"Manual handling is not just lifting heavy objects as many believe," says Nick Hind, a work place accident specialist at Bennett Griffin. "The statutory definition is 'any transporting or supporting of a load by hand or bodily force'. This could include lifting, lowering, pushing, pulling or carrying. All bear the risk of injury if the load is heavy, bulky, unstable and slippery or if the task has to be conducted over a substantial distance, in a confined space with an awkward posture or on a repetitive basis. Employers have a duty to regularly review working practices and eliminate any unnecessary manual handling tasks. They have to properly assess the risk of all manual handling tasks that are necessary and then reduce the risk of injury as much as possible. If employers fail to review and assess workplace risks and they don't take reasonable steps to reduce them, they will be liable for any injuries that arise as a result."

## "Get on your bike but be aware"

Says Bennett Griffin's personal injury cycling specialist Nick Hind

A growing number of us are taking up cycling as a cheap way to commute to work and as low cost exercise too. Whilst this upswing in the popularity of cycling is good news in many ways, there's a darker side. Recent statistics have shown a 20% increase in deaths and serious injuries in accidents involving cyclists.

The biggest problem for cyclists remains bad driving by inattentive drivers. In 75% of accidents involving cyclists, it is the driver of the vehicle who is at fault. In up to 40% of these accidents, the driver has simply run into the back of the cyclist, strongly suggesting that the driver has not been paying attention and so has not seen the cyclist.

Nick Hind comments, "The roads in Sussex are very busy. Unfortunately the interaction between cars and a growing number of cyclists will lead to more accidents. I cycle to work every day and so have first hand experience of how momentary inattention



on the part of a driver can lead to extreme danger for a cyclist. The message to drivers is clear. Be aware and look out for cyclists at all times. There is a message for cyclists too. Make yourself as visible as possible. Always have the required lighting and reflectors if cycling in poor light or at night. In fact, the law requires it. Reflective or high visibility clothing will help. Most importantly, cycle intelligently and safely."

### LIMITATION

**The statutory period following an accident in which a Claimant has the opportunity to initiate a claim by issuing Court proceedings.**



***"Thank you Mr Hawkins, very much... I can never thank you enough for all you have done for me.... In all my life I've never had to deal with solicitors... I had the best. Thank you."***

**Mr F**

***"I can't emphasise enough how invaluable the help Bennett Griffin provided was. Each step of the way - "attention to detail" "exceptional customer care" and "knowing someone was always available via telephone" made things run very effectively indeed.***

***My thanks go to Nick Hind." JM***