



Association of Personal Injury Lawyers

Briefing: Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 – February 2019

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for almost 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,400 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

Brexit – a threat to access to justice

Access to justice is a right, not a privilege. The UK's withdrawal from the European Union (EU) threatens that right, and UK residents injured abroad could be denied compensation.

Currently, if a UK resident is injured in a road traffic accident in the European Economic Area (EEA) and the injury was caused by the negligence of another person, the injured person can pursue a claim for compensation in the UK. The benefit of this is that he is able to make a claim in his own language, and with a local solicitor, as if the injury had occurred in his own country. The claim will be made against a UK-based claims representative appointed by a foreign insurer who is responsible for responding and settling claims on behalf of that insurer.

In some circumstances, such as if the foreign insurer fails to appoint a claims representative, or fails to respond to a claim, an injured person can make his claim for compensation through the UK's Motor Insurers' Bureau (MIB). If a claim is made through the MIB, it is then the responsibility of the MIB to recoup any costs from its counterpart in the country where the injury occurred.

The MIB estimates that 5,000 UK road traffic victims make claims under these arrangements each year. Of those, 4,300 claims are made against insurers, while 700 claims are made against the MIB¹.

After the UK's withdrawal from the European Union, insurance companies based in member states will no longer be under an obligation to appoint a claims representative in the UK. To coincide with that, the Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 will remove the ability of UK residents injured in road traffic accidents in the EEA to make a claim through the MIB. Instead, a UK resident will have to make his claim in the country in which the injury occurred.

In the absence of those obligations, and if these regulations are approved, it is vital that the Department for Transport and the MIB work to ensure that bilateral agreements are in place with EEA countries. These agreements should guarantee that UK residents injured abroad in road traffic accidents continue to have a straightforward route to access to justice.

Barriers to compensation

The commencement of a claim for compensation can be a daunting experience, even with the support of a local solicitor and where the proceedings are in the person's own language. In the UK an injured person will be able to rely on local organisations to refer him to the right place for legal advice and support. To make a claim for compensation in a foreign country he will almost certainly find he is alone. He will almost certainly have to navigate a language barrier to identify the right solicitor before he even knows if he has a valid claim. In most EU member states the injured person will have to pay for his own legal advice and representation, which may not be recoverable from the losing defendant. He may have to make several visits to that country as part of his claim, and incur costs for travel and accommodation. This could well be prohibitively expensive. It may not even be possible for the injured person to travel, depending on the injuries suffered.

Our members have also expressed concern about the efficiency and effectiveness of the legal systems in some EU member states. In their experience, for example, it can take many years for a legal claim to be heard. An injured person often cannot afford to wait many years for his compensation, especially if his injuries are serious or life-changing. The compensation may be needed to cover the loss of earnings if he is unable to work, or pay for additional assistance while he is injured, such as extra childcare.

¹ Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 Impact Assessment, 21 January 2019, page 9

In the most serious cases, someone who has been injured in a road traffic accident may never be able to work again. His compensation will be needed to pay for personal care, or ensure he has a home which is adapted for his needs. His life will have changed forever.

All injuries come with a cost, either financial, physical, emotional, or usually all three. If someone is unable to make a claim for compensation, or if his claim for compensation takes too long, it will be left to the State to pick up the costs, and not the wrongdoer who caused the injury.

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