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Have you been injured?

Andrew Kay puts the question to John Searby of **Gerard Maye Legal Ltd**, specialists in personal injury claims

So, have you been injured? And if not, have you seen the TV ads that ask that question? I'll wager that your answer to the second question is yes. It's almost impossible to turn on the set these days without being offered a "no win, no fee" deal on a personal injury claim. So is it better to answer one of these ads, or visit your local solicitor? I met with John Searby of Gerard Maye Legal to find out exactly how the system works. John recently joined Gerard Maye Legal to head its litigation department. He has practised in Sussex for the past 20 years. Gerard Maye Legal has offices in Brighton and Littlehampton, and has a reputation as a strong local criminal defence practice.

We are constantly being told that we are becoming a 'compensation culture'. Are we more litigious than ever before? "More people are aware of what they can claim than 20 to 30 years ago, certainly," John says. "This is not as radical an increase as we might think, and the government admits there has only been a "perception" that we are subject to this compensation culture."

So how does the "no win, no fee" system work? "No win, no fee works because the solicitor will only take on cases that have a reasonable chance of success. One of the problems is that the advertising we see on TV is from claims management companies – or 'claims farmers' – who are working for referral fees from solicitors.

"Claims farmers' are agencies that take calls from people who think they might have a claim. Those callers may be given false hopes by people who are not fully qualified to give expert advice and merely pass on the referrals to panel solicitors. The agency makes its money from the fee paid by the solicitors who accept cases and not from the claimants."

So are you saying that on these call centre numbers, the first point of contact is not always with a legal professional? "Not always. That's why it is always better to make sure your first contact is with a solicitor who specialises in these types of case. If you were to contact me at Gerard Maye I would always give an initial free consultation. If, after that initial meeting, I think your claim won't hold water, I would advise you not to pursue your compensation claim."

Can a client protect themselves against having to pay costs should a claim fail? "It is possible for a client to get insurance as protection against such an outcome, even up to three years from the date of the accident, but you do need to do this sooner rather than later."



"At Gerard Maye our strength is in a personal service where we deal directly with our clients at all levels"

Is it possible for a member of the public to claim against a local council for an accident caused by something as simple as tripping on defective paving? "A council has a statutory responsibility to maintain the road and pavements, yes, but you have to prove there is an obvious defect, usually a 20mm difference in height between the paving slabs. You also have to prove that it has been like that for some time. The council will have a defence if they have a system in place for carrying out regular checks

and maintenance of the pavement. So this kind of case is not easy to win. We can always ask to look at previous complaints and inspection records. In some cases we find that there has been a similar incident in the past, which can greatly help our case. This is why having good local knowledge and contacts is useful.

"There are a number of regulations designed to protect people suffering injuries in the workplace," John continues. "By law, employers have to provide insurance protection, but it is important to know how to present the case. Also, if someone does bring a successful claim against their employer, this will hopefully reduce the likelihood of further preventable accidents."

If someone has been injured and feels that a third party is responsible, what might they expect to be able to claim for?

"There are obvious things like loss of earnings, travel costs and medical expenses, but then you will also be compensated for the pain and suffering of the injury and also changes to the quality of your life. You also need to claim for any loss that may be incurred if your career prospects are damaged."

And are you, the solicitor, paid by the claimant? "No, solicitors' costs are awarded by the court if the claimant wins at trial. That said, the majority of cases are settled or resolved prior to appearing in court, in which case the settlement agreed includes the legal costs as well as the compensation paid to the claimant. If the claimant does not win compensation then, if they have signed a conditional fee ['no win no fee'] agreement with the solicitor, they won't have to pay any of the solicitor's costs.

"It is always worth noting that this is a constantly changing area of law. Professional legal advice is always going to be your best chance of getting the right advice and then the best possible solution. The era of dabbling in these matters is certainly over."

So the TV ads can be misleading? "It's not that they are misleading; many people do have a right to make a claim for compensation. It's more about how you go about doing that. If you do go through a third party to find legal representation it could be that that person is hundreds of miles away, unable to meet with you in person and without any of the undeniably useful local knowledge that can help to resolve a claim successfully.

"At Gerard Maye we strongly believe that our strength is in a personal service where we deal directly with our clients at all levels and keep them fully up to date as to how their claim is progressing."

Clearly there is nothing cut and dry about personal injury claims. Direct, professional advice is the best option, and that is what John Searby offers. He is a Senior Litigator member of the Association of Personal Injury Lawyers (www.apil.org.uk) and a member of the Law Society's Personal Injury Panel. As well as acting for personal injury clients, John specialises in leasehold disputes and housing problems. His services can be as valuable for landlords who manage their own properties as for agents managing large portfolios of property.

John is available for appointments at his Preston Park office at 36 Robertson Road, Brighton, and can visit clients at their home if required. Contact him on 01273 560426 or email john.searby@gerardmaye.co.uk. Alternatively, visit Gerard Maye Legal's website at www.gerardmaye.co.uk

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