

Legal Representation after a Disaster

This guide has been written by members of Disaster Action, all of whom are survivors and bereaved people from disasters. Some of the disasters we have been affected by are the Zeebrugge ferry sinking, King's Cross fire, Lockerbie air crash, Hillsborough football stadium crush, Marchioness riverboat sinking, Dunblane shootings, Southall and Ladbroke Grove train crashes, the 11 September attacks, the Tsunami and the Bali, London 7 July, Sharm El Sheikh and other overseas attacks.

The purpose of this leaflet is to take you through what you need to consider in terms of legal advice and representation if you have been affected by a disaster. Our aim is to inform you about the legal process, and what your choices might be in the immediate aftermath and in the longer term. Legal language can be difficult to understand and may at times seem insensitive, but in order to properly explain the various processes, we have used some legal terminology in this leaflet.

Disaster Action cannot give you legal advice, nor recommend any particular firm of solicitors, but can offer our members' experience to assist you in this process.

Please note: the contents of this leaflet apply to England and Wales. Scotland and Northern Ireland operate under a separate (though similar) legal system. We have, however, provided some suggested links to relevant organisations in Scotland and Northern Ireland (see Useful Contacts below).

It is important to bear in mind that if the death has occurred abroad and the body is returned to England or Wales, the coroner in whose district the body now lies is legally in charge of the body, until he or she releases it. If the deceased was cremated abroad before being returned, the coroner no longer has any duties or powers to deal with the matter in any way.

Part One: Introduction to the legal process

Whether you are a bereaved relative or friend, or a survivor, you are likely to find yourself involved in the legal process at some stage after a disaster. There are a number of very different aspects to this process.

The coroner and the inquest

The role of the coroner

After a person dies, if the death is sudden, the body of that person will be carefully recovered by a team of specialist police officers, and placed in the legal custody of the local coroner. The coroner organises the identification process, the release of the body to the next of kin, and the inquest. A designated police family liaison officer normally liaises between the bereaved and the coroner, but there is nothing to stop you contacting the coroner or his/her officer directly if you wish.

Sometimes the identification of those who have died, and the subsequent release of their body take longer than expected. Although all decisions of a coroner can be judicially reviewed, this

process takes time and instructing a solicitor at this point will usually not be useful. You are, however, as a potential bereaved relative, entitled to seek explanations for delays directly from the coroner or his/her officer.

Once you are confirmed as a bereaved relative, you have the right to ask to view the body before it is released to the funeral director. You may also want to know what your legal rights are in terms of objecting to, or requiring, a post-mortem examination.

The inquest

The inquest usually takes place in two parts: a first court hearing which normally takes only a few minutes, which legally enables the coroner to release the body to the next of kin. Once this has taken place, the body of the deceased person is normally released to the chosen funeral director. The inquest is then adjourned, normally for several months, until such date as the coroner has gathered all the information he or she needs to establish the cause of death. It would be unusual for the next of kin to be represented by a lawyer for the first part of the inquest.

You may, however, find that you wish to have representation for the main part of the inquest. You should be informed about when and where the inquest will take place and how long it will last, well in advance by the coroner so you have time to decide what you wish to do. As an 'interested person', you have the right to attend the court hearing and ask witnesses questions yourself. In order to be reasonably prepared, you need to know in advance who the witnesses will be and what they are going to say. It may be that you wish to explore instructing a solicitor for this purpose, but it is crucial to have a solicitor who is experienced in this area. Before instructing a solicitor it would be sensible to contact an organisation such as Inquest (see Useful Contacts below).

Public Inquiry

Decision to hold a public inquiry

The aim of a public inquiry is to look into the causes of the disaster, to establish whether any lessons can be learnt and to make recommendations as to what actions may be taken to prevent such a disaster from happening again. It is up to the Secretary of State to decide whether to hold such an inquiry or not. If he or she opts not to have a public inquiry, this decision may be judicially reviewed. This legal process must be set in motion very soon after the decision is announced, and in any case within three months of the decision. It is a very difficult area in which to succeed, and the only type of solicitors usually interested in taking on such cases re 'human rights' law firms. If you feel strongly about a public inquiry, you might wish to make an exploratory phone call to such a firm. However, the costs of judicial review can be prohibitive, and the wrongness of the decision difficult - if not impossible - to prove. Seeking an appointment with the Secretary of State concerned, as a group of relatives or survivors, may be more effective.

Representation at the inquiry

If it is decided that a public inquiry should be held into the disaster, the inquest will be adjourned again, and will very likely never resume, while the inquiry looks into all the facts of how the disaster occurred.

It is common for lawyers to be funded by the government to take part in the public inquiry to represent survivors and the relatives of those who have died. They will often be chosen from

the 'lead firm' or 'steering committee' (see below) representing the injured and the bereaved in proceedings for compensation.

It should be possible for relatives and survivors to obtain information in advance from these lawyers about the 'terms of reference' of the inquiry and the process. Once the inquiry begins, the lawyers representing the survivors and bereaved should be able to answer their questions and voice their concerns about any issue arising from the proceedings. There should be opportunities to meet them face-to-face.

Compensation claims

Making a claim

Survivors with physical and/or psychological injuries and bereaved relatives or partners may have a claim for compensation against a defendant company who could be liable for the injuries and deaths. Many bereaved relatives have found in the past that they are reluctant to 'make money from the death', and have mixed feelings about compensation. This is understandable, but it can also be said that the compensation claim from the bereaved is sometimes the only way that the defendant organisation can be seen to be held responsible. This is because in some cases there will not be any criminal, health and safety or any other proceedings against those responsible.

Choosing a solicitor

Some people choose to use their local solicitor, whom they know and trust, to pursue the claim on their behalf. If that is your choice, you must make sure that all the information your solicitor receives from the lead firm or steering committee is forwarded to you promptly.

If you do not have a solicitor in mind, then you should contact the Law Society who will advise you of specialists in the field of personal injury litigation. Your solicitor does not have to be local to you. You would normally only have to see him or her in person once or twice. You should ask the Law Society at the same time whether there is a lead firm or steering group set up for your disaster, as it may be more practical for you to use one of their lawyers rather than instructing a separate firm. Normally a steering group of lawyers is organised where there is to be a public inquiry or a group (or class) action.

Litigation

The compensation process is long and difficult. The levels of compensation are low, and the defendant lawyers will generally try to keep the amounts paid out to an absolute minimum. The defendants will sometimes accept liability for the injuries and deaths, so there will almost never be a civil court case. Most defendant companies have no wish to have the matter scrutinised in public, with all the attendant publicity.

It will then be for your solicitor, who must act according to your instructions, to negotiate a settlement on your behalf. There have been instances where a bereaved person or survivor has been put under enormous pressure to accept a settlement, without which the other claimants cannot recover their own compensation. It is a good idea for survivors or the bereaved to have contact with each other, at this point, away from the lawyers, in order to exchange information about this kind of issue. It may be that each survivor or bereaved relative thinks that they are the only person holding up the process. The defendant's lawyers can also bring pressure to bear by making a 'payment into court', or making an offer to settle which, if not accepted by you, could lead to you being awarded a lower sum by the court, and you then failing to recover some or all of your legal costs and even being ordered to contribute to the

defendant's legal costs if the court were to find you have acted unreasonably in rejecting the offer. These tactics can be distressing but are within the rights of the defendant.

Group (or class) actions

How group actions work

If a number of people have been party to the same incident, they can bring a group action for compensation. Large personal injury firms tend to take these on, rather than the smaller firms, because the system for such cases is complex. Each claimant still has an individual solicitor, but all solicitors are answerable to a 'lead solicitor' who is responsible for making the decisions on the direction the case should take. You may find that this happens automatically in your case. You should find out from the beginning whether this is the way solicitors are conducting the compensation process, so that you can choose whether to be part of the group action or not and that you are aware of the rules if you do.

Advantages and disadvantages

There are advantages and disadvantages to this way of pursuing a compensation claim: the advantages are that you do not have to take on all the financial risks and burdens associated with litigation yourself, and that all the issues about whether the defendant is responsible are resolved together. The amount of compensation payable to each claimant remains an individual calculation, however.

The main disadvantage is that all members of the group have to wait until the group action has been brought to an end before they receive their compensation. It is not unusual that pressure is brought to bear on any member of the group who is not prepared to agree to a settlement, for whatever reason. If you prefer to take individual instead of group action, you can – but if there is already a group action in your disaster, you can only proceed if the Court agrees you are able to fund your case.

Criminal Injuries Compensation Scheme

This provides for victims of violent crime to receive some compensation for their injuries, physical or psychological, or, in the case of the bereaved, the death of their loved one. The scheme is supposed to be simple enough to use without the help of a solicitor, but in many cases it might be advisable to seek advice regardless. The success of the claim will often depend on the quality of the medical evidence provided, and a good personal injury solicitor will know how to obtain an appropriately drafted medical report. In the case of a high profile terrorism case for example, such advice may be offered to the survivors and bereaved free of charge.

Due to the fact that this scheme is publicly-funded and open to all victims of violent crime, the levels of compensation for serious injuries and death tend to be lower than the sums awarded by the courts in civil litigation, and are based on a rigid tariff system. The maximum that can be awarded in regard to any individual claim is currently £500,000 and claims must normally be started within two years of the incident that caused injury or death.

Criminal prosecution

As a victim of crime you are not a party to criminal proceedings, only a potential 'witness'. You are therefore not entitled to legal representation. You are entitled to receive information about the process from Victim Support, however.

Legal proceedings overseas

There are likely to be additional complexities in the event of an overseas disaster such as unfamiliar language, culture and faith. It will be important to obtain the services of a firm of solicitors familiar with overseas disaster affecting UK nationals, who will work with legal representatives and authorities abroad. However, it is worth trying to find out at an early stage whether there are any organisations working with people in your position in the country concerned.

Group actions such as those outlined above may also apply in the case of an overseas disaster. Members of Disaster Action may have had experience similar to yours and may be willing to assist you as an individual, without sharing any confidential information about you with others in DA. Do bear in mind that such assistance does not constitute legal advice, but may help you through the process. Depending on where the disaster happened, it may be very difficult to obtain compensation from those responsible.

The Law Society website has lists of lawyers specialising in personal injury and other types of litigation in most countries of the world.

Unfortunately, criminal injuries compensation is not available to those affected by an overseas incident, although at the time of writing a government scheme to offer some compensation in the event of terrorist incidents overseas is being administered by the British Red Cross.

Part Two: Instructing a Solicitor

When to instruct

In most disasters, the injured who have been identified by the authorities, and the next of kin of those who have died, are contacted shortly after the initial adjournment of the inquest, often by the defendant company. It may be at this stage that a solicitor is instructed. If not, you may instruct a solicitor at any point, and you may also change solicitors if you are not happy with the service provided by the firm you have instructed.

Whom to instruct

Generally, it is probably better to instruct a solicitor who specialises in personal injury litigation and, if there is a steering group, a member of that group. There are specialist law firms in London and other large cities that are well known for their participation in past disasters. Some of them specialise in claimant litigation, but many also work for insurance companies on behalf of their corporate clients. Lists of personal injury solicitors are available from the Law Society.

Personal injury lawyers also generally take on representation at the inquest, although other types of firms specialise in high profile inquests too. The Law Society does not recommend particular firms, however, so you have to make your decision based on reputation or word of mouth. Most firms have their own websites, and they will generally advertise the fact that they have been involved in high profile disasters in the past.

How much will it cost?

Whether legal aid is available, or whether you can instruct a solicitor on a ‘no win no fee’ basis, depends on the type of legal action in which you are involved. Free legal advice is also available, particularly if you are willing to form a group, from Lawworks for Community Groups.

The inquest

For the inquest, the following applies: generally legal aid (means tested) is available for advice in preparation for the inquest, but not for representation at the inquest hearing, unless it is an ‘exceptional case’ (which includes the necessity of representation in the wider public interest). If the person who died had a dependant aged under 18, funding for legal representation may also be available to that minor.

In some cases where there is going to be a claim for compensation, and some of the evidence at the inquest is relevant to that, the costs of representation or other attendance by your lawyers¹ at the inquest can be included in the civil compensation claim. This is not unusual in a high profile disaster case. Finally, the organisation Inquest (see below) can also sometimes help in finding lawyers who are prepared to work for nothing (‘pro bono’).

The compensation claim

For the compensation claim you may be eligible for legal aid (‘public funding’), which means that the Legal Services Commission will pay for your legal costs. In order to qualify, whether it is for initial advice or full representation, you must be on a very low income or receiving state benefits.

You may have help paying for your solicitor through your trade union if you are an employee injured at work or if you are claiming as a relative of the deceased, who was an employee and died at work or in a situation connected with his or her work.

Some household and motor insurance policies contain legal expenses insurance for bringing personal injury claims, and some credit card purchases can also have legal expenses insurance included in the transaction.

Most personal injury actions are now paid for on a ‘no win no fee’ basis. This is a complicated system based on a simple idea: if you win your case, the losing party will pay your legal costs. If you lose your case, you do not have to pay your legal costs. To protect you from having to pay the winner’s costs if you lose, you are normally required to pay a one-off ‘after-the-event insurance’ premium (you usually get this back if you win). This is the one payment you may have to make at the beginning, although many insurers² do not actually seek immediate payment of this premium.

A group action is funded in the same ways, including private funding, legal aid, individual conditional fee agreements and legal expenses insurance.

What to expect

Once instructed, your solicitor must explain the processes to you, and answer any questions you have about your case in good time. You are entitled to see most of the papers and reports pertaining to your case. Your lawyer must also always follow your instructions on any decision to be made about the conduct of your case, provided the instruction you give is one

which your solicitor can lawfully and ethically carry out. Relatives and survivors in past disasters have found it very useful to make contact with each other to discuss common aspects of their cases, however, including what information is being given out to individuals by their lawyers.

Lawyers are, on the whole, sympathetic to their clients, but it is their role to view your claim very much in terms of its financial aspects rather than the human cost to you of having been involved in the disaster. Unfortunately this 'human' cost is not something that has monetary value in our legal system, and it is our experience that the most painful aspects of injury or bereavement are not recognised by the law.

Useful Contacts

England and Wales

Association of Personal Injury Lawyers

0870 6091958

<http://www.apil.org.uk/>

British Red Cross

020 7877 7250

www.redcross.org.uk

Criminal Injuries Compensation Authority (CICA)

Freephone 0800 3583601

<https://www.cica.gov.uk>

Foreign & Commonwealth Office

0207 008 1500

<http://www.fco.gov.uk>

Inquest

0207 263 1111

<http://inquest.gn.apc.org/>

Law Society

0870 606 2555

<http://www.lawsociety.org.uk/home.law>

Legal Services Commission (Legal Aid)

0845 345 4345

<http://www.legalservices.gov.uk/aboutus.asp>

Victim Support

0845 3030900

<http://www.victimsupport.org/>

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www.disasteraction.org.uk

Lawworks (free legal advice - solicitors)

0207 929 5601

www.lawworks.org.uk

Northern Ireland

Law Society of Northern Ireland

028 90 231614

<http://www.lawsoc-ni.org/>

Coroners Service for Northern Ireland

<http://www.coronersni.gov.uk/>

Northern Ireland Court Service

<http://www.courtsni.gov.uk>

Scotland

Law Society of Scotland

0131 226 7411

<http://www.lawscot.org.uk/>

Crown Office and Procurator Fiscal Service

<http://www.crownoffice.gov.uk/>

Scottish Court Service

<http://www.scotcourts.gov.uk/>

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