

## • ARE LARGE PERSONAL INJURY AWARDS IN JERSEY ABOUT TO GET LARGER?

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### **Simon Hurry considers a ground-breaking decision by the Guernsey Court of Appeal.**

If you've been involved in an accident that was due to someone else's fault, chances are you can pursue a claim for damages for personal injury.

Although financial compensation cannot change the past and people do not always feel they have been fully compensated for the physical and psychological effects of an injury, this is the only relief the Court can order.

But how do you calculate what a personal injury claim is worth? It's difficult to reach a specific figure because each claim is invariably unique and doesn't just include items on which a fixed financial value can be placed. If your bicycle is written off, the replacement cost is easy to calculate. But what if it's you that is damaged? People often ask "what is my claim worth?", but they overlook the important issue of, "how is my claim calculated?".

If the other party's insurers admit liability, recovering immediate losses and expenses can be relatively straightforward providing there is some documentary evidence in support. It is possible, using guidelines recognised by the courts and referring to previous cases where similar injury has been sustained, to provide a range of compensation for, say, breaking a leg, but how do you calculate what an injured person's future care costs may be, or how much money they will have to pay for medication over a number of years?

In England and Wales a formula exists for these sorts of calculations, and up until 11 November 2010, when the Guernsey Court of Appeal thought otherwise, this method was also used by lawyers in the Channel Islands. The English formula is intended to reach an amount reflecting the income an injured person will receive by investing a lump sum

damages award, balanced against reduction by taxes, costs of living and inflation; effectively allowing the lump sum to survive the intended period.

On 18 November 1998, Manny Helmot, who had represented the Channel Islands at the Kuala Lumpur Commonwealth Games that year, was cycling in Guernsey when he was involved in a head-on collision with a car. Manny was in hospital for 36 weeks and suffered a serious brain injury, loss of his right arm and partial vision; he continues to require 24-hour care for the rest of his life. The driver of the vehicle was convicted of dangerous driving following the accident.

In January 2010 (some complex personal injury claims can take many years to conclude), Manny was awarded approximately £9 million by the Royal Court of Guernsey which incorporated a significant sum for future care costs based on the English formula. However, Manny's family, now his full-time carers, appealed this amount on the basis that it wasn't going to be sufficient to cover his life-long requirements. The Guernsey Court of Appeal ruled that it was not bound by the English formula and imposed their own local calculations to try to reflect the real and true cost. This resulted in Manny receiving approximately £13.7 million overall, which exceeds any personal injury award made in the UK.

While the decision is currently under appeal to the Privy Council by the defendant's insurers, our neighbour has sparked a movement away from the English formula, not only in the Channel Islands, but in the UK, where the Lord Chancellor has been asked to review it. The Guernsey Court of Appeal's decision is considered ground-breaking, and we await to see if, and when, a test case comes before the Jersey Court for similar consideration.

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**FOR MORE INFORMATION,  
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