



# Your Rights After a Road Traffic Accident

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### **This advice guide is to help you understand:**

- (a) Your legal rights following a road traffic accident;

**And**

- (b) How to deal with motor insurance and claims management companies.

This guide focuses on your rights concerning vehicle repairs and a temporary replacement vehicle.

For further information on these rights, or your rights concerning any other losses you have incurred, or if you or your passenger(s) have been injured, you may wish to seek independent legal advice.

After an accident you should ensure that, at all times, you are fit to drive and that your vehicle is roadworthy and legally suitable for use.

### **Your rights following a road traffic accident**

- 1) When you have an accident in YOUR vehicle it is YOUR choice how you proceed to include:
  - Whether you have your vehicle fixed or not;
  - Who fixes it;

And

  - How you fund those repairs.
- 2) You can choose -
  - to make a claim under your own motor insurance policy;
  - or to use the services of an accident management company;
  - or to instruct a solicitor;
  - to pursue a claim by yourself against an at-fault driver;
  - or simply to pay for repairs yourself.
- 3) Those representing you and the insurer of any other driver(s) involved in the accident will usually investigate the accident's circumstances and may assess with you who they consider to be responsible for the accident.
- 4) You should make no admission of liability before that process has been properly concluded. This is because it may affect your no claims discount in future years, or you may have to pay a policy excess which may not be recoverable from the insurer of the other driver.

## Claiming against your own insurance policy

- 5) You are not required to make a claim against your own policy following an accident.

However, you will likely be bound under the terms of your own policy to report all accidents even if no claim is being made.

Should this be the case, you may wish to state to your insurer that you are *"notifying the claim for information purposes only at this time and will advise should that position change"*

This keeps your options open, although there may well be time limits imposed by your insurer as to when a claim must be proceeded with. You should check the wording of your own policy to confirm this.

- 6) Any claim you make against your own insurance policy may require you to pay an excess.

The **Policy Excess** is the amount you will be required to pay, or the amount you will not be able to recover, if you claim against your own insurance policy.

Claiming on your own insurance policy may affect the cost of your future insurance premium, whether you are at-fault or not, as well as any No Claims Bonus/Discount you have accumulated.

You may be protected against any loss of No Claims Bonus if you have taken out extra cover sometimes called 'No Claims Bonus Protection'.

Some insurers may waive the excess - meaning you won't have to pay the excess amount - if you are not at-fault for an accident, even if the other driver is not insured.

- 7) If you have 'Comprehensive' insurance your contractual rights under your policy will likely include compensation for:
- (a) The damage to your vehicle:
- (i) You can choose to have your vehicle fixed by a vehicle repairer of your choice.

Your insurer, or a Company appointed to handle your claim, may recommend a repairer but they

cannot insist that you use such a repairer. It is always your right to control what happens with your vehicle.

- (ii) If you choose not to use a repairer recommended by your insurer, you should check whether that has an impact on your policy excess or no claims bonus or any other terms of the policy.

Where you believe any of those terms may be unfair or, were not properly explained to you when you bought your policy, you should seek independent advice as to whether the terms can be challenged.

- (iii) The repairer should return your vehicle to the condition it was in before the accident occurred.
- (iv) Your insurer may try to insist that the car is repaired with parts and paint not supplied or specified by the manufacturer of the vehicle. These are also known as a Non-Original Equipment Manufacturer (Non-OEM), 'replica', 'spurious' or 'aftermarket' parts.

Your insurer may also try to insist that a repairer uses recycled second-hand parts, widely known as 'green-parts'.

Repairing a vehicle in this way may not return your vehicle to its pre-loss condition which is your right, hence affecting its value, and potentially its performance in any subsequent accident.

You should insist on knowing exactly how the vehicle is being repaired and whether that will have an impact on any other agreements which you have; for example, vehicle warranty or car finance terms.

You should not allow the vehicle to be repaired in a way which you are unhappy to accept.

You should seek independent advice should a dispute arise with your insurer or a repairer.

- (v) Where you do not wish to have the vehicle repaired you are entitled to request a cash payment in the amount of the repairs. Your

insurer may seek to reduce the amount of this payment, sometimes referred to as 'cash-in-lieu of repairs', by a percentage or by refusing to pay the VAT element of the estimate for repairs, or both. You should seek independent advice on their contractual entitlement to do so should this situation arise.

- (vi) If your vehicle has been assessed as being 'uneconomic to repair', meaning the cost to repair it exceeds the value of the car before it was damaged, and is declared a 'write-off' or 'total-loss', you are entitled to the market value of an equivalent vehicle of a similar age and condition at the time of the accident. This value is usually based on publicly available information.

You may wish to obtain a separate, independent valuation of your vehicle pre- and post-accident should you want to challenge the amounts assessed by your insurer.

## Do you have GAP Insurance?

GAP Insurance is a type of cover you can buy to protect your liabilities when you buy a new car. It is designed to cover the difference between the amount an insurer would pay if your car was stolen and not recovered, or written off, and the price you paid for your vehicle, or to discharge any outstanding finance on the vehicle.

There are different types of GAP policies and it is vital to check the terms carefully. For example, you will likely need to seek the input of that GAP insurer before you accept any offer of settlement from your motor insurer.

- (vii) Your insurer may try to insist that when a car is written-off, and they make a payment to you for it that they will take ownership of the vehicle.

However, you have the right to retain ownership of what is known as the 'salvage' of the damaged vehicle.

This applies even when your insurer has taken

possession of it after an accident.

Your insurer has no automatic right to hold the vehicle, or make a charge, should you wish to have it returned to you.

They can, however, reduce the amount offered to you for your vehicle to make allowance for the value of the damaged vehicle which you have retained.

- (b) A temporary replacement vehicle:

- (i) You may be provided with a temporary replacement vehicle by your insurer as part of your motor insurance policy, (often referred to as a 'courtesy car'), which may not be equivalent to your own.

If this is not suitable for your needs, your insurer may refer you to a replacement vehicle provider who will provide you with a vehicle equivalent to your own. You will likely have to pay for that vehicle should you not have purchased additional cover for this benefit at the time you took out your insurance policy.

If your car is being repaired cover for this benefit will likely only apply if you are using a repairer appointed by your insurer.

- (ii) This does not mean that a repairer selected by you will not provide a temporary replacement vehicle and you should ask them to confirm if they can or not and if a charge will be made or not.
- (iii) Where your car is 'written-off', any replacement vehicle might only be provided for a limited period such as 7-14 days. This applies even if you require it for a more extended period. Again, you will need to check your contractual entitlement under your policy.

## Your rights if an accident is your fault

- 8) If an accident is your fault, your contractual rights will be set out in your policy documentation. For further information, contact your insurance provider.

You will have protections under the law should any of the terms of your policy be contrary to consumer protection legislation. You may wish to seek independent advice if you believe this applies to your situation.

In law, you are responsible for losses you have caused others, and the 'third-party' element of your compulsory insurance will cover these.

You should refer any correspondence you are sent from another party's representatives to your own insurance company as soon as possible after you receive it.

### **Your rights if an accident is another driver's fault**

- 9) If an accident is another driver's fault, it is the responsibility of the other driver to put you back into the position you would have been in had the accident not occurred.

Any cost that you unreasonably incur may not be recoverable from the at-fault driver.

- 10) Neither your insurer, the other driver, nor their insurance company can insist on how you reinstate yourself to your pre-accident condition.

You may be contacted by one of those parties offering to help you, but it is your choice how you wish to proceed.

You have rights under The Data Protection Act 2018 not to be contacted by any party without your consent. You can complain to the Information Commissioner should you be unhappy with any unsolicited contact that has been made to you.

The Courts have said that the insurer for the at-fault party should NEVER telephone you to offer to help with your vehicle repairs or provide a replacement vehicle.

This would also apply to text messages and offers to settle personal injury or other claims.

You should not accept any offer of help which you do not wish to avail of and not without thinking about what is in your best interests.

You are free to seek independent advice on any offers should you wish to do so.

- 11) Your rights against the at-fault driver include compensation for:

(i) The damage to your vehicle:

You can choose to have your vehicle fixed by a repairer of your choice.

Your insurer or a company appointed to handle your claim, or the at-fault party and their insurer, may recommend a repairer but they cannot insist that you use such a repairer. It is always your right to control what happens with your vehicle.

(ii) You can choose to fund the repairs to the vehicle:

(a) from your own funds where you are sufficiently financially secure to pay for the repairs and await reimbursement which may take an indefinite period of time.

(b) by claiming on your own comprehensive insurance policy (see para 7 above)

(c) by appointing a representative to manage the claim process for you who also provides finance for car repairs – sometimes called 'a credit-repair company'.

These companies, or suitably specialist solicitors, can often arrange to appoint a motor assessor to inspect your vehicle.

(d) by contacting the at-fault party's insurers yourself or via your representative and seeking that they pay for the repairs.

(iii) The repairer should return your vehicle to the condition it was in before the accident occurred.

(iv) The at-fault insurer may try to insist that the car is repaired with parts and paint not supplied or specified by the manufacturer of the vehicle.

This is also known as a Non-Original Equipment Manufacturer (Non-OEM), 'replica', 'spurious' or 'aftermarket' parts.

They may also try to insist that a repairer uses recycled second-hand parts, also called 'green-parts'.

Repairing a vehicle in this way may not return your vehicle to its pre-loss condition which is your right, hence affecting its value and potentially its performance in an accident.

You should insist on knowing exactly how the vehicle is being repaired and whether that will have an impact on any other agreements which you have; for example, vehicle warranty or car finance terms.

You should not allow the vehicle to be repaired in a way which you are unhappy to accept.

You should seek independent advice should a dispute arise with the at-fault party's insurer or a repairer.

- (v) If you do not avail of your comprehensive motor insurance and you agree to the repairs being undertaken on a credit basis, i.e. you do not pay for the cost of repairing your vehicle upfront, you may be responsible for the costs of the repair if they cannot be recovered from the at-fault driver.

However, you will generally be provided with a separate insurance policy by the company handling your claim that will protect you against this eventuality (subject to terms and conditions), so that the repairs will ultimately be at no cost to you.

- (vi) You should give authorisation for repairs to commence within a reasonable time period.

What is reasonable will depend on your particular circumstances, and you will be allowed to take time to consider your options.

For example, when asking the at-fault party's insurer to pay for repairs, they may be unable to

do so while they investigate the circumstances of the accident.

They should not unreasonably delay making a formal admission or denial of liability, and you can typically wait until this has been provided.

You would not usually expect that they will take longer than around three months to issue their decision.

- (vii) Where you are not making a claim against your own insurance policy and do not have the funds available to pay for repairs yourself\* nor can find a suitable credit-repair company to finance your repairs, you or your representative should make this clear to the insurer of the party you believe to be at-fault as soon as possible, even if they deny responsibility for the accident.

\*You may be asked for proof of your financial circumstances where this is the case, especially if you are hiring a car.

- (viii) Even if Your vehicle is repaired to a high standard, it may still be worth less after it has been repaired than it was pre-accident.

You are entitled to be compensated for this loss which is known as Diminution-in-Value or Accident Depreciation.

This loss does not occur in all cases.

Assessment of any amount is usually carried out by an independent motor assessor or another suitable expert.

- (ix) Where you do not wish to have the vehicle repaired you are entitled to request a cash payment in the amount of the repairs. The insurer of the at-fault party may seek to reduce the amount of this, sometimes referred to as 'cash-in-lieu of repairs', by a percentage or by refusing to pay the VAT element of the estimate for repairs or both. You or your appointed representatives should seek an independent assessment on the appropriate amount should this situation arise.

- (x) If your vehicle has been assessed as being 'uneconomic to repair', meaning the cost to repair it exceeds the value of the car before it was damaged, and is declared a 'write-off' or 'total-loss', you are entitled to the market value of an equivalent vehicle of a similar age and condition at the time of the accident. This value is usually based on publicly available information.

You or your representatives may wish to obtain an independent valuation of your vehicle based on both its pre-and post-accident value when seeking compensation from the at-fault party's insurer. This is especially important should you wish to challenge the amounts assessed by the at-fault party's motor engineer.

## Do you have GAP Insurance?

GAP Insurance is a type of cover you can buy to protect your liabilities when you buy a new car. It is designed to cover the difference between the amount an insurer would pay out if your car was stolen and not recovered, or written off, and the price you paid for your vehicle, or to discharge any outstanding finance on the vehicle.

There are different types of GAP policies and it is vital to check the terms carefully. For example, you will likely need to seek the input of that GAP insurer before you accept any offer of settlement from any other party for your vehicle damage claim.

- (x) You have the right to retain ownership and possession of what is known as the 'salvage' of the vehicle. However, in most cases, you may not wish to do so.
- (xi) You are recommended not to store a vehicle which has been written-off at your own property due to the Health and Safety and legal risks involved.

Instead, the vehicle should be placed in secure and appropriate storage and disposed of as

soon as reasonably practicable.

The at-fault party will generally be responsible for the costs associated with storing of the vehicle, and it is good practice to confirm with them that they do not wish to inspect the vehicle so that the vehicle can be removed from storage for disposal.

- (b) A temporary replacement vehicle:
- (i) If you need a temporary replacement vehicle for the period you are without your vehicle, you are generally entitled to one that is equivalent to your own vehicle (for example, similar in size, type, number of doors and engine capacity) and on the same terms on which you are permitted to drive your own vehicle but with a zero excess in respect of all liability, for example, theft and damage waivers.
- (ii) Usually, it is presumed that a person who owns, insures, taxes and maintains a vehicle does so because they need one. If your particular circumstances are unusual, you should seek advice on your entitlement to claim the cost of a 'like-for-like' replacement hire car from the at-fault party.
- (iii) If you need to hire a car and your own car has been rendered legally unroadworthy after an accident you are entitled to hire a replacement until your own vehicle has been repaired. You are expected to take reasonable steps to progress repairs as promptly as possible.
- (iv) If your car is damaged but repairable and still legally roadworthy, you may still be able to hire a replacement vehicle if there is some particular reason why this would be reasonable in your circumstances. You should seek independent advice on your situation should this arise.
- (v) If your own vehicle has been rendered a total loss, you are generally entitled to hire another vehicle for a reasonable period of time to allow you to source, pay for and obtain a permanent replacement.

What is reasonable for you will be related

to your specific circumstances. You should seek independent advice as to what would be reasonable for you.

- (vi) If you hire a vehicle for a more extended period of time than might ordinarily be expected, you should ensure that you still need to hire the vehicle for the full duration.

For example, if you are going on holiday, it would not be deemed reasonable to leave a hire car sitting at an airport without good reason.

If you are incapacitated, for example by being in hospital following an accident, you might still require a vehicle if someone else needs to use the car on your behalf or if they ordinarily had use of the vehicle before the accident.

- (vii) Your insurer, insurance broker or another intermediary may refer you to, or recommend to you, a specialist accident replacement vehicle provider who will provide you with a vehicle equivalent to your own, most likely on credit terms (often referred to as a 'credit hire company').
- (viii) The at-fault driver's insurer may also offer you, but you do not have to accept, a temporary replacement vehicle or courtesy car. This is often arranged through the larger national rental companies or only offered if you allow them to appoint a repairer. If this is not equivalent to your vehicle, you are entitled to ask for one which is.
- (ix) Before you take delivery of a replacement car, you should be aware whether there will be a charge for such a vehicle and ensure that the at-fault insurer who made the offer has confirmed in writing that they have agreed to pay for all of the hire charges including all liability waivers and do not require a credit card or deposit from you.
- (x) If you are offered a car under a credit hire agreement then unless you are covered by an insurance policy provided by the replacement vehicle provider, you may be held liable for the cost of the hire of the temporary replacement vehicle should the temporary replacement

vehicle provider fail to recover the full cost from the at-fault driver, or if you are ultimately considered to be at fault for the accident.

While this is very unlikely to arise, you should check the hire terms of any temporary replacement vehicle and the associated insurance policy you are provided with, to ensure you understand what risks you are taking on.

- (c) You may be asked questions about your need for any replacement vehicle, and you may be asked, but are not required, to sign a Mitigation Declaration Statement to confirm your circumstances.
- (d) Where you are not financially resourced to be able to pay for a car yourself, and await settlement for an indefinite period of time, from your own funds and you avail of credit hire, you may be asked for proof of your financial circumstances.
- (e) Other losses
- (i) You can also claim if you have been injured in the accident or have suffered other losses (e.g. legal costs, recovery of any excess you have paid under your motor insurance policy and loss of earnings). Depending on the terms of your motor insurance policies (for example, whether you have motor legal expenses cover), your insurer may or may not assist you with recovering these losses.

### **Your Rights if an accident is:**

**(i) the fault of an uninsured driver or where the driver is unknown but the vehicle is identified but is also uninsured;**

**or**

**(ii) where neither the driver nor the vehicle which caused the accident can be traced or identified.**

- 12) In (i) your rights are the same as if you are being compensated by an insured driver.



In (ii), your rights may be more limited and might be restricted to claims for personal injuries only. This will depend on the severity of your injuries.

Claims of both types are made to an agency called the Motor Insurer's Bureau (MIB) who will investigate to make certain that:

- (i) no party who is insured has any responsibility for the accident.
- (ii) the police and any other investigations confirm that the responsible party or vehicle cannot be traced.

As a result, claims made to the MIB may take longer to resolve than might otherwise be the case.

Claims of these types will require you to complete an application form within defined timescales and you should always seek independent advice when completing and returning an application form to the MIB.

Where you make any claim against your own policy of insurance as well as submitting a claim to the MIB, you will not be able to make a claim against the MIB for any losses paid by your insurance company.

You may therefore wish to seek independent advice as to what is the most appropriate manner in which to reinstate yourself to your pre-accident position when the MIB are involved in the claim.

### **Your rights if an accident is partly your fault and partly the other driver's fault, or if fault cannot be agreed**

- 13) If there is a dispute about who is at fault in an accident, it may have to be decided in Court if an agreement cannot be reached beforehand. If both of you have some fault, you will only be able to recover from the other driver some of what you have lost.
- For example, if you are 50% to blame for an accident, you will be able to recover 50% of your losses from the other party, and they will be able

to recover 50% of their losses from you.

This is irrespective of whether your losses are in similar or different amounts.

If you have a comprehensive motor insurance policy, you will still be entitled to your full rights set out in that policy.

### **Different ways in which your claim can be handled**

- 14) If the accident is your fault, even partially, any claim you make against your insurance policy will usually be handled by your insurer.
- However, you are always able to appoint your own representative should you wish to be independently advised.
- 15) If the accident is the fault of another driver, you can pursue the claim yourself, but claims are typically handled in one of the following ways:
- a) By a claims management company:  
You, your insurer or the insurer of the other driver may choose for your claim to be handled by a claims management company that specialises in making a rapid assessment of liability and will support you through the presentation and settlement of your claim.
  - b) By a solicitor:  
You or your insurer may choose to have your claim handled by a solicitor.
  - c) By your own insurer:  
Your insurer will handle your claim under your own motor insurance policy and recover the costs of the claim from the insurer of the other driver. Your insurer may choose to refer you to another supplier for the provision of some services.
  - d) By the insurer of the other driver:  
The insurer of the other driver may contact you following an accident and offer to handle your claim, which you can choose to accept if you wish. They will be focused on reducing their costs and minimising the extent of your claim. At such a time, make sure that you understand

your legal entitlement to compensation and redress before considering any offers being made.

In particular be aware that insurance companies may record all telephone calls with you, and they may use those recordings at a later stage when defending your claim in respect of liability, repairs, replacement vehicle and personal injury.

- 16) The rights you have to claim against your insurer and your insurance policy are the same whoever is at fault for an accident or whether there is any dispute over who is at fault.
- (a) If you have comprehensive motor insurance cover, your policy will in most circumstances provide cover for the repair of your vehicle or compensation for its value before the accident if it is a write-off. It may also cover you for other items, such as a temporary replacement vehicle, which may not be of the same size, status or engine capacity as your own damaged car.
- (b) If you have third-party or third-party, fire and theft cover, your policy will not provide cover for repair or damage to your vehicle or provide you with a temporary replacement vehicle.
- (c) If you have motor legal expenses cover, or decide to purchase such cover after the accident, you may be covered for the legal costs of pursuing your claim.
- (d) If you contract with an accident management company or credit hire company to assist you after an accident, you may be provided with a legal expenses policy free of charge.
- 17) You should check the documentation provided with your insurance policies to understand exactly what cover is provided.
- 18) Where you are making a claim against another party who is totally or partially to blame for the accident you will be required to issue legal proceedings if the claim is not resolved:
- (i) within 3 years of the date of accident if your claim includes personal injury related loss such as pain and suffering, loss of amenity and loss of earnings.

or

(ii) within 6 years of the date of accident if your claim is only for non-injury related losses such as vehicle damage, car hire and diminution in vehicle value.

These time limits only begin from the date you turn 18 should you be younger than aged 18 at the date of accident.

# **CRASH**



THIS GUIDE IS NOT LEGAL ADVICE. YOU SHOULD ALWAYS OBTAIN YOUR OWN INDEPENDENT OPINION ON YOUR RIGHTS AND ENTITLEMENTS FOLLOWING A ROAD TRAFFIC ACCIDENT.

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