



MOTORCYCLE LAW™

Scotland

Specialist Motorcycling Lawyers

I recently took over a case for a motorcyclist who had been badly injured in a road traffic collision in Scotland. He had been airlifted to Queen Elizabeth University Hospital where he had remained for seven days. He sustained chest trauma with multiple rib fractures, flail segment and a haemothorax. He was referred to a panel solicitor by his insurance company.

On reviewing his file, I was shocked. I couldn't find a basic client statement on file, yet the initial statement is the cornerstone of any case. It's drilled into our qualified Lawyers from day one of their two-year traineeship. With no statement on file, what could the "case manager" know of her client? How could she truly understand the impact of injuries on him as an individual? This job cannot be done by email exchange and form filling.

As Lawyers, we have a professional obligation to our clients. What I reviewed on the panel solicitors' file was a process and a process doesn't work for those who are seriously injured. It's about respect, understanding and compassion. Trust must be established between client and Lawyer day one and that can't be done with a few email exchanges. A 'one size fits all' approach simply doesn't work. An injured motorcyclist is not just a number in a numbers game. They are not part of a process and they deserve more.

The following case studies or 'horror stories' as we call them are just a few examples of where we have stepped in to help injured motorcyclists lost in the process having been referred to a panel solicitor or non-specialist.

I believe that in order to provide the best possible service, your Lawyer needs to be a motorcyclist and we have plenty of those. Remember legal representation is your choice, so make that clear to your insurer.



Brenda Mitchell,
Senior Partner,
Motorcycle Law Scotland

1. ALWAYS APPOINT A SPECIALIST MOTORCYCLE LAWYER

On 27th June 2014 at around 9pm, James was riding his Honda Blackbird on the A76 between New Cumnock and Kirkcunol. He had negotiated a series of bends and as he lined himself for a left-hander, he was confronted with a car heading north on the southbound carriageway! The driver had clearly overtaken on a blind bend.

James tried to take evasive action to avoid a head-on collision by squeezing close to the nearside grass verge, but unfortunately he clipped the offside wing mirror and was jettisoned from his motorcycle. The driver also collided with the vehicle she had been attempting to overtake.

The police were called to the scene of the accident. The driver was cautioned and charged with dangerous driving but later accepted a lesser charge of careless driving and was fined £1600 with 8 penalty points endorsed on her licence.

James was taken by emergency ambulance to Ayr Hospital where he received treatment for multiple injuries including fractured and dislocated fingers requiring surgery, a fractured right wrist, soft tissue injuries and lacerations to his right knee as well as facial injury. James was kept in hospital for 4 days.

On discharge from hospital, James was contacted by a firm of solicitors who had been appointed by his motor insurers to pursue his personal injury claim.

As a result of the accident, James had lost income as being self-employed he didn't get paid during his 2-month period of absence. His motorcycle had been



written off and his helmet and protective clothing needed to be replaced.

Despite the serious nature of his injuries and his extensive losses, James was never offered an appointment with his appointed solicitor and dealing with matters over the phone was incredibly frustrating. Worse was to come when his appointed solicitor informed him that she had a report from an Orthopaedic surgeon and estimated his claim for his injury to be in the region of £5000. As a self-employed digger driver with an injury to his dominant right hand, James was concerned about what the future would hold for him. He strongly disputed the appointed solicitor's assessment of the value of his claim.

Concerned that his appointed solicitor was disinterested and looking for a quick settlement, James spoke with

some fellow motorcyclists who immediately suggested he contact Motorcycle Law Scotland and so in July 2015, over a year after his accident, James approached MLS and asked for help.

Following a face to face meeting with Brenda Mitchell, we identified the need to get a specialist hand surgeon to examine James. As a result of the focused attention to detail and meticulous investigation carried out, an offer was secured from the driver's insurer at just over £50,000, ten times more than his previous solicitor had estimated.

A great result and one that James was very happy about. He commented:

“It was like night and day. Insurance companies and their affiliate organisations only seem to be looking out for themselves whereas Motorcycle Law Scotland was different. They were genuinely interested in helping me. When I first met Brenda, I was extremely worried about my case. She reassured me massively, put me at ease and told me not to be concerned. She gave me confidence and I had complete trust in her. I cannot thank her and the rest of the Motorcycle Law Scotland team enough for all they did for me. I really appreciate it.”

2. IT MATTERS THAT YOU'RE A SPECIALIST

Michael sustained a nasty injury to his left foot after losing control of his motorcycle on 16th July 2013. That afternoon, he had left his grandparents' house and taken the scenic route home around Greyhope Road heading back into Aberdeen.

Unfortunately, the road had recently been jet patched. There were no signs and the road hadn't been swept to clear patches of loose gravel. Michael hit the gravel whilst riding within the speed limit.

The Police attended the accident scene and they too noticed a distinct lack of signage. Believing the accident had been caused by negligence on the part of Aberdeen City Council, **Michael sought advice from a leading personal injury firm who advertised that they specialised in motorcycle accident claims. However, he was left disappointed when, after 2 years, his case was turned down.**

Michael instructed Motorcycle Law Scotland for a second opinion and, without hesitation, we took his case on. The case was not straightforward but thorough investigation revealed the signage had indeed been inappropriate, the jet patching operation had created loose gravel which ACC was obliged to sweep clean. No records were found of such sweeping and the only sign we could find in place was one lying on the grass verge.

A medical report was instructed and this report highlighted the serious nature of the Michael's injury.

Proceedings were raised in Court and shortly before the pre-trial meeting, Michael was offered £18,750 in settlement.

In accepting the offer, Michael was ecstatic. He had thought the prospects of success were poor because a “specialist” firm had previously turned down his case. However, Motorcycle Law Scotland got a result because of our knowledge and tenacity.



The difference at Motorcycle Law Scotland is we are motorcyclists and bring that experience to our investigations. We don't just make a difference we are the difference.

Michael had this to say:

“Thank you so much for everything you have done, it's great getting the win and I am absolutely delighted.”

3. FIGHTING FOR JUSTICE- 4-fold increase in original offer

James McCormick was involved in a motorcycling incident on the 18th August 2016. He was riding his own motorcycle home with his son, Adam, as a pillion passenger, after visiting a motorcycle dealer.



James caught up with a line of 4 or 5 vehicles which were slowing in front of him. The first vehicle turned into a side road to his right-hand side which led to the Lochside House Hotel. The remaining vehicles continued to move forward and, as it was a straight road, James prepared to overtake the slower moving traffic.

After checking his mirrors, signalling and completing his lifesaver, he pulled out for the overtake. Suddenly, one of the vehicles in the line of traffic turned right across his path, without signalling or slowing. He had no opportunity to take any evasive action and, as a result of the collision, he and his son were catapulted from the motorcycle. James suffered a fracture injury to his back.

James was referred to a panel solicitor through his own insurance company. Without meeting James or even contacting witnesses, they suggested he accept an offer to settle his claim on a 50/50 basis, without a fight. No Police report had been obtained and no attempt had been made to meet with the reporting Police Officer. It transpired that both James and the driver who caused the incident were both insured with the same insurance company.

Furious that he should accept such advice and never having met his appointed solicitor, James approached Motorcycle Law Scotland for help. As a starting point, we travelled to see James at home. After taking a detailed statement from James, we did what should have been done at the outset. The offer to split the case on a 50/50 basis with rider and driver accepting equal responsibility for the collision was immediately refused. We obtained a Police report listing the independent witnesses. Statements were taken from the witnesses and the reporting Police Officer. Site visits were undertaken at the accident scene. The investigations revealed what James had said all along; he was there to be seen executing a safe overtake.

Although James returned to work, his back pain continued. Specialist medical experts were instructed and within 6 months of receiving his file, proceedings were raised in Court. Defences were received with a formal offer to settle. That offer was promptly refused. Further offers were made in settlement and counter proposals put forward until eventually an offer of almost four times the original offer was put forward. Settlement could finally be agreed at just under full value.

The difference we made was quite simple. When we first met James, he was an injured motorcyclist through no fault of his own. He had been told to accept 50% of the blame by a panel solicitor he had never met. He was confused and unhappy. We turned that around by treating James as an individual, not a file number. He had his own quite specific injuries. His case was unique and like no other. That attitude to all of our cases means we can make the difference. James was absolutely delighted with the outcome.



4. LESLIE O'DONNELL V LISA SMITH AND ROYAL AND SUN ALLIANCE

On 29th May 2016, Leslie O'Donnell and two friends, all from Northern Ireland, were travelling on their motorcycles from Omagh via Larne/Stranraer up to Oban when Leslie was involved in a serious RTC on the A82 just south of Tarbet. All the motorcyclists were very experienced riders. One was a serving Police Officer and headed up 'BikeSafe' courses in N.Ireland. Between the three, they had over 90 years riding experience.



Heading north and riding at between 55-60mph, they caught up with a Peugeot travelling at around 50mph. Leslie took up a position 50-60m behind the car. He considered overtaking as the road ahead was clear. However, the Peugeot driver became apprehensive when she saw the three motorcyclists in her mirror and she

braked suddenly. Critically, she braked so hard that she performed an emergency stop.

Following behind, Leslie had to brake hard but running out of tarmac he looked for an exit route. He tried as best he could to go to his left, but he hit the rear of the stationary car in front of him. He managed to crawl from the road onto the nearside verge. Seriously injured and in severe pain, he was taken by emergency ambulance to the Royal Alexandra Hospital in Paisley.

Leslie was admitted into the high dependency ward where he was treated for fracture injuries to his right wrist and right knee. He remained in hospital for some time before returning home to N. Ireland.

Following the incident, Leslie contacted his insurance company, MCE and was referred to their panel solicitor to handle his Personal Injury claim. Liability was disputed by the driver's insurer, Royal and Sun Alliance. Their position was simple; Leslie had clearly run into the back of their insured's vehicle, so he had to accept the lion's share of responsibility. Settlement was proposed on an 80/20 split in favour of the driver. **Leslie was told by his panel solicitor that he would have to accept such responsibility for the collision and any award of damages would be reduced by 80%.**

Furious with the advice from the appointed panel solicitor, Leslie told them to close his file. The driver had stopped dead for no reason, so how on earth could he be to blame?

Leslie sought help from motorcycle experts White Dalton but as the incident had occurred in Scotland, White Dalton immediately referred Leslie to Motorcycle Law Scotland. Brenda Mitchell, Senior Partner at MLS and an advanced motorcyclist herself, took on Leslie's case. She agreed to fly over to Northern Ireland and meet with Leslie and his fellow motorcyclists to get a better understanding of what had actually happened on 29th May 2016.

Meeting and talking with clients and witnesses face to face is something that the Lawyers at Motorcycle Law Scotland do. Lawyers stand a better chance of winning a case if they do the groundwork. Leslie had never met his panel solicitor and was not offered a meeting. Form filling and paper processing doesn't work. Specialist motorcycling lawyers do things differently. It is this attention to detail at an early stage which makes the difference. Having reviewed all the evidence, MLS advised Leslie he had a good case and the only way ahead was to raise an action against the driver. She would need to explain why she came to a dead stop before Leslie collided with her.

The case proceeded to trial on the 20th and 21st November 2018. Leslie O'Donnell and his two witnesses gave evidence that prior to the collision Leslie had been 50-60 m behind the car, an appropriate distance. The driver gave evidence that she had performed an emergency stop. She had been apprehensive about the presence of the motorcyclists and had braked too sharply.

Having heard the evidence, the Sheriff found in favour of the Pursuer, Leslie O'Donnell. Sheriff McGowan stated in his Judgement that "there is no rule that the collision

by one vehicle running into the back of another automatically gave rise to an inference of negligence on the part of the following driver." It is always necessary to look at the whole circumstances of a collision.

He further considered that Leslie O'Donnell had been riding his motorcycle at around 55mph and had been 50-60m behind the vehicle in front. As such, he had complied with the Highway Code in relation to stopping distances and the so called "two second rule". A vehicle travelling at 55 mph will cover 50m in just under two seconds. In relation to speed and distance behind the defender's car, the motorcyclist could not be faulted.

The accident was caused by the driver's negligence and the defenders did not make out a case of part-fault.

LESSONS

- The appointed panel solicitor failed to fully investigate the claim and appreciate the motorcyclist's position.
- The panel solicitor was too keen to accept the insurer's argument based on previously reported case law.
- The panel solicitor didn't meet the individuals involved and thus would never have been able to successfully argue the case.
- If the driver's position was always that she performed an emergency stop for no reason other than feeling apprehensive, this case should never have gone to trial and the insurers should have settled on full value basis at the start.
- Every case is fact sensitive. The driver stopped quickly. The motorcyclist had no time to react. He was faced with an emergency situation and was unable to bring his motorcycle to a halt. It cannot be inferred that because the motorcyclist is unable to stop that he must have been riding too close.

This is an example of why any motorcyclist involved in any collision should seek the help of expert motorcycling lawyers. Do not, under any circumstances, accept the appointment of a panel solicitor.

5. DISILLUSIONED WITH PANEL SOLICITOR AFTER REAR END SHUNT

In August 2015, James was involved in a serious motorcycle incident near Fraserburgh on the A98. He had been riding his Yamaha R6 motorcycle that he had only just bought 11 days before. He was stationary at temporary traffic lights with both feet on the ground when a car crashed into him from behind. James sustained multiple injuries including a shoulder dislocation fracture, fractures to his right hand and fractures in his spine.

James' insurance company put him in touch with their panel solicitors. Despite having suffered serious injuries, the panel solicitors never met with James to discuss his case in person and he felt that the process had not been adequately explained to him. Becoming increasingly disillusioned, James contacted Motorcycle Law Scotland in July 2017 after finding us online.

A face to face meeting is always a good starting point, so Brenda Mitchell travelled to Aberdeen to meet with James, explain the process and discuss his injuries and loss in detail. As our new Aberdeen Office opened in May 2018, Roz Boynton, Associate Solicitor, continued to provide local specialist representation to James.

As the driver of the car that caused the incident had been uninsured, we were able to raise a court case against the Motor Insurers' Bureau (MIB) whose Uninsured Driver's Scheme provides compensation to those injured by uninsured drivers. Whilst the MIB initially valued the case at £30,000, after extensive

negotiations we were able to secure settlement at £45,000.

James was delighted with the outcome and commented;

"Sterling job by you and your team. However, I did have faith in you guys doing a grand job."

This case highlights the importance of instructing a specialist motorcycle lawyer as soon as possible.

It is always your choice; you are not obliged to accept the representation of the panel solicitors appointed by your motor insurers despite what they might tell you.



6. INSURER'S PANEL SOLICITOR UNDERVALUES CLAIM

In October 2018 MLS received a call from a motorcyclist in crisis. Following a motorcycle collision on the 17th May 2018, just metres from home, he had been injured, was absent from work and struggling with his insurers' appointed panel solicitor.

After the collision, John reported matters to his insurers and they, in turn, appointed a lawyer to represent him. That lawyer sent John umpteen requests for information by way of questionnaires and forms. He was stuck in a process. Nothing was personal and nothing was tailored to his needs. As settlement loomed, he received a letter from his panel solicitor to say that his injury would attract an award of between £3,500 - £4,500.

That was the breaking point. How could such a serious injury only be worth £3,500? John picked up the phone to Motorcycle Law Scotland and we listened. We immediately arranged a face to face meeting.

Motorcyclists are vulnerable to serious injury. In the collision, John fractured his right ankle and bones in his right foot. John's occupation meant that he required to be on his feet all day. Although he returned to work following the accident, he was unable to work overtime for a period of six months and, as a result, there was a reduction in his earning capacity.

We set to work obtaining an independent assessment

from a Consultant Orthopaedic Surgeon. That surgeon supported John's claim that he could not do overtime for a period of six months post return to work. That had been completely missed by the panel solicitor.

A claim for damages can only be properly assessed and quantified by careful detailed planning and execution. The starting point is always the client and what is unique about a client. We quantified John's claim after thorough investigation. The table opposite represents our valuation compared to the panel solicitor's valuation.



Head of Claim	Components	Panel Solicitor	MLS Valuation
Injuries	Avulsion fracture right ankle. Fractures to 2nd and 3rd toe. Psychological trauma.	£3,500 - £4,500	£15,000
Wage loss		£400	£1,182
Refundable sick pay		Not claimed	£2,530
Further treatment	6-8 sessions of physiotherapy treatment	Not claimed	£400
Services		Not claimed	£500
Advanced motorcycle training	Six sessions recommended	Not claimed	£180
Any other heads as appropriate (specify)	Loss of overtime for six months	Not claimed	£1,355
	Loss of enjoyment of holidays	Not claimed	£500
	Voucher for driving course	Not claimed	£49
	Replacement helmet and damaged protective clothing.	Not claimed	£875
Total		£3,900 - £4,900	£22,391

Final settlement Motorcycle Law Scotland- £18,125
Panel Solicitor's Valuation - £3,900 - £4,900

There were glaring omissions on the part of the panel solicitor by failing to adequately calculate loss and under-valuing the extent of John's injury. Had it been left to the panel solicitor, John's case would have been grossly under-settled and he would have been none the wiser. He was just pleased that he made that call to Motorcycle Law Scotland saying:

"I have just recently had Motorcycle Law Scotland settle a claim for me after they took over from a "panel" solicitor appointed by my insurance company who were totally hopeless and grossly undervalued my claim. I cannot thank Brenda and the team enough; very professional, friendly and always kept me up to date. I cannot recommend them enough. NEVER go with an appointed solicitor. Give Motorcycle Law Scotland a call first."



MOTORCYCLE LAW™
Scotland

Motorcyclists beware.

Never allow your insurer to appoint a panel solicitor.

You are entitled to instruct your own independent specialist Lawyer.

At Motorcycle Law Scotland, we are passionate about the service we provide to our fellow motorcyclists. It's personal.



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