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Law

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## Success in appealing a CICA claim following a spinal cord injury

*This case study is an example of a difficult Criminal Injuries Compensation Authority claim, where we have successfully appealed the CICA decision following two rejections.*



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# About the accident

Mr H was injured when we was working at a carwash located on an old petrol forecourt. His manager asked him to get onto the roof of the old petrol station to find the source of a leak. To find the leak, he was required to climb between two layers of metal comprising the canopy of the roof.

He tried to come out of the space, at which point he was kicked in the shoulder by his manager and fell through the roof and on to the concrete forecourt around 30 feet below.



# The challenges faced by Mr H

Mr H sustained a serious spinal injury in the fall and is now tetraplegic. After initial treatment at the hospital, he was discharged to a care home due to the high dependency care he now needs. This care home was not appropriate for him, and his psychological health was suffering.

A letter of claim was sent to the owners of the car wash and it became apparent they were not insured. An application was submitted to the Criminal Injuries Compensation Authority.

Mr H had instructed another firm of solicitors to deal with his claim initially. However, they advised Mr H that the prospects of success in the claim were not

strong enough for them to continue pursuing this matter.

Mr H then contacted CFG Law for further advice, and we started investigating the claim on his behalf.

Due to the effect the care home was having on his psychological health he was discharged home, but unfortunately without the relevant support that he required. He was subsequently offered 70 hours of care a week by the Local Authority. However, due to the nature of his injuries and his difficulties with mobility, he required two carers to be in attendance, meaning that the 70 hours equated to just five hours of two to one care per day.

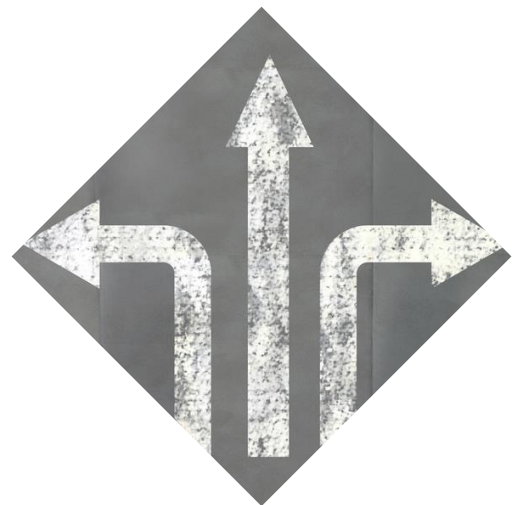


# How CFG Law helped with these challenges

After assessments, we quickly recognised that Mr H required far more care than was being provided by the Local Authority. Our Client Support Manager intervened and did all that she could to try and push statutory services to ensure more support and care was put in place. She liaised with Adult Social Services, as well as the carer at the home our client was a resident to try and establish this support as quickly as possible.

Unfortunately, despite significant efforts, our Client Support Manager was unable to do this alone, and therefore, we signposted our client to a Healthcare Solicitor who subsequently challenged the care decision successfully securing a 24 hour, two to one care package for our client.

As there was no insurer for the car wash, we investigated all possible avenues for a civil claim including the manager who kicked our client on the shoulder when they were on the roof. However, these investigations proved fruitless, as no individual had funds to cover payment of damages.



# How CFG Law helped with these challenges

There was a criminal investigation into the incident; however, the manager of the garage was not charged with assault, as there was insufficient witness evidence to support a prosecution.

We continued with the CICA investigation and our initial application was rejected because we could not prove on the balance of probabilities that the injuries has been sustained as a result of an assault on the roof and that this assault, in turn, had led to the fall. We obtained witness evidence from those who'd had contact with Mr H during his early recovery, and we obtained his records that indicated that the incident had been referred to as an assault from the outset. We also obtained the police file which showed that there had been anomalies in the evidence for the defence.

With this evidence, we applied to review the CICA's decision. The CICA rejected the claim again as we still could not prove on the balance of probability that there had been an assault.

# How CFG Law helped with these challenges

Following this second rejection from the CICA, Mr H had a fortuitous meeting with a former colleague who was there on the day the incident happened. He had been sent home immediately after the incident and had not returned to the car wash or seen Mr H since. He recalled witnessing the incident and what had happened on the roof.

We met with the witness and took a full and detailed witness statement from him, and a further statement from our client. We also referred him to the Police team who had originally investigated the incident.



# The results and outcome



After taking these steps to gather further witness evidence, we lodged an Appeal to the First Tier Tribunal. This Appeal was heard in March 2019 and Mr H's case was put to the tribunal. Following rigorous cross-examination by the Tribunal the Panel found that the injury had happened as a result of an assault, and our client would, therefore, be eligible for compensation under the CICA's 2012 Scheme.

We are now gathering medical evidence to put to the CICA to support our client. This includes compensation not only for his injury itself, but also for his inability to work, additional care he will require, costs associated with treatment, and the cost of equipment and adaptations for his home.



# About CFG Law

After a spinal cord injury, it's essential to find a solicitor with the experience and specialist knowledge needed to deal with your case.

If you or your loved one has suffered a spinal cord injury, you should know that you're not alone. Our expert solicitors can assist you, not only with claiming compensation but with the support and assistance you need to improve your independence. We can also help advise you with other problems you may be facing, including psychological issues and financial and benefits advice.

**Start benefiting from our specialist support and legal advice. Simply follow the link below to speak to a one of our experts today.**

**Request a call  
back now**

