

COURT PROCEEDINGS

WHAT HAPPENS WHEN THE COURT BECOMES INVOLVED IN MY CLAIM?



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THE COURT BECOMES INVOLVED

If it has not been possible to settle your claim with your opponent's insurers within 3 years of the date of the accident (or act of negligence) and either responsibility for the accident has been denied, or responsibility has been accepted but the amount of compensation cannot be agreed, the Court will need to become involved. We will therefore "issue Court proceedings" on your behalf. It may ultimately be necessary for a Judge to decide at a trial whether your opponent was responsible for your accident and injuries and/or how much compensation you should receive.

It may still be possible to settle your claim even after this step has been taken, and we will continue to try and achieve this.

From this point forward, if your claim is lost you may be asked to pay your opponent's legal costs, but we will ensure you have adequate insurance or other cover.

PART 36 OFFERS

Before Court proceedings are issued, and with your agreement, we will usually have made a formal offer to your opponent to settle the claim. This is called a "Part 36 Offer". This is an important tactical procedure, because if the offer is not accepted and the trial Judge decides that you should receive an amount equal to or higher than your offer, your opponent will have to pay additional interest and legal costs.

ISSUING COURT PROCEEDINGS

This involves sending various documents to the County Court setting out details of your claim. You will already have approved the documents, and which include:-

Particulars of Claim - briefly describing what happened and why you believe your opponent was to blame.

Medical Evidence - describing the injuries, treatment received or suggested and indicating when you are likely to recover.

Schedule of Special Damages - a list of your financial losses and expenditure resulting directly from the accident.

The Court sends a copy of the documents to your opponent or their solicitors, who have 14 days to indicate whether they intend to defend the claim. If so, within a further 14 days they must provide us and the Court with a written "Defence", setting out why they believe they are not responsible. We will send you a copy and ask for your comments.

Both before and after Court proceedings are issued the parties must consider whether some form of alternative dispute resolution (eg mediation or arbitration) would assist in resolving the claim.

THE COURT TIMETABLE

The Court will decide how the claim is to be dealt with and sends both parties an "Order" setting out the steps that need to be taken to prepare for a trial, and the date by which each step must be completed. The Court expects the parties to agree this timetable in advance, and aims for the claim to be ready for a trial within 6 months.

We will do whatever is necessary to prepare your claim and will send you any documents that require your approval. At certain stages we must also provide the Court and your opponent with full details of the legal costs we have incurred and are likely to incur in

pursuing the claim, and we must also send a copy to you, but this is for your information only.

Occasionally a Judge may wish to discuss specific issues with both parties prior to a trial, but you will not normally need to be present during these discussions.

The usual steps to be taken are:-

List of Documents and Disclosure

Each party must prepare a list of all the documents they have that are relevant to the claim, even if some may assist the other party's case. The "List of Documents" is sent to the Court and the other party's solicitors, who can then request copies of any of the documents identified.

Witness Statements

Each party must set out the detail of their case in witness statements. Sometimes the statements only need to deal with specific issues, eg if only the value of the claim is disputed, or if certain documents need to be commented upon.

We will need to prepare a statement from you, and if necessary from other people in support of your claim, eg if they witnessed the accident or provided you with help and assistance afterwards.

Your opponent must also prepare statements from everyone who they believe can assist their case.

Both parties then send copies of their statements to the Court and to each other at exactly the same time. We will send you copies of your opponent's statements and ask for our comments. It is usual for all witnesses to give evidence at the trial.

Further Medical Evidence

If you have ongoing symptoms the Court may allow you to obtain further medical reports, which must be copied to the Court and your opponent.

If your opponent disagrees with your medical evidence, the Court may allow them to obtain their own medical report, a copy of which must be sent to the Court and to us. An appointment will be arranged with the new expert, which you must attend.

Both parties may be allowed to ask questions of the medical experts. If both parties have obtained their own medical report, the experts may need to prepare a joint statement setting out details of the issues upon which they agree and disagree, and they may also need to give evidence at the trial.

Arranging the Date for the Trial

When all the steps have been completed, the Court will ask both parties for dates when the trial could not take place (eg because a witness is on holiday) and will then fix a date for the trial.

THE TRIAL

We will normally instruct a Barrister to represent you, and although the Court procedure is formal, you should not be frightened by it. Real trials are rarely as dramatic as those you see on the television.

A few days before the trial we will send to the Court a bundle of all the documents

relevant to your claim, so that the Judge can read them in advance.

At the start of the trial the issues involved in the case will be summarised and any preliminary matters will be dealt with.

Under oath, your Barrister will then ask you about your claim, highlighting the points set out in your statement. You will need to be very familiar with its contents and be ready to answer questions, as your opponent's Barrister and the Judge will then want to ask you about your claim. This process is known as giving evidence. The witnesses and experts supporting you and your opponent will then give evidence in turn.

When all the issues have been discussed, each Barrister will summarise their case, emphasising points that they feel are particularly important and the Judge will make a decision. If your opponent is found to be responsible for the accident and your injuries, the Judge will then assess the amount of compensation that you should receive. The Judge will also deal with the payment of the legal costs.

CHILD CASES

If a claim is made by someone who is under 18 years of age, any settlement must be approved by a Judge to ensure it is fair and reasonable. Court proceedings are started in a similar way, but if the parties have already agreed the level of compensation that they feel is appropriate, there is no need for a timetable to be followed and an informal Court appointment is immediately arranged. The approved compensation is invested by the Court until the claimant reaches 18.