

Expert Witnesses

In order to persuade the opponent and ultimately a Judge that you should receive compensation it will be necessary to secure the services of expert witnesses. In spinal injuries cases your opponent's legal team will also in due course exercise their right to obtain their own expert witnesses in similar fields of expertise to those we will instruct on your behalf.

It is vitally important to remember that even though we may instruct the expert (and in many cases we will be very familiar with the expert having worked with them on previous cases), the expert's duty is to the Court rather than to those instructing him or her. Court rules prescribe a considerable range of obligations that expert witnesses must adhere to.

It is also important to remember that whilst spinal injuries claims usually involve complex medical and other questions that need input from experts experienced in the particular fields to which those issues relate, a Defendant (and a Judge) will want to ensure that the expert is actually assisting the Court rather than merely stating the obvious and that which a Judge could have formed a judgment on him or herself.

In establishing liability we may well need to instruct experts in the following disciplines:-

- Accident reconstruction.
- Meteorology.
- Forensic engineers.
- Seat belt experts.

In establishing liability in clinical negligence cases involving spinal injury we may well need to secure expert witness input from:-

- Neurosurgeons.
- Neuroradiologists.
- A & E medicine.

Assuming the liability can be established and we can move on to quantifying the case, we will almost certainly want your treating consultant to act as the lead expert witness around which all other quantum experts would gather. In other areas of litigation it is quite unusual to ask a treating doctor to act as an expert witness and issues could arise in terms of conflict of interest, bias and the like. That said the nature of spinal injuries is such that the treating consulting has a lifelong and an in-depth interest. He or she is much better placed to assist a Judge than another expert who at best may spend only a matter of hours with you. Experienced spinal injuries consultants should be adept at satisfying a Judge that they are competent enough to recognise the duties they owe to their patients in the clinical environment and distinguish the slightly different duties they owe within the legal environment where they assist the Judge on matters within their areas of expertise and experience.

In addition to the spinal injuries consultant there may well be need to instruct other experts in medical disciplines, for example:-

- Neuroradiologists.
- Urologists.
- Gynaecological and reproductive medicine.

- Psychologists.

Usually it will be necessary to instruct experts who can assist with:-

- Care and case management.
- Occupational therapy.
- Assistive technology.
- Physiotherapy.

It is often necessary to secure expert witness input on:-

- Accommodation.
- Household assistive technology.
- Employment.
- Financial advice.

Wherever possible we seek to ensure that the expert meets with you at your home. We try to ensure a similar arrangement where the Defendant's experts are concerned. Sometimes an expert might be able to report on "a desktop basis". That means to say that it will not be necessary to see you and their report can be prepared on the basis of the various records and documents we can pass to them. At other times it may be necessary to bring several experts together and you may be asked to participate in that sort of meeting particularly towards the end of a case with a trial approaching.

Experts prepare their reports expecting them to be considered as drafts initially. Respecting that ultimately it is the expert's expertise and reputation that a Judge is interested in, there is often some discussion in terms of how the final report is presented. Typically experts' reports are not disclosed until later on in a claim unless there is a significant advantage to be gained by doing so earlier. It is also possible that several of the experts will need to prepare preliminary reports that need to be updated at a later date in a supplemental report. For example, proceedings cannot be issued without medical evidence and in some circumstances all that is required is a relatively brief observation on your condition and prognosis. But a spinal injuries consultant who we would want to help us with matters such as life expectancy and longer term needs will rarely be prepared to provide a final prognosis until 2 years post injury.

Experts operating in the field of spinal injuries claims litigation are relatively few in number and do need, as part of the claims process, to discuss and agree with the opponent's expert what can be agreed for the purposes of the litigation and what remains in dispute. As a trial approaches it is important to gather many of the experts in one room with Leading Counsel in order that we can take a robust view of the Defendant's expert and other evidence and the strengths and weaknesses of our own evidence.

Experts' fees can obviously mount up and it is important to remember that those fees remain payable whether your case is successful or not. If we are able to secure an interim payment we will look to discharge fees as the case progresses using your interim payment. In other cases and where there is no interim payment we proceed on the basis that you will have legal expenses insurance which will meet any disbursement we pay out on your behalf in the event that the case was unsuccessful. Where the case is successful we will of course look to recover as much of the experts' fees incurred as is possible. Occasionally it is necessary to obtain expert evidence that we might choose not to rely on and in those

circumstances it would not be realistic to expect the opponent to pay for that report. As always we would keep you informed of these issues as they arise in your case.

If you would like to read more about **expert witnesses** please do not hesitate to contact us.

You may also like to read our factsheets on **Liability, Quantum, Legal Expenses Insurance, Clinical Negligence Claims, Evidence and Life Expectancy**.

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