

The Other Side

Defendants

In every legal action, there are two sides. When you have suffered an injury the person who has caused this will be the Defendant. As the person who starts the civil proceedings you will be described as the Claimant. In a civil case both sides will present their arguments. These will be an amalgamation of witness statements, expert evidence and Schedule of Loss.

Where a Defendant is not initially known, your solicitor will do everything possible to identify them. This may involve speaking with the police, ambulance service or other witnesses. Where the Defendant cannot be identified or is uninsured in road traffic accidents this will not necessarily preclude a claim since the government has set up an insurer of last resort which is known as the Motor Insurers Bureau to compensate victims of uninsured or untraced drivers. There can be multiple Defendants in some cases, particularly in Clinical Negligence claims.

Once a case is under way the burden of proof will be on the Claimant. It is therefore necessary for you and your solicitors to be able to show that on the balance of probabilities the Defendant was liable for your injury. In general terms, the burden of proof might be described as the burden of proving to the court that there is a case for the Defendant to answer at trial. It would be necessary to prove that the Defendant had a duty of care to the Claimant, that this duty of care has been breached and that the breach has caused harm. For example, a driver owes other road users the duty of driving with reasonable care and skill. If the driver negligently has an accident this duty will be breached. If injuries have been sustained due to this accident then the breach has caused the harm. These elements must be established in order for the claim to be successful.

A Defendant may assert that the Claimant's own negligence contributed to the harm such as not wearing a seatbelt or driving too fast. In this instance, the Defendant will have the burden of proving the Claimant's contributory negligence. Where Contributory negligence is found, damages will be still be awarded but at a reduced rate.

Both parties will adduce their own evidence in respect of liability and quantum (the value of the claim). It may be necessary for you to attend appointments with the Defendant's experts prior to negotiations or trial. There will be an agreed date of exchange to ensure that both parties have the best overall picture of the case possible.

Throughout a case the Claimant will not correspond with the Defendant directly. All correspondence will take place between solicitors.

If you are bringing a clinical negligence claim the Letter of Claim will be sent to the NHS Trust, GP or individual doctor if your treatment was provided privately. They will forward a copy of the letter to their insurer or in the case of an NHS Trust we will send a copy to the NHS Litigation Authority (NHSLA). The GP, Trust or doctor may be aware of the claim if records have been requested because we have to advise if a claim is contemplated. In addition, early notification letters are now sent out providing an overview of the allegations to enable the defendant to begin their investigations in the hope that it will not delay their response to the more formalised allegations which will be contained within the Letter of Claim.

After the Defendant is made aware of the claim, Defendant Solicitor's will be instructed. At this stage the solicitors will try to work together as much as possible in order for the case to progress as quickly and smoothly as possible. It is important to remember however that with a number of parties, progress may take time. Your solicitor will keep you up-to-date with any progress and discuss all decisions in detail throughout.

If you would like to read more about any of the things discussed please do not hesitate to [contact us](#).

You may also like to read other notes we have made available via our website including **Role of Barristers, Expert Evidence, Costs** and **Colleagues in other teams**.

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