

# Brethertons BIG FAQs Series

## Liability

All life changing injury cases have two distinct aspects that need to be established on the evidence the Claimant may need to put before a Trial Judge. Those aspects are Liability and Quantum. For the claim to be successful, Liability will first need to be established. The question of whether compensation should be paid (liability) precedes the question as to how much compensation should be paid (quantum).

### Who is liable in a compensation claim?

The person or legal entity that the Claimant seeks to establish is liable (to pay compensation) in a personal injury claim is the opponent. The opponent against whom the claim is made is more commonly known as the Defendant. If the Claimant can establish on the evidence that the Defendant owed the Claimant a duty of care which was breached by something the Defendant (or their employees or agents) did or did not do; and that the breach of duty caused the Claimant to incur loss; the Defendant will be found to be liable to the Claimant and ordered to compensate the Claimant in respect of the losses caused.

### What is Liability?

In the context of life changing injuries litigation, Liability is essentially the Court imposed obligation on a Defendant to claim to compensate the Claimant in respect of the losses and damage caused to the Claimant by the party found to be liable as result of their breach of a duty of care owed to the Claimant and by which loss was caused to the Claimant.

### Why do Defendants deny Liability?

Defendants who consider they did not owe a duty of care to the Claimant at the time the Claimant was injured, or that they discharged their duty sufficiently; and or that the alleged breach did not cause the Claimant to suffer any loss (perhaps because the extent of the loss is disputed or where it is asserted the loss was occasioned by some other cause) are of course entitled to meet the allegations made against them and defend the claim.

In life changing injuries cases the amount of compensation in issue will often be so significant as to lead the Defendant (and their insurers and legal advisors) to think very carefully about whether they are liable and the extent of any liability. Most life changing injuries cases tend to be robustly defended. Even in cases that appear more straight forward on the facts (and which result in early admissions of liability) the Defendant will typically leave no stone unturned in exploring whether it might be possible to defeat the claim against them such is the amount of compensation likely to be in issue.

### Where does Liability fit into a case?

Before engaging in the amount of compensation to be paid, the question of whether compensation should be paid (Liability) must be addressed first. To incur time and cost in proving the extent of the loss without first establishing liability will expose the Claimant to criticism by the Defendant and the Court and any costs incurred in doing so is unlikely to be recovered.

Your solicitor will work to secure the evidence that will prove the following to establish a Defendant's Liability:

- That a duty of care existed between the parties involved. A duty of care expresses the acknowledged responsibility or responsibilities that people have towards each other in most facets of day-to-day life.

- That a breach occurred in this duty of care. That the Defendant did or failed to do something that was reasonably expected of them in connection with their relationship with the Claimant at the time of the injury.
- That the breach of duty identified caused what then happened to the person claiming compensation.
- The extent of the loss caused by the Defendant's breach or breaches of the duty of care. This aspect goes to Quantum in the main although it is common for Defendant's to take issue with exactly what any alleged breach caused on the basis that some of what the Claimant endured might have arisen irrespective of anything the Defendant did or did not do.

Liability makes up the first three points, and most of our work will be in proving there was a breach which caused a loss. To do this, medical and other records will be reviewed, expert input will be sought, witness statements will be prepared, and discussions between the parties will take place to narrow issues in dispute.

### When is Liability investigated?

Liability will be one of the first things your solicitor tries to establish and so it will be important to investigate liability from the very outset. It can take time to establish and or reach an admission. It is common for cases to settle without an admission of liability where the risk of continuing to test the point before a Trial Judge is too great for one or both parties.

It will be the aim of your solicitor to obtain an admission as swiftly as possible and then move on to quantifying your case. When an admission of liability or willingness to negotiate a settlement cannot be obtained it may be necessary to initiate Court proceedings in your case. The case might then proceed until Liability is resolved at a preliminary issue trial (where Liability is the preliminary issue).

### How does an admission of Liability affect my case?

An admission of liability will allow attention to turn to how much compensation should be paid in respect of the injury caused. The Quantum aspects of a life changing injuries compensation claim are themselves complex and demanding but it is helpful to focus on how much compensation should be paid rather than on whether compensation should be paid as soon as possible.

Perhaps more importantly, an admission of liability opens the possibility of securing often much needed and substantial interim payments on account of damages which can help the injured person and their family with addressing medical, care and case management, therapies, equipment, technology, and accommodation needs much sooner than they otherwise might have been able to where of course they would otherwise be depending on using savings, State support or even charity to meet those needs.

A denial of liability is not unusual in these cases – or necessarily fatal to the claim. It will almost certainly however delay the conclusion of the claim and increase the cost that will need to be incurred in pursuing it.

If you would like any more information or have any questions, please contact:

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