

THE TRIAL

If it proves impossible to settle the claim, it will be necessary for it to be decided by a Judge at the end of a trial in a public court room. There will not be a jury.

Clinical negligence trials are often complex and can last several days or sometimes even weeks. Therefore, before proceeding to a trial we must be as certain as possible that the potential benefits to you are likely to exceed the potential risks. Consequently if you are in receipt of public funding it will be necessary for us to send a report to the Legal Services Commission and obtain their approval to the case proceeding to a trial. Provided that we are of the view that you have reasonable prospects of success and that the likely damages, if successful, are not disproportionate to the likely costs if your claim is not successful, then approval will probably be given.

Shortly before the date that is fixed for the trial to commence we will arrange for you to meet with the barrister who is to represent you at the trial together with all of the experts.

At the trial, the barrister will present your claim to the Judge using the evidence of the various witnesses and medical and other experts who have provided statements and reports. Obviously the Defendants will also have the opportunity of presenting their case and each side will be able to cross examine the witnesses who are called by their opponent.

All persons who have signed witness statements or provided expert reports will be required to attend the trial unless their evidence is not disputed by the Defendants.

It will usually be necessary for you to give evidence at the trial in accordance with the statement that will already have been signed by you and provided to the Defendants. You will be cross examined on this evidence by the Defendants' barrister.

We will of course advise you shortly beforehand as to what to expect and how to handle yourself when giving evidence. You may understandably worry that giving evidence in court is going to be a very nerve racking experience, but if you remember the following advice when giving your evidence you will not have any problems.

You should familiarise yourself with your witness statement, a copy of which will be provided to you by us well before your case gets to court. You should go through it thoroughly on the evening before the trial is due to start.

Dress conservatively when you attend court and take the proceedings seriously. Treat the court and everybody in it with respect. However strange the clothes worn in the court may seem to you and however odd the language used by the barristers and the Judge, you must be respectful at all times, otherwise you will risk antagonising the judge.

Act naturally and be polite at all times.

Take the Oath seriously and always tell the truth.

Direct all of your answers to the judge and not to the barristers.

Be sure that you understand each question before you try to answer it. Do not be intimidated by the opposing barrister if a question is confusing. If you do not understand a question that is put to you, ask the barrister to repeat it.

Listen to each question and answer only that question.

If you are asked a question about something that is in your witness statement or in another document that you need to refer to before answering, ask the Judge for permission to do so.

If you are not entirely clear about your answer it is perfectly acceptable to say "so far as I recall" or "to the best of my memory" or something similar.

Do not guess at an answer. If you do not know the answer to a question then you should say so and go no further.



GADSBY WICKS
SOLICITORS

Make sure to complete each answer that you give. You may find that the Defendants' barrister cuts you off before you have finished. If that happens you should simply wait until he or she has finished and then say that you wish to complete your answer. Then complete it. Barristers will often try to prevent a witness from completing an answer if they think that what is about to be said will damage their client's case.

When you have finished answering a specific question stop and say no more.

Correct any mistakes immediately. If you realise you have made a mistake tell the Judge straight away. The longer you wait, the worse it gets.

Do not volunteer information that you have not been asked to give. If you go on talking outside the scope of the question put to you, you may unnecessarily reveal weaknesses in your case.

Never refuse to answer any question.

Do not respond to silence. It may be uncomfortable if silence continues for more than a few seconds but do not be tempted to fill it. Just wait until another question is asked. Some barristers will wait deliberately in the hope that the witness will say more than they need to.

If you are shown a document, read it carefully before agreeing to talk about it. Do not worry if this takes time.

Whatever happens do not get angry. If you do, you will lose concentration and will be playing right into the Defendants' barristers' hands.

Request a break if you feel that you need one. Giving evidence is not intended to be an endurance contest and you should be comfortable so that you can concentrate. If you wish to sit down or if you want a glass of water you should ask the Judge and he or she will direct an usher to provide one for you.

You will not be able to speak to your solicitor or barrister once you have started giving evidence until your evidence has been completed. If there is an adjournment for lunch or at the end of the day and you have not completed giving evidence you will have to observe this rule and therefore you will not be able to talk to your solicitor, barrister or any one else (even your family and friends) about your evidence. The reason for this is that there might otherwise be a suspicion that you are being coached in your evidence.

You must assume that the Defendants and their lawyers will be watching you and that if you are seen speaking to other people involved with the case whilst you are still giving evidence then they will not hesitate to complain to the Judge. This could have seriously damaging consequences for your claim. However, these restrictions only apply from the moment you first go into the witness box and will no longer apply after you have completed your evidence.