

Stress points in catastrophic INJURY LITIGATION

Litigation is stressful for claimants. Professionals working with people going through the court process should understand the stress points so that they can support the claimant as these arise.



Ben Townsend

Part of the role of a solicitor conducting litigation on behalf of an injured person is to minimise the stress they experience. The solicitor needs to progress the case continually and have a clear strategy to bring it to a conclusion.

Many brain injury survivors will be unable to make decisions on their case personally because they lack capacity. While some will welcome this, others will find the lack of control frustrating.

EARLY STAGES OF LITIGATION

The injured person should be kept well informed about the case and where it is going. If they have capacity to make decisions on the case, they should have the information they need to make those decisions. They need to be reassured that the litigation is being conducted in accordance with their needs and priorities, rather than what is convenient for their lawyer or the case.

There will be several occasions when the injured person has to recount what happened to them to the extent they can remember it. Some claimants will not remember the accident, which can avoid the stress of flashbacks and having to relive what happened. For others, a lack of memories can be frustrating. For claimants who can remember the accident in which they were injured, it can be traumatic having to recount what happened to strangers during the case.

LETTER OF CLAIM

At a relatively early stage of the case, the claimant's solicitor will send a letter of claim to the defendant and their insurer, explaining what is alleged to have happened and why it was the defendant's fault. The defendant should respond to the letter of claim within three months of acknowledging it.

The defendant's response can be a source of stress for the claimant, particularly if the defendant fails to provide a proper response and states that their investigations haven't concluded. Potentially even worse for the claimant, the defendant may allege that the accident was partially or even entirely the claimant's fault. This is an understandable point of stress for the claimant.

CRIMINAL PROCESS

If there is a criminal process running alongside the claim, this can be a major source of stress. That process will be entirely outside the claimant's control but may be central to the claimant feeling that there has been proper recognition of the wrong done to them. A decision not to prosecute or a failed prosecution can leave the claimant consumed by feelings that their suffering has not been acknowledged.

Any criminal trial will carry similar stresses to those in a civil trial, as set out below.

COURT PROCEEDINGS

Cases become more serious once court proceedings are commenced (which must generally be within three years of the accident date). There are also court deadlines that have to be met. These should be primarily the concern of the instructed lawyer, but the claimant will be involved in evidential decisions required to meet those deadlines. This can be stressful for the claimant as the solicitor may need documents to be provided and reviewed, and decisions made at relatively short notice.

After the court papers have been sent to the defendant, it will explain its case in a document called the defence. It may be difficult for the claimant to read in a formal document why the defendant is alleging that the claimant was partly or entirely at fault.

Some claimants will never waiver in their belief that the case is going to succeed. Other claimants will be worried by the defendant's denials and may need regular reassurance about the strength of their case and the likelihood of it succeeding.

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WITNESS EVIDENCE

As part of the court timetable, the parties will need to exchange witness statements. The claimant may need to provide a witness statement covering the circumstances of the accident and the effect the catastrophic injuries have had on them. For some people, reliving the accident can be very difficult. It can be daunting to see laid out in one place the vast extent to which their lives have changed. For others, it can be cathartic to have the opportunity to set out for people how much their injuries have affected them.

The claimant will also hear accounts from witnesses close to them, setting out how they perceive that the claimant has been changed by the accident. This may be tough for a brain injury survivor who doesn't have good insight into the extent of their injuries and the effect their symptoms have on other people.

The claimant will need to see the other side's witness statements. Again, if liability remains in issue, then it may be hard for the claimant to read potentially radically different accounts of what happened.

EXPERT EVIDENCE

The injured person will need to undergo a significant number of medico-legal expert assessments during the case. The more serious the claimant's injuries are, the more experts they are going to see. The experts on the claimant's side may be more sympathetic towards the claimant, but they're still strangers to whom the claimant has to describe intimate and potentially embarrassing symptoms. Their stress may be increased when reading the resulting reports, knowing they are going to be sent to yet more strangers working on behalf of the defendant.

The injured person will need to approve the expert evidence in relation to both liability and the value of the claim before it is released to the other side. This can be difficult for people and somewhat daunting. Once that evidence is exchanged with the other side, it may

be stressful to see experts for the defendant potentially downplaying the claimant's symptoms.

SETTLEMENT

Settlement before trial can be stressful for the claimant. However, it is generally better for both sides to settle before trial. While that means the stress of negotiation is not spread out over a long period, the day of a settlement meeting can be stressful as the claimant knows they are making decisions that will affect them for the rest of their lives. If the claimant feels they have secured a good settlement, it will make it all worthwhile.

TRIAL

Trials, although rare, are always stressful for claimants. This is partly down to the extremely formal nature of the trial, which will almost certainly be alien to the injured person and their families. This is partly because there is so much riding on the trial and its outcome, which will not be certain.

Again, talking in public about painful memories and intimate details of injuries can be extremely stressful for claimants. Hearing the defendant's witnesses and experts give evidence can also be difficult.

Unfortunately, in many cases, the judge will not provide their judgment immediately at the end of the trial, and it may be some weeks until it is received. That wait can be difficult, but hopefully, the stress of the process will at that point prove to have been worthwhile.

Hopefully, this article gives a flavour of the difficulties and stresses that affect seriously injured claimants. It is important that all of us working with such claimants bear in mind the stress points and plan to minimise them.

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