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## Preparing for and attending trial

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This factsheet provides information on what you can expect if your claim has to be referred to court for a judge to decide.

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### Will I have to go to court?

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It is important to note that not every personal injury claim is settled in court with a judge deciding whose fault the accident was and what compensation is payable. Personal injury claims are often settled before court – either through negotiation between the lawyer and the defendant’s lawyers, or through mediation, with the parties meeting to discuss the claim and agree an outcome. However, in cases where the parties cannot agree, either who was responsible for the accident or what the value of the claim is, or both, the claim will usually be referred to a court for a judge to decide.

If your claim has to be decided at a court trial, your lawyer will tell you this and inform you of the date of the trial and whether you need to attend in person. If the lawyer tells you that you need to attend it is important that you do so. If you fail to attend court for a trial, it can have serious consequences for your claim.

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### If I do need to go to court, what happens and what do I need to do?

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Your lawyer should give you help and advice on what you need to do both before the date of the trial and whilst at court on the day, but if you are unsure you should ask your lawyers for advice. Lawyers know that trials are stressful for their clients, and if you are worried about what will happen and what is expected it is worthwhile raising this with your lawyers. If you are nervous and do not know what to expect, you can arrange to go to another trial at court beforehand, as they are open to the public, to understand what happens. This can be arranged through your local county court.

Your lawyer may choose to instruct a barrister to represent you at the court hearing. This may be for one of two reasons – either that the lawyer does not have sufficient rights of audience to represent a claimant at court, or they may decide that a barrister’s expertise and experience would be beneficial in court on the day. If your lawyer is intending to instruct a barrister, they should advise you that they are doing so and provide you details of the barrister so you are aware of who they are before you go to court.

If you need any reasonable adjustments or help at the trial due to a disability, let your lawyers know so they can arrange this with the court.

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### On the day of the hearing – what happens

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Make sure you arrive in plenty of time before the trial is due to start. If you are travelling to the court by vehicle, make sure you know where you can park, and bear in mind that it can be very busy in the area around the court and it may not be possible to park close to the court. If you are running late, you will have to let either the court or your lawyers know.

If you are late for your trial, the judge could either defer your claim for another time or even dismiss it. If the judge does not hear the claim on the day, they could make you pay costs, such as the defendant's expenses.

Although your trial will be a formal hearing, it will take place in a normal room, and the judge won't wear a wig or gown. The defendant will also normally attend together with their legal representatives if applicable, and you will sit separately before the judge. Hearings such as this are open to the public so there may be other people there to watch it.

The judge will have read all the evidence beforehand, but they may still ask your lawyers and those of the defendant, if applicable, to summarise the case and also ask you both questions. If you are asked questions, you must make sure that you answer what is being asked as clearly as you can.

Having heard the evidence, the judge will then give their decision or 'judgment' at the end of the hearing and briefly explain the reasons. They will explain whose fault they decide the accident was, and if it was the other party's fault what they need to pay you. If either side doesn't attend, the court will send a copy of the judge's reasons to each side. If you are unhappy with the judge's decision it may be possible to appeal it, but you will have to speak to your lawyers about this and they will provide advice on whether an appeal is possible and what the prospects are of bringing a successful appeal.

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### Other things to consider

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The courts see a trial very much as a last resort and are keen for parties to negotiate settlement before a court hearing is needed. The courts therefore encourage mediation, negotiation and the parties making formal offers to settle before the matter gets to trial.

Either party has the option to make a formal offer prior to trial. These are referred to as "Part 36" offers as the rules around making formal offers are set out in Part 36 of the Civil Procedure Rules, which are the rules which set out how claims have to be progressed.

A Part 36 offer is a formal offer which is usually time restricted – that is, the other party only have a short time to accept the offer before it is withdrawn, but if a Part 36 offer has been offered and rejected, this can have serious consequences for the party who rejects it if the claim then goes to court. If the judge decides that the offer was reasonable and does not award a higher amount in damages, they can then make a costs award against the party that rejected the offer, making them pay the other parties' costs and expenses. If the defendant makes a Part 36 offer in your claim, we would expect your lawyer to tell you and provide advice on whether they think that the offer is reasonable and whether it should therefore be accepted.

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## How to contact us if you would like more information

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**If you need information in another language, large print, Braille or on audio CD then please let us know when contacting us.**