

Personal injury

Liability for a road traffic accident

Parties involved in an accident are expected to try to reach agreement about their claim without using the court process wherever possible. The court rules require the parties for example to tell each other what they say happened at the time of the accident and disclose any evidence to support their case to try to facilitate settlement. A 'cards on the table' approach is expected from both parties.

Initial stages of the claim

When sending our 'letter of claim' to the defendant's insurance company we will give them a brief description of the accident circumstances following our discussions with you. The insurers then have 21 days to acknowledge that letter and a further three months to investigate the accident circumstances before making their decision about liability. Sometimes insurance companies take less than three months to reach a decision but where the circumstances are complicated or evidence is difficult to obtain, they may ask for more time.

When liability is accepted in full

It is then a matter of obtaining the appropriate medical evidence and proof of financial losses to enable the parties to agree the amount of compensation payable.

Where liability is disputed

The defendant's insurance company may deny the defendant was liable for the accident at all, or they may accept partial liability. They may blame another party or they may blame you. Where they accept some responsibility but claim that you were also partly to blame for the accident, this is known as alleging contributory negligence.

For example

A driver who is turning right from a main road into a minor road is expected to ensure that it is safe to do so by checking that there is no oncoming traffic and also that nothing is approaching him from behind by checking his rear view and side mirrors.

A driver who is overtaking another vehicle on the main road is also expected to ensure that it is safe to do so and should not overtake where there is a minor road or turning. He should also make sure that the vehicle he is overtaking is not indicating to make a turn to the right.

In this type of situation it is likely that where a collision occurs, both parties may be held partly to blame for the accident.

Assessing the evidence

Of course you, the defendant and any witnesses were actually there when the accident happened. We were not and neither was the defendant's insurance company. Crucially, if your case is decided by a judge in court, the judge was not there either. Therefore, we have to assess what evidence will be available to produce to a judge and consider how that evidence might support either party's version of events. This would include your own evidence, evidence of damage to the vehicles, photographs/plans of the accident scene, other witness's evidence and evidence contained in the police accident report. We have to review the evidence objectively. Even though we have every confidence that you were not to blame for the accident, we have to consider whether or not we will be able to prove this in a court of law.

The burden of proof

This is on you as the claimant. In court *you* will be required to satisfy a judge that it is more likely that the accident happened as you described it than as described by the defendant. It is not up to the defendant to disprove what you say but for you to produce evidence to prove it.

Settlement proposals

Based on our assessment of the evidence we may sometimes suggest that we make proposals to the defendant's insurance company to settle your claim at less than 100%, taking into consideration that we may not have enough evidence to prove in a court that the defendant was 100% to blame for the accident.

Apportioned liability: where both parties are held partly liable for an accident, this will reduce the amount of compensation that you are able to recover. For example, if it is accepted that you were 25% to blame for an accident you would be able to recover 75% of the value of all parts of your claim. Therefore, your claim would still be well worth pursuing.

What happens if we cannot reach agreement?

If we feel that we have a strong enough case to recover more than the defendant's insurers are prepared to offer in relation to liability, we may recommend that we issue court proceedings. All the evidence would then be presented to a judge in court who will assess it and make a decision as to who was responsible for the accident. He may find that one party or the other was 100% liable, or he may apportion liability between the parties. We will give you more information about the court process if necessary at the appropriate time.

Contact

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