



CLINICAL NEGLIGENCE CLAIMS

How to make a complaint or bring a clinical negligence claim if you are unhappy with your medical treatment from a GP, hospital or other medical practitioner.

EXEMPTIONS AND RELIEFS

If your treatment was provided on the NHS, you can make a formal complaint following the NHS complaints procedure, subject to certain time limits.

This action is appropriate if you want an explanation of why the treatment was carried out in the way that it was and, if applicable, what went wrong. As a result of pursuing a formal complaint, you may be given an explanation, an apology, if appropriate, and possibly a reassurance that certain procedures have been changed.

HOW DO I MAKE A COMPLAINT?

A complaint should generally be made within 12 months of the event complained about or within 12 months of you realising that you have something to complain about. This time limit can sometimes be extended.

The complaint should be made to:

- the Chief Executive or Complaints Manager of the hospital or Primary Care Trust (PCT) from which you received your treatment or
- a practice manager or the individual who you believe is responsible where neither of the above is available

The matter should then be looked into and you should receive a written response to your complaint.

WHAT IF I AM NOT HAPPY WITH THE OUTCOME OF MY COMPLAINT?

You can ask for your complaint to be reviewed by the Parliamentary and Health Service Ombudsman who will consider both sides of the complaint and report further. The emphasis of investigation is likely to be toward recommending that the NHS body looks at the complaint again in a different way rather than provides a final response.

Complaints about treatment in the private sector must be dealt with under the treating doctor's or hospital's own complaints arrangements unless the treatment was originally commissioned by an NHS body, for instance, under a waiting list scheme. A complaint is often a good way of obtaining further information about your treatment before assessing whether there is a claim to be pursued.

PURSUING A CLAIM FOR CLINICAL NEGLIGENCE

If you are seeking compensation as a result of the treatment you have received, you will need to pursue a civil claim for clinical negligence using a lawyer who specialises in this field.

HOW DO I CHOOSE A LAWYER?

It is important to choose a solicitor who:

- is experienced in clinical negligence work
- is familiar with dealing with the NHS and understands how it works
- fully understands the broad range of issues that arise in such claims
- has access to equally competent experts

When choosing a solicitor, you should also look for relevant credentials:

- there are two specialist approved panels of solicitors, one operated by the charity AvMA and the other by the Law Society; if you are considering a number of solicitors, ask them if they are on these panels
- you should also ask if their firms are accredited by the Association of Personal Injury Lawyers (APIL)
- you can look online in the two main legal directories – Chambers UK and The Legal 500 – to see if they are ranked as leaders in the field of clinical negligence
- you should find a lawyer who will provide some initial advice without charge
- you should be clear as to what costs you may have to pay if you bring a claim
- last but not least, you need to feel confident in and comfortable with your solicitor; pursuing a



claim can be a lengthy, difficult and stressful process for a claimant so it is important that you find your solicitor easy to talk to, approachable and supportive

WHAT DO YOU NEED TO PROVE FOR YOUR CLAIM TO SUCCEED?

For your claim to be successful, it is necessary to establish that:

- the medical practitioner was negligent and
- the negligent treatment has caused damage

You cannot claim for problems due to any pre-existing condition or something that would have occurred even if the treatment had not been negligent.

The test for assessing if there has been negligence is whether or not the standard of care received fell below the acceptable standard of a responsible body of medical opinion in the relevant field.

A claim for clinical negligence could be defended if a responsible body of medical practitioners in the relevant field would have provided the same treatment or where the outcome is a recognised complication or risk of the treatment.

WHAT HAPPENS WHEN INVESTIGATING A CLAIM?

The first few steps in investigating a claim are usually:

- take a detailed history of the events and decide if there are issues to be investigated
- set up funding
- obtain and review a full set of medical records
- obtain independent expert evidence on the issues of the standard of care provided and whether any identified negligence has caused damage
- make a formal approach to the defendant practitioner or hospital and their defence organisation and set out the basis of the claim against them
- the defendant(s) will then carry out their own investigations and respond to say whether or not they admit negligence and/or causation of your injury
- a review is then made at that stage to agree the way forward

Often cases are settled by way of negotiation without ever needing to issue court proceedings. However, if the claim is disputed and the experts remain supportive, then court proceedings will be issued and the case proceeds through a court timetable towards a trial to determine a claim.

It is worth knowing that very few cases get as far as trial as most are resolved beforehand.

HOW WILL I BE COMPENSATED IF I WIN MY CLAIM?

There are two forms of compensation:

- General damages can be claimed to reflect the pain, suffering and loss of amenity consequent upon the negligent treatment ie for the injury sustained.
- Special damages can be claimed for out-of-pocket expenses incurred as a result of the negligent treatment. These include loss of earnings, the costs of care, travel expenses and medical expenses. Special damages cover the financial losses sustained already and also any likely future financial losses.

One of the financial benefits of bringing a claim is the funding you could receive to help with further treatment and rehabilitation as part of your recovery. Interim funding may also be obtained to help with this while your case is ongoing.

HOW LONG HAVE I GOT TO MAKE A CLAIM?

Any court proceedings for clinical negligence claims should be issued within three years of the negligent act (treatment) or the date you were aware that you had suffered a significant injury as a result of the treatment, if this is later. For children, the three year limitation period does not start to run until their 18th birthday. For someone who lacks the capacity to litigate (eg due to a brain injury), the three year period does not start to run unless and until they recover capacity.



FUNDING CLINICAL NEGLIGENCE CLAIMS

Community Legal Services Public Funding (the successor to Legal Aid) is available to investigate and pursue such claims but only for cases involving children sustaining injury at birth or shortly afterwards.

Some people have legal expense insurance, for example as part of their household insurance policy, from membership of a union or associated with a credit card, which may be available to investigate and pursue such a claim subject to the insurer's approval.

Alternatively you may be able to pursue a clinical negligence claim on a conditional fee basis (no win no fee). This is where fees are only charged if you are successful in your claim and then most of those costs are recovered from the other side in addition to your damages. You will usually have an insurance policy in place to protect you against any claim for costs from the other side and arrangements with your solicitors to fund things such as court fees and expert fees for you so that you do not have to pay out anything as the case proceeds. You will not pay anything if you do not win your case but should expect to pay some cost out of your damages if you win.

FIND OUT MORE

For further information or to discuss your potential claim with an experienced solicitor, please contact:

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