



CLINICAL NEGLIGENCE CLAIMS AND COMPLAINTS

How to make a complaint or bring a clinical negligence claim if you are unhappy with your medical treatment.

NHS COMPLAINTS PROCEDURE

If your treatment was provided by 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 and a direct dialogue with the provider. As a result of pursuing a formal complaint, you may be given an explanation, an apology and /or reassurance that certain procedures have been changed. A complaint is often a good way of obtaining further information about your treatment and the concerns you have before assessing whether there is a claim to be pursued. However, any admissions of fault do not mean an admission of liability for the purposes of a claim.

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 Clinical Commissioning Group (CCG) 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. Sometimes a meeting will be offered or an Incident Investigation instigated.

COMPLAINTS ABOUT PRIVATE MEDICAL CARE

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 and there is no fixed complaints procedure.

PURSUING A CLINICAL NEGLIGENCE CLAIM

If you are seeking compensation (damages) as a result of the treatment you have received, you will need to instruct a solicitor to pursue a civil claim for clinical negligence.

HOW DO I CHOOSE A LAWYER?

It is important to choose a solicitor who:

- is experienced in clinical negligence work including claims with similar facts and medical issues to your case
- is familiar with dealing with the NHS and private medical care and understands how each works
- fully understands the broad range of issues that arise in such claims – both the legal issues and the medical issues relevant to your case.

In addition you:

- should find a lawyer who will provide some initial advice without charge
- should be clear as to what costs you may have to pay if you bring a claim and when
- last but not least, 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.

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 (Action against Medical Accidents) and the other by the Law Society – both of which have stringent



requirements of expertise to get on and stay on such panels

- you should also ask if the solicitor / their firm 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 and find out what feedback they have
- you can also look on the firm’s website to review the solicitor’s experience and recommendations from clients and directories such as *Chambers UK* and *The Legal 500*.

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

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

- one or more of the medical practitioners involved in your care was negligent **and**
- the negligent treatment has caused damage.

The test for assessing if there has been negligence is whether or not the standard of care received fell below the standard of a responsible body of medical opinion in the relevant field ie whether no responsible body of practitioners would have acted in the same way in the same circumstances.

In terms of assessing the damage caused and to be compensated, 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 – such as a recognised complication from treatment that can occur without any errors. You have to establish that the negligent treatment made your condition and/or outcome materially worse.

WHAT HAPPENS WHEN INVESTIGATING A CLAIM?

The first few steps in investigating a claim are usually:

- take a detailed history of the events
- 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(s) 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 elements of compensation:

- ‘General damages’ to reflect the pain, suffering and loss of amenity consequent upon the negligent treatment ie for the injury sustained. The value of this aspect of the claim is assessed mainly on evidence obtained from independent medical experts about the nature and impact of your injuries and your future prognosis.
- ‘Special damages’ are claimed for financial losses incurred because of the negligence – such as loss of earnings, the cost of care, travel expenses and medical expenses. Special damages cover past financial losses sustained already **and** likely future financial losses – part of our role is to investigate any future losses which you are likely to sustain so that you can be compensated for them. Expert evidence is often required for aspects of this – for example future care and treatment needs, pension losses, accommodation needs or prosthetics (for an amputee).

Often once liability has been resolved we can agree an interim payment of damages from the other side to fund rehabilitation, medical treatment or care or to cover loss of earnings whilst the case is ongoing.

The aim of compensation is to put you back in the position that you would have been in but for the negligence, insofar as money can achieve that. Valuing the claim therefore involves very thorough consideration of your pre incident life and what you need in place to try and regain as much of that as possible. Every claim is tailored to the individual claimant.



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 potentially negligent 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 expenses 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 do win.

HOW LONG WILL IT TAKE?

The two main factors that affect how long a claim will take to conclude are whether liability is disputed (and needs to be resolved) and when medical experts can give a final prognosis for the claimant's injuries – enabling the claim and losses to be assessed. Most cases take between 12-36 months to resolve but big cases involving serious injury can take considerably longer.

EXPERTISE OF THE PENNINGTONS MANCHES COOPER CLINICAL NEGLIGENCE TEAM

Penningtons Manches Cooper has a large and nationally recognised clinical negligence team operating out of all of the firm's UK offices. Many individuals are accredited panel members and recognised as specialists in the legal directories and the team has a wide range of specialist expertise in medical issues and experience of dealing with sensitive, complex and high value cases.

For more details, visit the [clinical negligence](#) section of our website.

FIND OUT MORE

Initial advice is without charge and/or obligation

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

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