

Medical Negligence: What you need to know about making a claim



What is medical, or clinical, negligence?

All healthcare professionals owe a duty of care to the patient. There will be a potential claim for negligence where the healthcare professionals have breached this duty by failing to provide an appropriate standard of treatment, which has caused injury. This is called either medical negligence or clinical negligence.

When might I be able to claim?

You may have a claim in the following situations:

- Delay in diagnosis
- Wrong diagnosis
- Poor surgical treatment
- Poor nursing care
- Delay in treatment
- Prescription errors
- Failure of a medical product or device

What can I do about it?

You can make a complaint regarding the problems you have experienced with your treatment, which should be made within 12 months of the treatment in question. Your complaint will be investigated and you should receive a response to the concerns raised regarding your treatment in your complaint. You may also receive an apology and/or an assurance that changes have been made to minimize the risk of the same problem occurring in the future.

You may also be offered the opportunity of a meeting to discuss your complaint, possibly with the medical staff concerned in your treatment.

You can obtain assistance with making a complaint about any aspect of NHS treatment from your local

independent health complaints advocate service.

If you are not satisfied with the response you receive, you can contact the Parliamentary and Health Service Ombudsman and ask them to investigate your complaint.

A complaint will not generally result in an award of compensation. To recover compensation, you will need to pursue a claim for negligence.

If you pursue a claim for negligence you can seek compensation for the injuries and losses suffered which were a direct result of the negligent treatment you received. These can include:

- Pain and suffering
- Ongoing treatment
- If you cannot carry out certain activities or hobbies
- Loss of earnings
- The cost of any extra care or equipment you may require
- The cost of adapting your home
- Psychiatric or psychological injury

Who can bring a claim?

You can bring a claim on your own behalf. The parent of a child under the age of 18 can bring a claim on behalf of the child. Where an adult is unable to act for themselves due to a disability, they will need a legal representative to act for them.

How do we prove that we have grounds for a claim?

Medical negligence claims are often complex and difficult to prove. For your claim to be successful you must prove:

- Negligence – that there was a breach of the duty of care owed to you by the health professional concerned ie that the standard of care you received fell below the standard to be expected of a reasonably competent medical practitioner in the relevant field at that time.
- Causation – that the breach of duty or negligence of the clinician directly caused you injury.

What next?

At the start of this process we will obtain your medical records and seek advice from an independent medical expert on the standard of care you received. The expert will prepare this advice based on a review of your medical records and your account of your treatment.

Following a review of your records and obtaining advice from an expert, we will be able to give you an indication of the strength of your case, the level of compensation that you might expect (if successful) and discuss the best way to proceed.

Once a decision has been made to proceed, we will write a letter of claim to the Trust or health professional concerned, who will have 4 months to investigate your claim and provide a response indicating whether or not they admit negligence and causation.

Is it likely to end up in court?

Medical negligence claims rarely end up in court, with the majority settling before this point. However, a claim should not be entered into lightly or under the misapprehension that you will not go to court. Bringing a claim is a serious, distressing and potentially costly exercise that requires expert advice and realistic consideration.

How long do I have to bring a claim?

You must start your claim proceedings within three years of the date that the incident occurred, or of the date you first realized that you may have suffered a significant injury as a result of failings in your medical care.

In the case of children the three year time limit does not apply until their 18th birthday and they can process a claim up to their 21st birthday, irrespective of the date that incident occurred or you realized they were injured.

If the case involves an individual who is not managing their own affairs (for example, because of mental incapacity) then the three-year time limit does not start to run unless and until their disability resolves.

How would I fund my claim?

There are a number of ways to fund you claim and we will be able to discuss the best options with you, when we meet. These include:

- **Conditional Fee Agreements** – Under a Conditional Fee Agreement you will not be liable to pay your solicitors' costs unless you are successful. The exact nature of these will depend on your circumstances and case and may not be offered to everyone.
- **Legal Expenses Insurance** – you may have legal expenses included within insurance policies you may hold. In other cases you can take out special legal expenses insurance to cover your costs.
- **Trade Union Help** – If you are a member of a Trade Union, in some cases, you may qualify for financial assistance in bringing a claim.
- **Private Funding** – Where you pay for everything yourself.

What if I am pursuing a claim on behalf of someone who has already died?

There are a number of claims which can be pursued in relation to the loss of a loved-one. These include:

- **Bereavement damages** - You can claim an award of £12,980 if your spouse, civil partner or child (if under 18) has died after the 1.4.13 (the award will be £11,800 for deaths before that date).

- **Funeral costs;**
- **Loss of dependency** – where you were financially dependent on the deceased you can claim for the financial loss you have suffered as a result of their death.
- **Loss of Services** - where the deceased has provided services around the house, such as DIY, gardening, decorating etc, you will have a potential claim for the loss of these services.

For more information on Medical Negligence please follow the link wards.uk.com/service/medical-negligence.

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