



Medical Negligence Claims Guide



About Us

We are a network of specialist Medical Negligence Lawyers. All our members are considered experts in their field. We only advise in relation to Medical Negligence claims. For that reason, all our members have extensive Medical Negligence Litigation experience. In fact, many of our Lawyers have reputations second to none. Their extensive knowledge coupled with their sympathetic manner make them the perfect Medical Negligence Lawyers for you. Because we only deal with Medical Negligence Claims you can rest assured that your Medical Negligence Claim is in the best possible hands. Medical Negligence claims can be extremely complex and can take many years to reach a conclusion. You will therefore need a Medical Negligence Lawyer that you can rely on.

The Law : The Three Hurdles

There are three 'hurdles', so to speak, which must be overcome before a Medical Negligence Claim is successful.

1 : Duty of Care

The first 'hurdle' is known as 'Duty of Care'. The question to be asked is: Did the alleged negligent party owe you a duty to take reasonable care to avoid any harm to you? If that question can be answered in the affirmative, the first hurdle is overcome. Fortunately, in Medical Negligence Claims, this question is almost redundant; it is well known that all medical professionals owe a duty of care to their patients. Therefore, the issue of duty of care does not usually need to be addressed.

2 : Breach of Duty

The second question to be asked when considering the liability of a medical professional is: did he/she breach their duty of care to you. That is, did the standard of care provided to you fall below a standard to be expected of a reasonably competent medical professional in the same situation. It is a defence to any Medical Negligence Claim that the medical professional acted in a way that would be considered reasonable by a responsible body of medical opinion.



3 : Causation

This issue is probably the most complex in a Medical Negligence Claim. It is also very often the area that a person finds difficult to understand. If it is shown that the medical professional has breached his/her duty of care, that breach must have caused some injury. This injury can either be deterioration in their condition, an adverse outcome, or treatment that they would not have undergone had there been no negligence.

So, you have to prove that but for the medical negligence you would have been in a better position. What is often difficult to understand is the fact that, whilst there may have been a breach of duty, it does not necessarily follow that that has caused any harm; i.e. the patient would have been in the same position even if the medical professional had not breached their duty of care. The aim of compensation for Medical Negligence Claims is to put the victim back into the position they would have been 'but for' the medical negligence. Clearly the victim of a medical accident cannot turn back the clock either physically or psychologically; any compensation awarded in a Medical Negligence Claim is intended to cover the financial losses incurred both in the past and also those that will arise in the future.

If your Medical Negligence Claim is successful, you will also be awarded a sum to compensate you for the injury itself.

Time Limits

You must bring a claim within 3 years of the date of the alleged negligence. Alternatively, you may bring a claim 3 years from the date that you knew or ought to have known that you had a potential claim. This can become complicated and your legal advisor will discuss this further. If the claim is on the behalf of a child, legal proceedings should be brought 3 years after their 18th birthday, i.e. before their 21st birthday.



Funding

There are various ways to fund a Medical Negligence claim. Your legal advisor will discuss the various options with.

Our Panel Members are able to offer any of the following funding options:

Public Funding (Formerly Legal Aid)

Nowadays it is difficult to obtain Public Funding for a Medical Negligence claim. Your legal advisor will assess your eligibility. You must be financially eligible before you can obtain Public Funding. In addition, usually your claim must also be worth in excess of £10,000.00.

Once your financial eligibility has been assessed your claim must also meet a costs benefit test. I.e. the costs of bringing a claim must not substantially outweigh the benefit of bringing the claim.

Conditional Fee Agreements (“No Win No Fee”)

A No Win No Fee Agreement (CFA) may be the best method of funding your claim if you are not eligible for Public Funding. You may be asked by your legal advisor to pay the costs of any disbursements (medical records fees and Experts’ fees). You will not have to pay your legal advisor’s fees unless you act unreasonably. You should discuss with your legal advisors the circumstances in which you may be asked to pay.

No Win No Fee agreements only cover your legal advisor’s costs and not those of the Defendant. Your legal advisor will advise you as to whether an insurance policy (known as ATE insurance) should be taken out to cover the Defendant’s costs should you lose your case.

Private Funding

This is the traditional method of funding a legal claim. Given the extremely high costs of Medical Negligence claims it may not be appropriate. However, your legal advisor may ask you to pay on a private basis in the first instance until the prospects of success are clear.



Defendants

Who the Defendant is in your claim will depend on who has been negligent.

General Practitioners

Where a GP has been negligent, the claim will be directed at the individual GP concerned. The GP will therefore be named as a Defendant and his/her Medical Defence Union will deal with the claim.

NHS Hospital Treatment

Where negligent treatment has been provided by a person employed by an NHS Hospital, the Defendant will be the Trust that is responsible for that Hospital. The claim will be dealt with by the NHS Litigation Authority.

Private Hospital Treatment

Where a Private Consultant is negligent the claim will be directed at the individual Consultant involved. However, if you receive treatment at a private Hospital and it is alleged that the nurses were negligent, the claim will be directed at the Hospital itself. Private Hospitals have insurance against Medical Negligence claims.

Compensation

The amount, and type, of compensation will vary from claim to claim. However, Medical Negligence Claims will usually consist of the following:

Special Damages

Special damages are awarded for any financial losses that have arisen as a result of the negligence. Special damages are split into past and future losses.

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Special Damages Continued...

Past losses will relate to any out of pocket expenses that have already arisen such as:

- **Travel**
- **Loss Of Earnings**
- **Prescription Charges**

Future losses will cover losses that will reasonably be incurred in the future. Future losses will normally be calculated based on expert evidence. The evidence will assess the required equipment, prescriptions, treatment (amongst other things) that are likely to be required in the future and will also calculate their cost.

Depending on the size of the claim, future losses may be paid as either a lump sum or as periodical payments. Your Legal Advisor will discuss this in more detail.

The Investigation Stage

The initial stage of any Medical Negligence claim is the investigative stage. During this stage your Legal Advisor will gather the necessary documents and evidence required.

The investigation stage will usually follow a set process:

- **1. Obtain medical records – usually all records that relate to you (e.g. GP, Hospital and Physiotherapy records)**
- **2. Review medical records – this task will usually be undertaken by a Nurse Paralegal. However, some Lawyers prefer to do this process themselves**
- **3. Witness Statement – You may be asked to give a statement setting out the events leading up to your injuries and what you believe to have been negligent**
- **4. Report on breach of duty – this will be prepared by an independent medical expert**
- **5. Report on Causation – again, this will be prepared by an independent medical expert**
- **6. Pre Action Protocol Letter of Claim – see below**
- **7. Pre Action Protocol Letter of Response – see below**



Pre Action Protocol for Clinical Disputes

The Pre Action Protocol for Medical Negligence Claims was developed to reduce the number of claims that reach the Courts and to encourage early settlement. Before issuing our claim at Court, your Legal Advisor must approach the Defendants and provide them with detailed information in relation to:

- **The background to your claim**
- **The allegations that you are making (based on the evidence obtained)**
- **The injuries that you have suffered**
- **The likely value of your claim – or the losses that you will be claiming**

The letter is known as a Pre Action Protocol Letter of Claim. The Defendants must then acknowledge this letter within 14 days. They will then have a period of three months in which to provide their Letter of Response. This letter must either:

- **1. admit your claim and therefore offer to pay compensation; or**
- **2. reject your claim and explain their reasons why.**

Many claims will settle at this stage avoiding the need for Litigation. Should the Defendant reject your claim your Legal Advisor will discuss with you the procedure for Issuing Proceedings at Court.

This guide is for information purposes only. If you feel that you have been the victim of Medical Negligence then please don't hesitate to get in touch.

For a helping hand when you need it most. Visit us online

www.medicalclaimsonline.co.uk