

Clinical Negligence

This factsheet explains the background to bringing a clinical negligence claim, explaining what this involves and providing an understanding of the procedure and what can be claimed.

What is clinical negligence?

We all place our trust in doctors, nurses and other health professionals when we become ill, but if something goes wrong, it can be devastating for both you and your family.

If a mistake has been made by a doctor, nurse or other healthcare professional and they have failed in their duty to provide an appropriate level of care or skill, which has resulted in an injury, loss or damage, you may be entitled to pursue a claim for compensation.

Clinical negligence covers both 'acts' and 'omissions' – this includes situations where something wrong has been done (for example, a surgical error) and also situations where there has been a failure to do something that should have been done (for example, a failure to carry out an emergency caesarean section in labour, where there was clear evidence of foetal distress).

There can be situations where a hospital has been negligent but the error did not actually result in an injury – in these circumstances there is no claim.

Time limits for bringing a claim

While there are some exceptions, generally, you will need to bring a clinical negligence claim within three years from the date of the negligent treatment. If you do not commence court proceedings by issuing a claim form within the three year period, you may be barred from bringing a claim.

While courts have a discretion to allow claims to proceed even if they fall outside of the three year period, this is rarely exercised.

Where a person is under a disability and they do not have the capacity to bring a claim, then time will not run for the purposes of bringing a claim. In the case of children, time will not generally run until they reach the age of 18 years.

Who do I sue?

Clinical negligence claims can be brought against general practitioners (GPs), out-of-hours GP services, health visitors, osteopaths, physiotherapists, dentists, midwives or any other healthcare professional. Claims cover all medical treatment and care and are not restricted to hospitals. Some claims will be against the NHS, which includes Clinical Commissioning Groups and hospital trusts. Other claims will be against private hospitals and private doctors.

It is important to establish at the outset who the opponent will be.

A claim made against a GP will be addressed to them personally.

GPs carry professional indemnity insurance to cover these situations.

If negligence has taken place in an NHS hospital, it is the trust itself and not the individual doctor or nurse which will be held liable if your claim is successful.

Where medical treatment is provided by a private consultant, claims will be made against the individual who will be insured for circumstances like this. Where a member of staff is employed directly, it will be the hospital which is responsible for the claim.

Compensation

Compensation falls into two distinct parts:

- General damages – this compensates you for the actual injury (pain, suffering and loss of amenity)
- Special damages – this represents actual financial losses from the date of damage or injury and those likely to arise in the future.

Special damages - past losses

You will be entitled to claim for any financial expenses that you have incurred as a result of the negligence. This can include, amongst other things, travelling expenses incurred attending hospital appointments, prescription charges, additional heating costs, loss of earnings, care provided by a family member on a gratuitous basis to give just a few examples.

Special damages - future losses

You will be entitled to claim for any future financial losses that you are likely to incur as a direct result of the clinical negligence. This can include future loss of earnings, loss of pension rights, care costs, aids and equipment, transport costs, the cost of private medical treatment, the cost of physiotherapy and accommodation expenses, to give a few examples.

Where needs are complex, it will be necessary to instruct experts to carry out a formal assessment and provide costings. In catastrophic injury cases, where future losses are likely to be significant, then the court may insist that some of the future losses should be paid in the form of annual or other periodic payments rather than a single lump sum to ensure the money does not run out and is there for life.

Funding your claim

Many clients will be concerned about how their claim will be funded. There are a number of options available to you and we can advise which is the best suited to your claim.

- **Legal expenses insurance**
You may have legal expenses insurance attached to your home and contents insurance or some other policy. This type of cover may allow you to pursue a clinical negligence claim.
- **Conditional Fee Agreements (CFA)**
CFAs are often termed 'no win no fee' and can help to fund your clinical negligence claim. If we are successful on your behalf, the majority of our costs will be paid by your opponent. But there are still some items which you will be responsible for from the compensation you recover. These include part of any insurance premium and our success fee, together with any shortfall between costs claimed from your opponent and costs recovered. The vast majority of damages you recover will be protected and untouched by these payments. If your claim is not successful, you will not be charged anything.
- **Privately paying**
If a CFA cannot be offered on day one as the merits of your case are unclear, we may offer a privately paying arrangement which can be entered into to include a fixed fee retainer. This will be limited to carrying out an initial investigation before offering you an alternative method of funding.
- **Legal Aid**
Legal Aid is only available in the case of a child with a neurological injury resulting in severe disability, which has arisen during pregnancy, child birth or in the eight week postnatal period. It is also subject to a means and merits test prior to award.

Stages of your claim

STEP 1 : Our first attendance

To take your instructions, provide initial advice and where appropriate prepare a preliminary witness statement.

Allow 2 weeks

STEP 2 : Request copies of medical records

This will include GP and hospital notes.

Allow 2-3 months

STEP 3 : Review and analysis of medical records

Once we have your notes, we will collate and paginate them and prepare a detailed chronology and analysis of your records.

Allow 4-6 weeks

STEP 4 : Copy of relevant records and detailed report sent to you

A written report will detail our views.

Allow 2 weeks

STEP 5 : Client meeting

We may suggest meeting to go through the records with you and any issues arising, with a view to preparing a detailed witness statement.

Allow 2 weeks

STEP 6 : Put together a schedule of your financial losses

We may at this stage start work on a preliminary schedule of your financial losses both past and future to assist in relation to your damages claim. Further expert evidence may be needed to assist in this process.

Allow 4 weeks

STEP 7 : Obtain independent medical advice to consider the issue of negligence

We will get the opinion of independent medical experts as to whether or not the care you received was substandard. We may also need to arrange for you to be independently examined.

Allow 6-12 months

STEP 8 : Reporting to you

A copy of any medical reports received will be sent to you with a detailed report setting out our views.

Allow 2 weeks

STEP 9 : Meeting with a barrister

In the majority of cases as soon as we have supportive expert evidence and enough information regarding your claim and resulting injuries, we will test the strength of that evidence by recommending a meeting (conference) with a barrister. Any conference will be attended by you and the medical experts.

Allow 3 months

STEP 10 : Serve a 'letter of claim'

We are not allowed to issue court proceedings without giving your opponent the chance to consider your claim. The law requires us to write to your opponent to tell them that we are instructed to take forward a claim. We have to explain what your claim is about, why it is being made and the likely allegations of negligence, giving a preliminary indication of the value of your claim.

Allow 4 weeks

STEP 11 : Defendant's 'letter of response'

The defendant's are obliged to respond within four months and either admit the claim and offer compensation or deny liability, necessitating court action

Allow 4 months

Legal Representation

We are a leading law firm offering a full range of commercial and private client services with expertise in:

- Education
- Health and social care
- Court of Protection matters
- Personal injury and clinical negligence claims
- Disability discrimination
- Healthcare law
- Tax and trusts
- Employment
- Housing issues

If you or a family member require advice and support, we can provide an initial assessment of your case entirely free of charge please contact us on **023 8071 8000** or email tim.spring@mooreblatch.com

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