

FACTSHEET

Clinical negligence

When we're unwell, we are used to placing our trust in doctors, nurses and other health professionals. However, occasionally things can go wrong and when they do, the effects can be devastating.

This factsheet explains what to do in the unlikely event something does go wrong; the background to bringing a clinical negligence claim, what bringing a claim involves, the procedure for bringing a claim, and what exactly can be claimed.

What is clinical negligence?

If you believe a doctor, nurse or other healthcare professional has made a mistake and/or they have failed in their duty to provide an adequate level of care or skill that has resulted in you suffering an injury, loss or damage, then you may be entitled to pursue a claim for compensation.

Clinical negligence covers both 'acts' and 'omissions'.

'Acts' covers situations where an error has been made – for example, an error in surgery.

'Omissions' refers to situations where there has been a failure to do something that should have been done. For example, the failure to carry out an

emergency caesarean section in labour when there was clear evidence of foetal distress would count as an 'omission'.

There can be situations where a hospital or healthcare professional has been negligent, but that negligence hasn't resulted in an injury. In these circumstances, it is not possible to bring a claim.

Time limits for bringing a claim

Clinical negligence claims should be brought within three years from the date of initial negligent treatment, or if you did not know you had suffered an injury at the time, then three years from the date you knew or ought to have known you had suffered an injury. There are exceptions to this time frame, but on the whole if you don't issue a claim form (which begins court proceedings) within this three-year window, you may be prevented from bringing a claim. Although the courts can allow claims to proceed if a claim form is issued outside the three-year period, they rarely do so.

The three-year time frame does not apply to those that do not have the capacity to bring a claim themselves. Also exempt are children under the age of 18, though any claim they do make related to their childhood will need to be lodged within three years of turning 18.

What services are covered by clinical negligence claims?

Clinical negligence claims are not just restricted to hospitals; they cover all forms of medical treatment meaning a claim can be brought against any healthcare professional. This includes general practitioners (GPs), out-of-hours GP services, health visitors, osteopaths, physiotherapists and midwives. At the outset it is important to establish who is responsible for the negligence in question – this could be an individual, a trust or a hospital.

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, even though the claim may be a result of an individual's actions, it will be the NHS Trust itself that will be deemed liable if your claim is successful.

With regards to private healthcare, private consultants are insured against clinical negligence, meaning claims can be made against individuals. For other staff employed directly, the private hospital will bear responsibility for any claim.

Compensation

Should your claim be successful, subsequent compensation falls into two distinct categories:

- General damages – this compensates you for the injury you have suffered, and covers pain, suffering and 'loss of amenity'. The latter covers losses that are non-financial, but that limit your lifestyle.
- Special damages – this covers financial losses that have occurred as a result of an injury. It also covers costs that are likely to arise in the future.

Special damages – past losses

You are entitled to claim for any financial expenses that you have incurred as a result of the negligence. For example, this could include the cost of travelling to and from medical appointments, loss of earnings, prescriptions, additional heating costs, or unpaid care provided by a family member. These are just a few of the expenses that can be claimed.

Special damages – future losses

You are entitled to claim for future financial losses that are a direct result of clinical negligence. This could include future loss of earnings, loss of pension rights, care costs, medical aids and equipment, transport costs, the cost of private medical treatment or the cost of physiotherapy and accommodation expenses.

For those with complex healthcare needs, experts will need to be instructed to carry out a formal assessment in order to provide realistic costings.

If an injury has been catastrophic resulting in significant future financial losses, then the court may insist that some of the compensation payments are made periodically – for example, annually or monthly for life – as opposed to a single lump sum to ensure the money does not run out.

Funding your claim

Many people are concerned about how to fund a claim. Be assured that there are a number of options available and we can advise which is the best suited to your circumstances.

- Legal expenses insurance: you may have legal expenses insurance attached to your home and contents insurance, or attached to another insurance policy which may allow you to pursue a clinical negligence claim.
- Conditional Fee Agreements (CFA): CFAs are often termed 'no win no fee'. In these instances, if we are successful on your behalf, the majority of our costs will be paid by your opponent. However, there may still be some expenses. This will include part of any insurance premium, a 'success' fee, and any shortfall between costs claimed from your opponent and costs recovered.
- Paying privately: if the merits of your case are unclear meaning a CFA can't be offered at the outset, it is possible to pay privately with the option of a fixed fee retainer. This will be limited to carry out an initial investigation before agreeing an alternative method of funding.
- Legal Aid: which is subject to a means and merits test, is available only for children with neurological injury resulting in severe disability stemming during pregnancy, child birth, or during the eight-week post-natal period.

Expert legal knowledge is essential if you are to achieve a successful outcome in a clinical negligence claim. We consistently achieve outstanding results on behalf of adults and children who have suffered harm due to medical or clinical negligence.

Our team of specialist clinical negligence lawyers have been hand-picked for their skills, technical competence, and includes lawyers qualified in medicine, nursing and midwifery.

Contact us today

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