

MEDICAL NEGLIGENCE– CLAIMS PROCESS

Compensation

As well as compensation for your pain and suffering, we will also be seeking compensation for any financial losses incurred to date and likely to be incurred in the future. It is important that you keep a list of the same, together with documentary evidence in support and forward this to us. This could include loss of earnings and any care you have received either from a professional carer or a family member.

Legal Test

In order to be successful in claim for clinical negligence you need to prove the following:-

That the Defendants owe you a duty of care and
That the standard of care they have provided has fallen below the standard that you would reasonably be entitled to expect (liability/breach of duty of care) and
That damage has resulted as a result of the negligent act (causation).

The test of liability in clinical negligence cases is the “Bolam Test”. The central question is whether the treatment provided would have been supported at the time by a reasonable and responsible body of medical opinion. The fact that a particular Doctor/Surgeon/Nurse would have acted differently is irrelevant provided that the treatment did not fall below the standard to be expected of a reasonable body of Practitioners and providing that the treatment was not patently irrational/illogical having regard to the particular facts of the case.

Causation is whether harm was caused by any failure in the standard of care and is decided on the balance of probabilities. The question is whether it is more likely than not that the injury resulted from any alleged failing.

NHS Complaints Procedure

If the treatment complained of occurred in the last 6 months, or within 6 months of you discovering the problem, provided this is within 12 months of the date of the incident, we may pursue a complaint under the NHS Complaints procedure. This would involve writing a letter of complaint to the Hospital or GP that provided your treatment.

The NHS complaints system is designed to provide:

- Explanations of what happened
- If appropriate, apologies
- Information about action taken to prevent similar incidents happening again.

Any errors identified can help support a letter of claim and allegations of negligence.

Independent Medical Evidence

Once we have obtained and reviewed copies of the relevant medical records we will then consider obtaining independent medical evidence on your behalf. We will usually obtain evidence from an expert in the same medical field as that of the medical professional who treated you. It may be necessary to obtain medical evidence from an expert in more than one area of medical specialism.

The independent medical expert will consider the standard of care provided and whether the care provided fell below a standard that was reasonable at that time.

If the treatment you received is considered to be substandard it will then be considered whether this caused you to suffer an injury or exacerbation to your condition.

Letter of Claim

Assuming we have obtained supportive evidence we will then write a Letter of Claim to the doctor, NHS Trust or private clinic who provided your treatment. Unless an extension is requested and agreed, the Defendant will have 4 months of the date of the letter of claim whether liability is disputed.

If the Defendants do dispute liability they must respond fully to the Letter of Claim setting out the reasons why liability remains in dispute.

If liability is not disputed, then negotiations will take place with a view to concluding settlement of your claim.

Court Proceedings

If liability is denied, we will consider the letter of response with our medical experts. If we still consider you have a strong case, then we will issue court proceedings which involves sending formal documents setting out the details of your case to the Defendant and the Court.

The Defendant is required to provide a formal Defence and the Court will list a Case Management Conference to determine a timetable of steps to be completed by both Parties, narrowing the issues and/or to value the claim. Such steps include disclosure of relevant documents, exchange of witness statements and the exchange of experts' reports.

Whilst cases can end up at Trial, this is very rare because if there is a dispute in regards to liability, the Parties will send each other their medical evidence and the experts would then meet to discuss any disagreements.

How long does a Medical Negligence Claim take?

Claims of this nature normally take in the region of 3 years to conclude, however these cases can take longer depending on whether or not liability is disputed and the prognosis in terms of injuries.