

Clinical Negligence

Your right to claim when health care goes wrong

Overview

Millions of people are treated by doctors, dentists, nurses and other healthcare workers every year. Fortunately, the standard of healthcare in this country is usually high and we can place trust in our healthcare professionals. Sometimes, however, things do go wrong, and the effects can be life shattering for both the patient and their families. Bringing a clinical negligence claim (also known as a medical negligence claim) requires a lawyer who has specialist legal and medical knowledge, rather than a generalist personal injury lawyer. A good clinical negligence lawyer will understand the emotional and physical needs of those affected by negligent treatment, and will be able to recognise what went wrong. They will also know when to seek initial payments (known as interim payments) in circumstances where immediate financial support is important. Membership of AvMA or The Law Society Medical Negligence Panel are the best indicators that the lawyer you speak to has the correct experience and skills.



Bringing a claim

Medical negligence claims are different from general personal injury claims. A medical negligence claim requires that you, the claimant, prove two separate elements: fault and avoidable harm.

- **Fault:** this involves proving that the healthcare professional failed to carry out their responsibilities. You may hear your lawyer talk about a 'breach of duty'. This means that for the type of treatment you received your care fell below the standard expected of a reasonably competent and skilful specialist.
- **Avoidable harm:** This is also called 'causation'. You need to be able to show that the fault caused you to be in the position you are now, and that it was the negligent care (rather than an underlying condition) caused you harm. This may sound relatively easy to prove, but in reality it can be difficult particularly when someone was already ill.

Your lawyer will probably recommend that you obtain a medical report from an independent medical expert to help prove these two issues. They will be able to arrange this for you.



It is crucial to seek legal advice as soon after a clinical accident as possible. This will mean the proper steps can be taken to fully investigate your case at the earliest possible opportunity.



Preparing your case

Your lawyer will want to fully understand the impact of the negligent treatment on your life and make sure that any compensation you receive will cover all your needs. Preparing a case can involve taking detailed statements, obtaining full copies of your medical records and x-rays and seeking expert opinion.

It may take time to ensure the case preparation is done thoroughly. Good preparation will ensure your claim has the best chance of success and should not deter you from making one if you want to. A specialist medical negligence lawyer will prepare your case for you, so you don't need to worry.

Some people are put off from starting a claim by the thought of having to go to court. This only happens in a small minority of cases; the vast majority are won without litigation. Even if you do have to take your case to court your lawyer will assist you every step of the way and ensure you have the help and support you need.

Time Limits

It is crucial to seek legal advice as soon after a clinical accident as possible. This will mean the proper steps can be taken to fully investigate your case at the earliest opportunity. Some evidence relies on the memories of you, your witnesses and the healthcare practitioner and it is always best to try and record these recollections when they are fresh.

Any court proceedings must start within three years of the date of your injury or of the date when you first discovered your injury was the result of clinical negligence. There is a lot of preparation to be done before court proceedings can begin, so it is vital to consult lawyers early.

Continue overleaf >

Slater & Gordon
Lawyers

FORMERLY
Russell Jones & Walker

Funding or paying for your claim

There are a number of funding and payment options you may be able to access in order to pursue your claim. We are able to pursue cases under Conditional Fee Agreements (sometimes known as 'No Win No Fee' agreements) and with Legal Services Commission (LSC) Funding (previously known as Legal Aid). It is important to ask your lawyer about possible funding or payment options to ensure you are not unduly worried about costs.

In all cases where a claim is successful, whoever it is decided should pay your compensation will also be ordered to pay your legal costs. If your claim is run under a Conditional Fee Agreement and your claim is unsuccessful, your solicitor waives their fee and you do not have to pay anything. With LSC funding, the Legal Services Commission will review your case on a regular basis and decide whether the chances of the case merit continuing with it.

How to decide if you should make a claim

If you've been affected by substandard medical treatment, you may not want to pursue compensation. Sometimes, you might simply want an apology from your healthcare provider. On other occasions, you may want justice or the security of knowing that no-one else will suffer in the same way you have.

Bringing a medical negligence claim will only be able to provide you with financial compensation. However, your lawyer may also be able to explain to you what other options are available.

Regardless of whether you bring a claim you are entitled to make a written complaint about treatment received either privately or on the NHS. We will be able to advise you on how to go about this; if you do wish to make a formal complaint it is best not to delay.

Inquests

In the event of a fatality, the Coroner may require an investigation in order to determine cause of death. We can assist in preparing for, and representing you, at an Inquest. We will assist you to understand the Inquest procedure and ask the right questions to help you gain an understanding of what happened.

Our recent successes

Examples of recent successful cases for police officer clients include:

- A multi-million pound award for a man left seriously disabled when a failure to diagnose a heart infection led to a stroke
- £280,000 for an officer who was medically retired after an injection injured his spinal cord
- £150,000 for an officer who was left brain damaged after an anesthetic error
- £50,000 for an officer who's wrist injury was negligently repaired by her local hospital
- £26,000 for an officer who's anterior cruciate ligament repair was negligently performed



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Our Clinical Negligence team

We have a team of dedicated and experienced solicitors who are experts in pursuing medical negligence claims. We only ever act for claimants and our expertise is accredited by membership of the Law Society Medical Negligence Panel. Our national network of offices means we are able to provide you with a local service.

We are able to act on all types of clinical negligence claims including severe, life changing injuries involving neurological/spinal injuries and brain damage as well as:

- Fatal accidents
- Brain injuries
- Cerebral palsy
- Birth injuries
- Anaesthetic awareness
- Mistakes in diagnosing and treating cancer
- Orthopaedic errors including problems from hip and knee surgery
- Nerve injuries
- GP negligence
- Keyhole surgery errors
- Dental errors
- Prescription errors.

Please feel free to discuss your own position and concerns. Contact your nearest office on:

T: 0800 9171 999

W: www.slatergordon.co.uk/policelaw

Our offices:

Birmingham, Bristol, Cardiff, London, Manchester, Milton Keynes, Newcastle, Sheffield, Wakefield & Edinburgh - Associated office.

Slater & Gordon (UK) LLP is authorised and regulated by the Solicitors Regulation Authority and the Financial Conduct Authority for insurance mediation activity. The information in this factsheet was correct at the time of going to press April 2013.