

# \* Medical Negligence Fact Sheet

## An essential guide to Medical Negligence claims

Every day, countless people are treated by doctors, nurses, dentists and other medical professionals. Fortunately, the standard of healthcare in the UK is usually high and we can trust our healthcare professionals to provide good quality treatment.

However, people do not always have a positive outcome from medical treatment. Things can go wrong and the outcome of the treatment is not always what was expected. In many such cases, this is not due to fault. Poor outcomes may be due to the medical condition of the patient before treatment began or due to complications which happen regardless of the care and skill of the treating clinician.

There are times, however, when the treating clinicians make mistakes which result in a poor outcome and injury. This may cause patients to require further invasive treatment or may leave patients permanently injured.

In this scenario, the patient may be able to seek compensation from the clinician by pursuing a damages claim for “medical” (or “clinical”) negligence.

### Areas which may give rise to claims for medical negligence include:

- Obstetric or midwifery care during pregnancy or child birth
- Plastic or cosmetic surgery (including breast augmentation, rhinoplasties and face lifts)
- Orthopaedic surgery (often failures to properly treat fractures)
- Emergency care in A & E (including failure to diagnose strokes, heart attacks, fractures and brain haemorrhage)
- GP care ( e.g. misdiagnosis or failure to refer such as cancer, cardiac disease, stroke, heart attacks etc)
- Surgery including Urology, General Surgery, Gynaecology, Keyhole (or laparoscopic) surgery
- Anaesthetic errors (including anaesthetic awareness)
- Dental negligence (during routine or specialist dental treatment such as implants)
- Nursing negligence (often failing to prevent hospital falls or pressure sores or district nursing errors)



This information relates to the law and procedures in England and Wales. Please contact us if you need advice about the law and procedures in other legal jurisdictions.

## \*What is Medical Negligence?

Medical negligence is often referred to as clinical negligence since it covers not only core medical professionals (Doctors and Nurses) but also dentists, physiotherapists, psychologists etc. Negligence is when the treating clinician provides treatment which falls below a standard considered as reasonable for the clinician's experience and specialism. This may be by doing something which they should not have done or failing to do something which they should have done. Where a patient suffers injury as a result of this failure, they have a right to claim compensation for their injury from the clinician.

It is important to remember that not all mistakes are negligent and not all negative outcomes are due to negligence.

## What is a Medical Negligence Solicitor?

A medical negligence solicitor is someone who specialises in claims for damages brought against the medical profession. Such a solicitor will have received specialist training and will practice either exclusively or largely within this area.

Pursuing a medical negligence claim is not straightforward and is quite different to pursuing other types of personal injury claim. It is therefore important to find a solicitor who has expertise and experience of medical claims which encompasses both medical and legal knowledge. Ask your solicitor how much experience they have of medical negligence claims and whether this is the only sort of work which they do.

The Law Society and the patient charity group AvMA (Action against Medical Accidents) have specialist panels for the most experienced medical negligence solicitors. Membership of the AvMA and/or Law Society's Medical Negligence Panel is a good indicator that the solicitor or law firm that you have approached has the necessary experience and skills to handle your case. Only firms who have Law Society or AvMA panel membership can hold a legal aid franchise in medical negligence.

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## \*What is Compensation?

Compensation (often referred to as damages) is a sum of money to repay financial losses and physical or psychological pain and suffering.

There are 2 main categories of compensation: General Damages and Special Damages

### 1. General Damages

This is compensation for the pain, suffering and loss of lifestyle which you have suffered as a result of your injury (your non-financial loss). Awards for pain and suffering in the UK are limited and there are guidelines available which give broad bands of financial compensation for particular injuries.

### 2. Special Damages

This is compensation for financial loss which you have incurred in the past or will incur in the future as a result of your injury. It can include the cost of medical treatment and equipment, travel and parking, clothing, loss of earnings, paid care or care provided by family and friends, paid help (including cleaning, gardening etc), and accommodation costs (either the cost of adaptations or new accommodation).

Compensation (often referred to as damages) is a sum of money to repay financial losses and in recognition of physical or psychological pain and suffering.



# \*The Legal Tests

## Breach of Duty and Causation

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### What do I have to prove in order to establish a claim?

You must prove both of the following 2 things, on the balance of probability (that is a greater than 50% likelihood), in order to establish a medical negligence claim:

#### 1. Breach of Duty

You must prove that the treating clinician did something or failed to do something which no other reasonably competent practitioner would have done or failed to do. This is also referred to as liability.

#### 2. Causation

You must prove that the breach of duty on behalf of your treating clinician caused you to suffer an injury which you would not otherwise have suffered. In other words, you would not have suffered your injury if the clinician had provided the correct standard of care.

### How do I prove my claim?

The duty will be on you to prove your claim and you will require evidence to prove your claim. Since your claim is about medical treatment, the most important evidence will be evidence from medical experts in the form of expert reports.

Your solicitor will recommend obtaining expert reports from independent medical experts who have both a specialist knowledge of the area of medicine relevant to your treatment and injury and experience of the litigation process. It is most important that the correct medical expert is used, since their evidence will be absolutely crucial to the success or otherwise of your claim. Without supportive expert evidence, you will be unable to pursue your claim.

You must prove both breach of duty and causation in order to establish a claim.

### Who do I sue?

If the treatment which you received was provided in an NHS hospital, you will sue the NHS Trust responsible for that hospital rather than the individual clinician involved. If your treatment was provided by a GP or a Doctor at a private hospital then you will sue the individual GP or Doctor rather than the GP practice or private hospital. All GPs and private Doctors have insurance to cover claims against them. If your claim is against a dentist then you will sue the individual dentist rather than the dental surgery. There are exceptions to these general rules, however, and your solicitor will need to carefully consider who should be pursued.

If the treatment that you received was provided in an NHS hospital you will sue the NHS trust responsible for that hospital rather than the individual clinician involved.

## \* Preparing your case

### 1. Initial Investigations

Initial investigations are required before either you or your solicitor can be confident that your claim is likely to be successful. Depending upon the circumstances of your case, the first step may involve taking a witness statement from you and possibly from others who may have important information about the treatment you received. Your solicitor will also apply for copies of your medical records.

Once the records are received, your solicitor will begin to obtain expert evidence. The first report will deal with the issue of breach of duty. If the expert concludes that the treatment you received was substandard, then your solicitor will go on to obtain an expert report on the issue of causation. Sometimes it is possible for one expert to deal with breach of duty and causation but sometimes two or more reports are required, from different experts.

Initial investigations can take several months and even a year, depending upon how many reports are required. In some cases, such as a birth injury claim, the initial investigations can take even longer because of the specialist expert reports required.

Once these investigations have been carried out, your solicitor will be in a position to advise you with much more certainty whether your claim is likely to be successful.

Initial investigations are required before either you or your solicitor can be confident that your claim is likely to be successful.



## \* Preparing your case

### 2. Valuing your Claim

In order to value your claim, your solicitor will need to consider the nature and extent of your injury, whether your injury will be permanent or will improve and the impact of your injury on your lifestyle and ability to work and self-care. The value of your claim and the amount of compensation you can claim is often called “quantum”.

As with proving your case on liability and causation, you must prove the financial losses which you have or will incur.

Expert evidence will be obtained dealing with the nature and extent of your injury and your future prognosis. These expert reports are called “condition and prognosis reports” and the expert will need to examine you in order to provide their report. Sometimes it may be necessary to obtain more than one report in order to deal with different aspects of your injury. On occasion, experts may not be able to give a final prognosis and may recommend further treatment first.

It may also be necessary for your solicitor to obtain “quantum” reports to assess the value of your financial losses. This can include reports on nursing care, occupational therapy, accommodation, physiotherapy etc.

Your solicitor will also need evidence from you to prove your financial losses including receipts for any items purchased, invoices for services paid for, wage slips or business accounts, tax returns etc.

Once your solicitor has obtained all of the evidence required to value your claim, a document called a Schedule of Loss will be drawn up which will set out all of the financial losses which you are able to claim. It can sometimes be a long time before the Schedule of Loss can be completed.

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## \* Preparing your case

### 3. Pursuing your Claim

Medical negligence claims are governed by a “Pre-action protocol” which sets out the steps which both the Claimant and the Defendant (the treating clinician) must take before proceedings are actually issued and pursued through the Court.

A Letter of Claim will be sent to the Defendant setting out the allegations of breach of duty and causation and giving as much detail as possible about your resulting injury and your losses. The Defendant has 4 months to provide a detailed response, indicating whether your claim is admitted either fully or in part or whether it is denied.

It may be possible to negotiate settlement of your case at this stage and without issuing Court proceedings.

If it is not possible to settle your case at this stage then it will be necessary to issue Court proceedings. Once this has taken place, the Court will provide a timetable for your case with all steps leading up to trial.

It may be possible to negotiate settlement of your case without issuing Court proceedings.



## \*Will I have to go to Court?

Many people are put off from making a claim by the thought of having to go to Court. By going to Court, we mean attending a trial where a judge decides the outcome of the case. The vast majority of medical negligence cases are resolved without going to Court, even where Court proceedings have been commenced. The Court strongly encourages early settlement of cases and there are plenty of opportunities to negotiate settlement of your claim.

In the very unlikely scenario that your case goes to trial, your solicitor will assist you every step of the way and ensure you have the help and support you need.

## Is there a time limit for bringing a claim?

It is vitally important to seek legal advice as soon as possible after the medical treatment or as soon as you become aware that you have suffered an injury as a result of the medical treatment. This is because all medical negligence claims must be brought within 3 years of the negligent treatment. This means that Court proceedings must be commenced by issuing a claim form at Court within 3 years.

Where you are not aware that you have suffered an injury as a result of the treatment until later, the 3 years will run from the date that you became aware of your injury.

These time limits are provided by statute law and are rigidly applied by the Courts. It is very rare indeed for a Court to be persuaded to allow a claim to be brought after the 3 year period.

If a claim is brought on behalf of a child, they will have three years from the age of majority within which to start Court proceedings (i.e. until they are age 21).

In the very unlikely scenario that your case goes to trial, your solicitor will assist you every step of the way and ensure you have the help and support you need.

## How will I fund my claim?

Before you embark on your claim, it is important to think about how you will pay for your legal costs and expenses (such as the cost of expert reports).

The cost of investigating and pursuing a medical negligence claim can be very high. However, there are lots of different options available to limit or entirely remove the cost from you.

You may have an existing insurance policy which covers the costs of investigating and pursuing a medical negligence claim or we may be able to act under a Conditional Fee Agreement ("no win, no fee agreement"). You might be financially eligible for legal aid (legal services commission funding) and we have a Legal Services Commission franchise ("legal aid"). We will discuss all of your funding options with you at the outset to make sure that you get the best form for funding available for your circumstances.

For more information on funding options please see the funding section on our website:  
<https://www.clarkewillmott.com/service/medical-negligence/29>

Before you embark on your claim, it is important to think about how you will pay for your legal costs.



## \* Clarke Willmott LLP

Clarke Willmott LLP is a national law firm with an excellent reputation. We have a specialist team of dedicated medical negligence solicitors who are experts in pursuing medical claims. We only ever act for Claimants (injured patients) and are accredited by the Law Society and AvMA Medical Negligence Panels. We also have a number of offices across the UK which means we should always be able to come to you, if you cannot come to us.

We are able to represent all Claimants who have suffered medical accidents and have particular specialism in handling cases where patients have suffered severe, life-changing injuries such as spinal injuries, brain damage and neurological injury and fatal injuries.

### Our recent successes include:

- An award of £8.6 million for a child with cerebral palsy resulting from negligence during birth
- An award of £1.5 million for a man who suffered a stroke due to negligence following a heart bypass procedure
- An award of £500,000 for a child who suffered brain damage after a GP negligently failed to refer her to hospital with symptoms of dehydration
- An award of £750,000 for a man who suffered a stroke following negligence of his GP in failing to treat high blood pressure
- An award of £220,000 for a delay in diagnosing and treating malignant melanoma of our client's knee
- An award of £425,000 damages for the widow of a man whose GP failed to refer him to hospital with an abnormal ECG, which led to him suffering a heart attack and premature death

## Contact Us

We are available to discuss your concerns. Contact our specialist team of medical negligence advisors on:

Telephone: **0800 316 8892 (freephone)**

Web: **[www.clarkewillmott.com/service/medical-negligence/29](http://www.clarkewillmott.com/service/medical-negligence/29)**

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek independent formal legal advice. This information was correct at the time of going to press in May 2015.

## Offices

### **Birmingham Office**

138 Edmund Street, Birmingham B3 2ES

### **Bristol Office**

1 Georges Square, Bath Street, Bristol BS1 6BA

### **Cardiff Office**

2nd Floor, Emperor House, Scott Harbour, Pierhead Street, Cardiff CF10 4PH

### **London Office**

1 Chancery Lane, London WC2A 1LF

### **Manchester Office**

2nd Floor, 19 Spring Gardens, Manchester M2 1FB

### **Southampton Office**

Burlington House, Botleigh Grange Business Park, Hedge End, Southampton SO30 2AF

### **Taunton Office**

Blackbrook Gate, Blackbrook Park Avenue, Taunton TA1 2PG