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Clinical Negligence Claims

If you are unhappy with the treatment you, a family member or close friend has received from a General Practitioner or from a hospital or other medical practitioner there are a number of options open to you, brief details of which are set out below.

Complaints Procedure

If the treatment was provided on the NHS then, subject to certain time limits, you can make a formal complaint following the NHS Complaints procedure. This action is appropriate if you want an explanation of why the treatment was carried out in the way that it was and, if applicable, what went wrong. As a result of pursuing a formal complaint you may be given an explanation, an apology, if appropriate, and possibly a reassurance that certain procedures have been changed.

A complaint should be made within 12 months of the event complained about or within 12 months of you realising that you have something to complain about. These time limits may be extended if there is a good reason why you did not complain in time, provided the complaint can still be investigated. **You can now also pursue a legal claim at the same time.**

Initially the complaint should be made to the Chief Executive or Complaints Manager at a hospital or PCT, a practice manager or the individual directly where neither of the above is available. It should be acknowledged within 3 days. The matter should then be looked into and you should receive a written response to your complaint within 6 months, but you should be kept informed of progress during that period. If the reply takes longer than 6 months you are entitled to an explanation.

If you are not happy with the outcome of your complaint you can ask for your complaint to be reviewed by the Health Service Commissioner (the Health Service Ombudsman). She will consider both sides of the complaint and report further. The emphasis of investigation is likely to be toward recommending that the NHS body look at the complaint again in a different way rather than provide a final response.

Complaints about treatment in the private sector must be dealt with under the treating doctor's or hospital's own complaints arrangements unless the treatment was originally commissioned by an NHS body, for instance under a waiting list scheme.

A complaint is often a good way of obtaining further information about your treatment before assessing whether there is a claim to be pursued.

Pursuing a Claim for Clinical Negligence

If you are seeking compensation as a result of the treatment you have received you will need to pursue a civil claim for clinical negligence.

Tests for negligence

To succeed in a claim it is necessary to establish both that the healthcare provider was negligent and that the negligent treatment has caused you damage, as opposed to any pre-existing condition or something that would have occurred even if the treatment had not been negligent.

The test for assessing if there has been negligence is whether or not the standard of care received fell below the acceptable standard of a responsible body of medical opinion in the relevant field. It would be a defence to a claim for clinical negligence if a responsible body of medical practitioners in the relevant field would have provided the same treatment or where the outcome is a recognised complication or risk of the treatment. The treatment must fall below an acceptable standard of practice – poor practice is not sufficient to prove negligence.

Once we have obtained supportive expert evidence on both negligence and causation then we make a formal approach to the Defendant practitioner or hospital and their defence organisation and set out the basis of the claim against them. They will then carry out their own investigations and respond to say whether or not they admit negligence and/or causation of your injury.

Often cases are settled by way of negotiation without ever needing to issue court proceedings. However if the claim is disputed and our experts remain supportive then we will issue court proceedings and work through a court timetable towards a trial to determine a claim. However very few cases get as far as trial – most are resolved beforehand.

Damages

There are two forms of compensation. Firstly “general damages” can be claimed to reflect the pain, suffering and loss of amenity consequent upon the negligent treatment. Secondly it is possible to claim any out of pocket expenses incurred as a result of the negligent treatment, for example loss of earnings, the costs of care, travel expenses, medical expenses etc (including those which are anticipated in the future) which are known as “special damages”.

Limitation

Any court proceedings for clinical negligence claims should be issued within 3 years of the negligent act (treatment) or the date you were aware that you had suffered a significant injury as a result of the treatment if this is later. For children the 3 year limitation period does not start to run until their 18th birthday.

Funding Clinical Negligence Claims

Clinical negligence claims are expensive to run because of the detailed investigations that are needed, the often complex subject matter and the involvement of experts by each party.

Community Legal Services Public Funding (the successor to Legal Aid) is available to investigate and pursue such claims but only if you qualify on financial grounds and the Legal Services Commission considers that your claim has sufficient merit. The question of merit takes into account not only your prospects of success but also the likely value of the claim.

Some people have legal expense insurance, for example as part of their household insurance policy or associated with a credit card, which may be available to investigate and pursue such a claim subject to the insurer’s approval.

Alternatively you may be able to pursue a clinical negligence claim on a conditional fee basis (“no win no fee”). This is where we only charge you our fees if we are successful in your claim. Most, if not all, of those costs are then recovered from the other side

because you have succeeded in your claim. We can usually put an insurance policy in place to protect you against any claim for costs from the other side and arrange to fund things such as court fees and expert fees for you so that you do not have to pay out anything as the case proceeds.

Our expertise

We are a specialist clinical negligence team dealing with all types of clinical negligence claims from missed and delayed diagnosis cases to catastrophic brain and birth injury cases. We have experience of a wide variety of cases and our solicitors have particular areas of medicine in which they specialise. We have a well regarded team of experts and Counsel and select the best people to support your case. The team is accredited by the Association of Personal Injury Lawyers. All of the partners in the team are members of the Law Society specialist Clinical Negligence Solicitors panel and of the panel of recommended solicitors for the charity, AvMA. We pride ourselves on a client focused, bespoke and partner led service and are ranked as leaders in the field of clinical negligence by the two legal directories – Chambers and the Legal 500.

Who to contact for further advice

If you would like to discuss your potential claim with an experienced solicitor please contact:

Tim Palmer in Basingstoke
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Philippa Luscombe in Godalming
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Specialist advice should be obtained before taking or refraining from taking action based on comments in this handout which is only intended as a brief note.

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