



Funding a Clinical Negligence Claim

If you wish to investigate a potential clinical negligence claim, you need to consider how you are going to pay the legal costs and expenses involved. The following information sets out the options for funding clinical negligence claims, all of which we are able to offer. If you have any queries please do not hesitate to contact us.

Legal Costs and Expenses

- The general rules are:
 - If your claim is successful, your opponent pays all your reasonable legal costs and expenses. In addition, your opponent pays his own legal costs and expenses.
 - If your claim is unsuccessful, you pay your own legal costs and expenses. In addition, you may be ordered to pay your opponent's reasonable costs and expenses.
- The various funding options that may be available to you are set out below.

Public Funding (formerly Legal Aid)

- The Legal Services Commission (LSC) is the body that administers the Public Funding scheme. Public Funding is currently still available for clinical negligence claims. Only firms with specialist expertise in clinical negligence claims are awarded a clinical negligence franchise from the LSC, so it is important to ask your solicitor whether their firm has a franchise. Alsters Kelley hold a Public Funding franchise for clinical negligence work.
- There are two tests which you must satisfy in order to qualify for Public Funding:
 - **Financial test** - The scheme is only available to people on low incomes and who have very little capital. If you are on state benefits then you may qualify. Claim's on behalf of children are pursued in their own name, so it is the child's financial position that is assessed, not the parents'. We would make an initial assessment of your eligibility before making any application.
 - **Merits test** - The LSC must be satisfied that your claim deserves their financial support. This will be based on an assessment of the prospects of



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success of your claim. The LSC will also take into account the likely costs to investigate your claim compared with the likely damages, known as cost/benefit. The damages must be high enough to far outweigh the costs.

- If either or both tests are not satisfied then you will not qualify for Public Funding.
- If both tests are satisfied then a Certificate of Public Funding will be issued. This will cover the investigation costs of your claim, up to an agreed financial limit. The financial limit on your Certificate can be increased if necessary.
- You should bear in mind from the outset that Public Funding may involve some cost to you:
 - You may be required to pay a financial contribution each month towards the legal costs of your claim;
 - If you succeed in your claim, your opponent pays your reasonable legal costs and expenses. However, there may be a shortfall between the sum recovered from your opponent and the actual level of costs and expenses incurred. In these circumstances the LSC will look to make up the shortfall from your compensation award. This only rarely occurs.

Legal Expenses Insurance

- Legal expenses insurance can provide you with cover for your own legal costs and expenses and also those of your opponent. You may not know you have this cover as it is often incorporated into another insurance policy, for example, household contents insurance. Some credit cards also have legal expenses insurance as part of the package. We will need to examine any insurance policies you have, to see whether they will cover you in relation to your claim. Please check all your insurance policies and credit cards and bring all available documentation with you to our first meeting.

Trade Union

- If you are a member of a trade union or trade or professional association, they may assist you with the legal costs and expenses of bringing a clinical negligence claim. More often than not, however, they merely provide free legal advice following an



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initial enquiry. In any event, please check your membership and whether support is available. Please bring the relevant documentation with you to our first meeting.

No Win No Fee or Conditional Fee Agreement

- If none of the above options are available to you, a conditional fee agreement (CFA) is an alternative means of funding your claim. CFAs are often called “no win, no fee agreements”. In brief, this firm would agree not to charge you for the legal costs we have incurred if the claim is unsuccessful. However, the agreement does not cover the expenses we incur on your behalf in investigating the claim, such as the cost of medical reports, or your opponent’s legal costs. To cover these costs and expenses you need to take out an insurance policy, which we will do on your behalf. We ensure that you do not have to pay the insurance premium, whether you win or lose your case.

If you need any further information about matters in this information sheet, please do not hesitate to contact us.

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