



Steps in a Clinical Negligence Claim

It is possible to make a claim for compensation for clinical negligence arising out of your medical care or treatment. Clinical negligence claims are less straightforward than accident claims.

Initial assessment

- We will obtain full details of your claim either at a meeting or over the telephone. We will give you our initial view on the prospects of success and the likely timescale of your claim. We will estimate the legal costs of your claim and advise you on funding options. We will inform you of our terms and conditions of business.

Initial action

- The steps we will undertake in your claim include:
 - confirming in writing what we have discussed;
 - completing arrangements for the funding of your claim;
 - preparing a detailed statement on your behalf;
 - monitoring our legal costs in connection with your claim, both those incurred in the past and those which we estimate will be incurred in the future;

Consideration of medical records

- In all claims for clinical negligence we will need to consider your hospital and GP records before we make a final decision as to whether your claim has reasonable prospects of success.
- As soon as you have given us the authority to act on your behalf, we will write to the hospital and your GP. They have 40 days to provide us with your records. Once we have all the notes we will carry out a detailed review.

Medical evidence

- In most cases we will need to obtain a medico-legal report, usually from a consultant, very early on in your claim in order to determine whether it has reasonable prospects of success.
- We will instruct the consultant who may arrange for you to be examined and a report will be prepared. When we receive the medical report from the consultant,



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we will forward a copy to you and advise you on the report's implications and how to proceed.

Letter of Claim

- If, at this stage, we feel your claim has reasonable prospects of success we will send a Letter of Claim to your opponent setting out the following:
 - a summary of the facts on which your claim is based
 - the allegations of negligence
 - what injuries the negligence has caused
 - the financial losses you have incurred.
- Your opponent has four months to carry out an investigation. At the end of the four-month investigation period your opponent must let us know whether they admit liability or deny it.
- If your opponent admits liability it means they accept that:
 - they were obliged to give you suitable and adequate medical care and treatment
 - they failed to do this
 - the failure to act properly led to your injury/illness
- If liability is admitted, we will turn our attention to determining the amount of compensation you should receive. We will be required to provide a schedule of your losses and expenses (which we will draft on your behalf) and copies of the documents that prove your losses and expenses.
- If liability is denied your opponent must provide us with an explanation and disclose all relevant documents.

Disclosure of documents

- All parties are required to exchange information about a claim before and after court proceedings have been commenced. This means that you have a duty to search for and disclose documents that are or have been in your possession or control which may be relevant to your claim. You must disclose not only those



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documents that support your claim but also those documents could be potentially harmful to your case.

Negotiations

- We will contact your opponents on a regular basis with the aim of negotiating an early settlement of your claim, where this is appropriate. In some cases it is not possible to negotiate more than an admission of liability where, for example, an injury has yet to settle or further evidence is awaited before the claim can be properly valued.

Offers to settle

- If your opponent admits liability then it is likely that they will later make an offer to settle your claim. We will advise you fully as and when such an offer is made.
- You can make a formal offer to settle to your opponent. If this is accepted by your opponent you will be bound by it. By making a formal offer to settle, you will increase your opponent's financial risk, should this offer be rejected. However, whilst this may encourage an earlier settlement it may also reveal your minimum settlement figure.

Time limit

- There is a three-year time limit for commencing court proceedings in a clinical negligence claim.
- The three year period runs from the latest of these dates:
 - the date of the clinical negligence
 - the "date of knowledge" of the person injured (usually when you first become aware something went wrong with your care or treatment)
- Special considerations apply to persons who die from their injury or illness within the three-year period. Only in exceptional circumstances can a clinical negligence claim be brought outside the three-year time limit. We will advise you if we consider that the three-year period will cause you a problem in bringing your claim.

Commencement of proceedings



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- We (or a barrister instructed by us) will draft the court papers that are required to issue court proceedings on your behalf.
- Once proceedings have been issued and served on the opponent, we agree a timetable of steps in order to try and bring your case to a conclusion. This timetable can last around a year. Although court proceedings may have been issued, it remains unlikely that the case will go to trial as most cases settle “out of court”.

If you have any questions about the clinical negligence process, please contact us.

CONTACT:

Ally Taft or any member of the team
Clinical Negligence

Telephone Number: 0844 561 0100
Email: ally.taft@alsterskelley.com