

Clinical Negligence

Your rights 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. Unfortunately, sometimes things do go wrong, and when this happens the effects can be life shattering for both the patient and their loved ones.

Bringing a clinical negligence claim (also known as a medical negligence claim) requires a lawyer to have a very specialist expertise that encompasses both legal and medical knowledge. This is why, if you do decide to bring a claim, it is important to use a law firm with a specific medical negligence team, rather than using a generalist Personal Injury lawyer.

A good clinical negligence lawyer will understand the feelings and needs of those affected by negligent treatment, as well as recognising 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 – they require that you, the claimant, prove two separate things: that the healthcare professional failed to carry out their responsibilities (fault) and this is what caused you to be in the position you are now (avoidable harm).

Fault – You may hear your lawyer talk about a 'breach of duty'. This simply means that, for the type of treatment you received, your care fell below the standard expected of a reasonably competent and skilful specialist. In other words that they failed to treat you in the way you could reasonably hope to be treated.

Avoidable harm – This is also called 'causation'. It means that you need to show that the negligent care (rather than the 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.

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. This may take time to ensure these are done thoroughly. All this will ensure your claim has the best chance of success and should not deter you from making a claim if you want to. A specialist medical negligence lawyer will arrange all of this, so you do not need to worry.

Some people are put off from starting a claim by the thought of having to go to Court. This only happens for a very small minority of cases, the vast majority are won without making it there. Even if you do have to go your lawyer will assist you every step of the way and ensure you have the help and support you need.



"It is crucial to seek legal advice as soon after a clinical accident as possible"

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 memories and it is always best to try and record these when they are fresh.

You are normally expected to start a claim within 3 years of the date of your injury or of the date when you first discovered your injury was the result of clinical negligence.

Funding or paying for your claim

Russell Jones & Walker are happy to discuss the merits of your claim at your convenience.

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 these to ensure you are not unduly worried about costs.

In all cases, if your claim is successful, the side paying your compensation will also 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 are not liable for any of their costs. 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.

Medical Negligence Claims at Russell Jones & Walker

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. Additionally our network of offices across the country enables us to provide 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
- Cerebral palsy
- Birth injuries
- Anaesthetic awareness
- Mistakes in diagnosing and treating cancer
- Orthopaedic errors including problems from hip and knee surgery
- GP negligence
- Keyhole surgery errors
- Dental errors
- Prescriptions errors
- Medical Law cases.

Our recent successes include:

- A substantial interim payment for a man left seriously disabled when a failure to diagnose a heart infection led to a stroke
- An award of £300,000 for a woman left seriously disabled after her brain haemorrhage was diagnosed too late for effective treatment
- An award of over £300,000 for a woman left severely disabled after a substandard hip replacement
- An award of over £200,000 for a woman whose husband died after his lymphoma was diagnosed too late
- £40,000 for a woman left partially sighted after her GP failed to diagnose a torn retina
- £20,000 for a woman who underwent unnecessary surgery when wrongly diagnosed as suffering from breast cancer.

How to decide if you should make a claim

In our experience when someone has been affected by sub-standard medical treatment it is not always compensation they want. Sometimes it's simply an apology. On other occasions it is wanting justice or knowing that no-one else will suffer in the same way. 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. Your lawyer will be able to advise you on how to do this.

If you do wish to make a formal complaint then you have to do so within 6 months, so it is best not to delay.

Inquests

Occasionally the Coroner may require an investigation into a death. We can assist in preparing for, and representing you, at an Inquest: helping you to understand the procedure and ask the right questions to help you gain an understanding about what happened.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:



0800 916 9015



Email: enquiries@rjw.co.uk



Web: www.rjw.co.uk



Our offices:

Birmingham, Bristol, Cardiff, Edinburgh (Associated Office), London, Manchester, Newcastle, Sheffield, Wakefield

Regulated by the Solicitors Regulation Authority.
Prepared by Russell Jones & Walker Solicitors 2010.

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 time of going to press January 2010.