

Clinical Negligence

- ◆ A clinical negligence claim may be brought against any health care provider when
 - ◆ Care is not of an acceptable standard, and
 - ◆ Injury or death results
- ◆ Claims may be funded in a number of ways
- ◆ Claims may be made up to three years from the date the claimant knew that injury had resulted from an error.

1. Common errors in the diagnosis and treatment of patients

Inadequate examination/investigation	Wrong diagnosis	Delay in diagnosis
Damaging other body parts	Wrong treatment	Delay in treatment
Failure to monitor	Failure to refer	Delay in referring

2. When can a claim be brought?

A clinical negligence claim may be brought against any healthcare provider when:-

- ◆ Care is not of an acceptable standard; and
- ◆ Injury or death results

Care is not of an acceptable standard if it is not in accordance with what a responsible body of medical opinion would approve.

An injury may be an entirely new problem or simply delayed or incomplete recovery.

3. The NHS complaints procedure

- ◆ A complaint may be about the quality of service, including medical care.
- ◆ Your complaint should be investigated and responded to within 20 working days.
- ◆ If you are dissatisfied, you can request the Healthcare Commission carry out an independent review within 2 months of the response you receive.
- ◆ Making a complaint should always be considered as a first step, as it may result in an explanation and an apology and provide information that will help in deciding if a claim for compensation should be brought.
- ◆ Legal advice is always essential in bringing a claim. Many solicitors specialise in clinical negligence and will advise how to make an effective complaint without a fee.

4. Limitation – how late can a claim be brought?

Basic Rule

Legal proceedings must start within three years from the date the claimant knew or ought to have known that significant injury resulted from an error. Therefore, if you could not reasonably know that a mistake has been made, time will not begin to run.

Time does not run for a person under 18 or who, because of a mental disorder, is unable to manage their own affairs.

Extensions

The Court has discretion to override the time limit when it is fair to do so, but it is best to bring claims promptly.

5. How is compensation calculated?

An award of damages has four components:-

- ◆ Pain, suffering and loss of amenity;

- ◆ Past financial loss/expense;
- ◆ Future loss/expense;
- ◆ Interest

6. How to Fund a Claim – The Options

- ◆ Existing insurance – check all your policies and show them to your solicitor. You may have insurance for legal expenses.
- ◆ Conditional fee arrangements (CFA). These are the so called “no win no fee” option.
- ◆ Legal Aid, this is means tested – only a small percentage of the population is eligible. (Your existing insurance – check all your policies and show them to your solicitor. You are ineligible if gross income exceeds £27,456 or capital exceeds £8,000 with small monthly allowances for partners (£138, and dependent children (£190) and a disregard of up to £100,000 on the equity of your house)
- ◆ Self-funding – justifiable for initial claim investigation prior to CFA.

7. Making a Claim – The process⁴

- ◆ Retain an experienced solicitor. Look at the Law Society web site for their special interest group.
- ◆ Solicitor obtains medical records.
- ◆ Solicitor instructs independent medical expert.
- ◆ Medical expert reports on the standard of care.
- ◆ Solicitor prepares detailed Letter of Claim.
- ◆ Healthcare Provider replies to Letter of Claim within three months admitting or disputing claim.
- ◆ Legal proceedings.
- ◆ Settlement out of court or trial.

Note: Only a tiny percentage of claims reach the door of the court.

8. How to Obtain Your Health Records

The Data Protection Act 1988 provides an entitlement to obtain a copy. The cost is dependent on the volume of material but cannot exceed £50. You are not obliged to give any reason for your request. Records should be made available within 40 days.

9. Questions to ask when injury results

- ◆ Was outcome unexpected?
- ◆ Was the correct diagnosis reached as quickly as it should have been?
- ◆ Was the correct treatment provided?
- ◆ Was treatment given promptly?
- ◆ Has an explanation for the outcome, that can be understood, been given?
- ◆ Would the outcome probably have been different if the correct treatment was given earlier?

Relevant Information

Law Society - www.lawsociety.org.uk tel. 0870 606 6575

Action Against Medical Accidents - www.avma.org.uk Helpline 0845 123 2352 - AVMA is a charity that supports people involved in medical accidents.

Patient Advice and Liaison Services (PALS) - www.dh.gov.uk or contact your local hospital or Health Authority

Independent Complaints and Advocacy Service (ICAS) – contact your regional Health Authority

The Health Ombudsman – 020 7276 2035

Note: Please bear in mind that litigation and giving evidence can add to your stress and Pain levels and effect recovery or improvement