

## Making a medical negligence claim

### Here is our guide to the stages of a claim.

### We will be right beside you throughout.

We understand that complaining about medical treatment can feel overwhelming and distressing, but we're here to help. When you contact us, your case will be assessed – free of charge – by our specialist assessor who is a medical negligence lawyer with over 40 years' experience. You will get a highly expert opinion. We'll listen to you and also explain the options regarding costs (including No Win, No Fee); this means you don't have to pay out any money in advance of getting compensation – or at all, if the claim is not successful. Every medical negligence case is different, with its own unique facts and circumstances. Whilst some steps are mandatory, others are not and there is no "one size fits all". **The aim of this guide is to provide some general guidance on the process, but we work with you to pursue your case in the best way for you.**

You will have a lawyer leading on your case, who you can talk to when you need.

#### Stage 1

### Initial assessment

When you first contact us, we offer a free initial assessment to see how we may best help you.

1. **We listen to you** and talk through what happened.
2. **One of our specialist medical negligence solicitors reviews any complaints documents or incident/investigation reports** you can give to us and considers how we may help with any legal case.
3. After reviewing your case, **the specialist solicitor offers some initial advice** as to how we can best help you and what else can be done.
4. **We may apply for a copy of key medical records** and review these.
5. **We may then explore your case with one of our medico-legal experts** to canvass their views on whether the care you received was negligent.
6. **Our specialist solicitor assesses the case and advises you** whether a legal case is likely to succeed. If we are unable to help pursue the case further, we will try to signpost you to other organisations who may be able to help, for example, advocates or charities.

#### Stage 2

### Starting formal investigations

If we consider the claim is likely to succeed we will:

1. **Enter into a formal funding arrangement** to meet the costs of the investigations into your case. Usually this is a "No Win, No Fee" agreement alongside insurance. Few cases are now eligible for legal aid.
2. **Apply for all your medical records** and arrange for these to be sorted, indexed and paginated for ease of access.
3. **Prepare an initial statement** based on your recollection of events.
4. **Instruct independent medical experts** to advise whether the care you received fell below the acceptable standard, and whether this caused, materially contributed to, or worsened, your condition. In some more complex cases, we will need to instruct several medical experts.
5. **Review all the evidence** and advise you whether your case is still likely to succeed in the light of the material gathered.

These investigations can take some months, depending on how many expert reports are needed and how quickly the medico-legal experts can provide their reports.

#### Stage 3

### Before starting court proceedings ('pre-action')

Once supportive expert evidence has been obtained:

1. **We notify the defendant** (for example the hospital or GP) in a letter of notification and then a more detailed letter of claim, which sets out why we believe the care that you received was negligent and what harm this caused.
2. **The defendant has four months to respond with their letter of response.** They may deny they are responsible, or agree they are liable for some or all of your injuries. They may offer you compensation to settle your claim.
3. **We consider the letter of response.** If the defendant admits liability in full or in part, it may be possible to explore a settlement. If admissions are not made, we invite the medical experts to consider the points made in the letter of response, to see whether they still support your claim.
4. **We often meet with a barrister and the medical experts** (this stage is known as 'conference with counsel') to test the evidence in detail to make sure that your claim is strong enough to proceed.

#### Stage 4

### Start court proceedings ('issuing the claim')

Before starting the claim at court, we always consider alternative dispute resolution methods, such as mediation. If it's not possible to resolve your claim, whether because the defendant denies the claim, or because we're not able to agree an appropriate amount of compensation, court proceedings will be started. However, this does not automatically mean that your claim will go to trial and in fact, very few get that far. It is also the case that most claimants do not ever have to attend court at any stage of the process.

The steps involved in starting court proceedings are:

1. **Preparing the claim** for submission to court
  - a claim form (the official document that needs to be issued at court to start your claim).
  - The particulars of claim (a statement of your case), which will set out the allegations of negligence.
  - A preliminary schedule of damages which will set out the specific financial losses incurred as a result of the alleged negligence and an estimate of the likely future losses, such as loss of income.
  - Medical reports on your condition and prognosis.

**You will need to approve these documents and sign a statement of truth** confirming the documents are true and accurate before we send them to the defendant.
2. **Issuing proceedings** by submitting the claim form to court.
3. **Serving proceedings** by sending the claim form, particulars of claim, preliminary schedule of loss and condition and prognosis reports to the defendant; (this must take place within four months of the claim form being issued at court).
4. **Filing proceedings with the court.**

#### Stage 5

### The court timetable

Once court proceedings have been started:

1. **The 'defence' is served and filed.** Usually this is served within 1-4 months after court proceedings are served.
2. **The court sends out a questionnaire to all parties,** asking for information about the case. This helps the court consider how best to manage the case.
3. **A court hearing is held** (called a costs case management conference). Your solicitor and/or barrister attend the hearing. The court will decide whether it should first decide a preliminary issue (for example, whether you win your case) or deal with the full case (whether you win your case and also how much compensation you should receive) at the same time. It will give numerous directions which everyone involved must follow to prepare the case for trial. In most cases, the court also allocates both sides a budget for the costs that each side is permitted to incur going forwards. Key directions include:
  - **Disclosure and inspection:** The parties produce various documents relating to the case.
  - **Exchange of factual witness evidence:** The parties exchange witness statements from those they intend to rely on. This includes the health professionals responsible for your care.
  - **Exchanging expert evidence:** We give the defendant our expert evidence and they give us theirs.
  - **Experts' meetings:** The experts meet to discuss the case and try to narrow the issues before trial.
  - **Service of the schedule:** this is a document that sets out how much compensation you are seeking and why.
  - **Service of the counter-schedule:** this is the defendant's response to your schedule. It sets out how much compensation they believe you should receive if your case is successful.

4. Trial is usually scheduled within 18-24 months of the claim form being issued.

As your case proceeds, we will proactively seek opportunities with the people representing the defendant, to explore a settlement and aim not to go all the way to court.

There is likely to be at least one further meeting with a barrister and the experts during this stage.

#### Stage 6

### Trial

Medical negligence cases rarely go all the way to trial. However, we always prepare your case as if it will go to trial, because a small minority do.

If there is a trial, you will be represented by a barrister. The judge will hear evidence from witnesses for both sides as well as the evidence of the independent experts. The judge will then decide whether or not the claim succeeds. The length of the trial depends on the number of witnesses and the complexity of the case, but can range between 2-15 days.

### Settlement

Most cases are settled out of court, whether by negotiation or some form of alternative dispute resolution (ADR). The most commonly used forms of ADR in medical negligence cases are 'joint settlement meetings' where the parties come together to see whether it's possible to settle the case; or, mediation. In this case a mediator works with the parties to find a solution that all are willing to accept.

There are other benefits to mediation, including non-monetary remedies, such as an apology, which are not necessarily achievable through litigation. ADR can be used at any time in the case, although it is more likely to be successful at certain key stages.

**Whichever way settlement is achieved, you will be fully involved in the process.**

### Valuing your claim

We will investigate the amount of compensation to which you would be entitled. The purpose of compensation is to return you, as far as possible, to the position that you would have been in if the medical negligence had not occurred.

In many cases, we will not fully investigate how much compensation you are likely to receive until the preliminary medical issues have been considered. However, we will usually be able to provide you with a broad outline at the beginning of the case. To be more precise takes time because we will need to investigate how much you are entitled to and obtain evidence to support your claim.

During your case, it may be possible to obtain an interim payment of compensation from the defendant to help you purchase specific items such as care, a wheelchair, a car or a house that is suited to your needs. This is usually only possible if the defendant has accepted liability for your claim.

At the end of the case, compensation may either be paid as a single lump sum or as ongoing annual payments (periodical payments) or a combination of the two.

You may be awarded provisional damages. This is when there's a possibility that your injury will get worse in the future, and it's possible for the court to make an order allowing you to come back to court if your injury gets worse.

**We hope you've found this information helpful. Of course your legal adviser can answer more detailed questions once we get to know you. If you haven't already booked a meeting and would like to, please get in touch. We can meet you in person or by video call.**



Our medical negligence team in Chelmsford. Tees has a large team of approximately 20 medical negligence specialists who are based in Chelmsford, Bishop's Stortford and Cambridge, but we can help you wherever you are in England or Wales.

**You can visit our website for a more detailed account**

[teeslaw.com/home-life/medical-negligence/](https://www.teeslaw.com/home-life/medical-negligence/)

### There's more to Tees

Tees provides expert legal services and independent financial advice – so our expert advisers can also help you in other ways. If you receive compensation, we can help you to manage the money and we can advise on matters concerning wills, lasting powers of attorney, property, family law and employment law. Your lawyer in our medical negligence team will remain your foremost contact throughout, but they can introduce you to other experts, should you need and wish.