



**Let's talk  
Medical  
Negligence**

**Putting your  
needs first**

Professional advice, simply stated.

**Barcan+Kirby**

# Medical negligence, your questions answered.

When we visit a hospital, dentist or GP, we rely on health professionals to correctly diagnose and treat us. However, on rare occasions, things can go wrong – and the resulting consequences can be life changing.

## **Making it easier for you**

As medical negligence specialists, we're passionate about what we do – getting you the result you deserve and highlighting poor treatment to stop it happening to anyone else.

No one we meet ever wants this to happen. Each and every client we deal with would rather be fit and healthy. But we understand that while compensation might help you put your life back on track, it can never undo the impact of negligent treatment.

If you've been affected by medical negligence, it's a confusing place to be. A wealth of information is available online, but much of it is complex or even contradictory. That's why we've published this guide – a straightforward explanation about medical negligence cases with the basic facts and principles in one place.



# Medical negligence, the basics.

You can make a medical negligence claim against most healthcare providers, including NHS hospitals, ambulance trusts, private clinics, doctors, GPs and dentists.

To bring a successful claim, we need to prove that your treatment fell so far below the acceptable standards set by the medical profession that it breached their duty of care to you. We also need to prove that the substandard treatment you received caused an avoidable injury.

If you're successful, you may get an apology and you'll be awarded compensation for your injuries. Compensation should also cover your past and future losses which have arisen because of the negligence. 'Losses' can, however, refer to lots of things:

- + Pain and suffering, including psychological damage
- + Inability to look after yourself
- + Loss of past and future earnings
- + Medical expenses, including special equipment and nursing care
- + Inability to carry on hobbies or sports

Of course, the only way to know how much these losses equate to is through careful investigation. We look at similar previous cases, expert medical reports and our own research before arriving at a figure.

Diligent research is often the difference between success and failure when it comes to negotiating with a hospital's lawyers, which is why we take the time to investigate thoroughly.

## Duty of Care

### Hospitals and doctors should:

- + Diagnose your health condition correctly
- + Refer you to a specialist if they aren't sure what the problem is
- + Avoid unnecessary delays
- + Prescribe you the right medication
- + Warn you of the risks of surgery and get your consent before operating
- + Take reasonable care during operations

# Compensation

## the process.

**1.** If we think you have a potential medical negligence claim, we'll usually offer you a 'no win, no fee' agreement.

**2.** We'll begin our investigations by requesting a copy of your medical records. When we do this, we will have to inform the hospital that we're investigating a claim against them. This doesn't always mean that the person or people who treated you will know that you're considering legal action and it certainly won't affect your future and ongoing medical care.

**3.** We consider the records in detail and prepare a witness statement setting out your recollection of what happened. We usually then instruct an independent expert or experts to comment on the standard of care provided and the link between any negligence and injuries. If the evidence is supportive of a claim, we draft a letter of claim setting out the allegations of negligence to the defendant. We may ask an independent medical expert to assess your injuries and identify their long-term impact.

We'll then send a letter of claim to your healthcare provider letting them know that we intend to claim compensation, how much and why. They must acknowledge receipt of this letter within 14 days and give a detailed response within four months.

**4.** Once they've considered our letter, broadly speaking, there are three things that could happen:

1. They offer compensation, either with or without admitting liability, and with or without an apology

### No win, no fee explained

No win, no fee is also known as a 'conditional fee agreement' (or CFA). As part of your CFA, we'll take out insurance on your behalf - this covers the cost of any legal fees (including ours) if you lose your case.

If you're successful in your claim, the CFA lets us claim most of the legal fees back from the defendants. We'll also receive a percentage of the compensation we - this is known as our success fee.

2. They deny your claim entirely
3. They admit part or parts of your claim, but disagree about compensation

Most claims we handle tend to settle before going to trial and it's very rare that you'd have to go to court. If you've got a strong case, the hospital's lawyers will usually advise them to settle out of court rather than risk additional expense. In the rare case that you *do* go to court, we'll bring in a specialist medical negligence barrister to speak on your behalf.

Any offer of compensation outside court is likely to be less than the amount initially claimed. You might need to make a decision about whether to accept a slightly lower amount in return for bringing the case to a conclusion without a trial. We can advise you on this but the choice is ultimately yours.

If you're offered compensation, your solicitor will negotiate on your behalf to get the best possible settlement.

# What happens next?

We will explain in detail how legal costs work, but in broad terms, once your claim is finalised, we'll also recover costs on your behalf from the defendant.

This includes most of your own fees and the costs of any experts and barristers we've involved in your case.

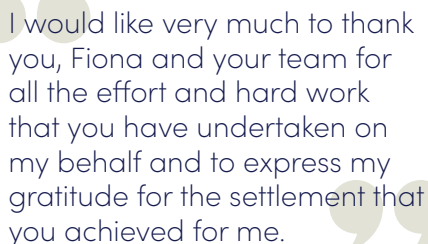
## Ongoing support after compensation

In our experience, some clients need more than just financial compensation. If you have ongoing care or financial needs as a result of the negligence, we'll work with you throughout your claim to arrange care teams and packages for your circumstances.

We might also recommend that you speak to a financial adviser for independent advice - especially if you've received a large compensation sum.

If the person you're caring for is under 18, or if they lack mental capacity because of a brain injury or neurological condition, we can advise you on setting up or managing a trust.

We can also act as a professional deputy if you don't want the responsibility of managing someone else's financial affairs.



I would like very much to thank you, Fiona and your team for all the effort and hard work that you have undertaken on my behalf and to express my gratitude for the settlement that you achieved for me.

**Yvonne | Medical Negligence client**

## Get in touch

One thing we know is that all medical negligence claims are different and you probably have specific questions about your own case. A medical negligence specialist will help you understand whether you can make a claim. We promise to treat you with respect, empathy and understanding.

We won't pressure you into making a claim and speaking to us over the phone doesn't mean you're obliged to instruct us if you want to go ahead. Most importantly, all conversations about medical negligence claims are conducted in strict confidence and are completely free.

Although we're based in Bristol, we act for clients across the UK. And if you can't get to our offices, we'll visit you at home.

# Your questions answered.

## **How long does it take to claim compensation?**

It's difficult to put an exact date on each case, as every claim is different. Some simple cases can take a year, whilst more complex claims can take significantly longer.

## **Is there a time limit for claims?**

Yes. You have three years from finding out that you have been a victim of negligent treatment to register your claim with the Court or to reach a settlement.

However, if you were a child when the negligence occurred, you have three years from your 18th birthday. Exceptions are also made for some people with learning difficulties or mental health issues.

## **Will I take money out of the NHS?**

Your compensation will not come out of the NHS budget for staff, training and supplies. The money for your compensation and cost of legal action is paid from a separate fund. Individual doctors also have their own insurance and their insurers will normally be the ones to pay out if you take action directly against them.

## **Is it ethical to sue the NHS?**

Clients often tell us that what they really want is an apology or explanation rather than compensation. Sadly, sometimes the only way to force an NHS trust to admit their mistakes is to take legal action and this can often lead to improvements in care for other patients. Knowing that they've helped prevent something similar happening to someone else is often the best form of closure for people who have been victims of negligent treatment.

## **Will my doctor or GP lose their job?**

Your claim will not have a direct impact on your doctor or GP's job, however the hospital or practice may launch an internal investigation if they have their own concerns. The General Medical Council may also investigate individual practitioners for serious wrongdoing, however, this process is independent of your claim.

## **How can I fund my claim?**

As well as no win, no fee agreements, there are other ways to fund your claim – including legal expenses insurance and through a trade union. Alternatively, we can start initial investigations into your case on a fixed-fee basis, with the aim of signing you up to a no win, no fee agreement if our investigation produces the evidence needed.

## **Is Legal Aid available?**

Legal Aid is only available for cases involving children who have suffered neurological injury during pregnancy, labour, or their first eight weeks of life. If this results in the child suffering a severe disability for the rest of their life, they may be entitled to public funding.

## **Who will manage my case?**

Your case will be managed by an experienced specialist lawyer in our medical negligence department. Our dedicated team also includes trainee solicitors, paralegals and experienced legal secretaries, all of whom will assist your solicitor throughout your case.

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