

## Clinical Negligence – an overview

If your child suffers from a disability, then there can be a raft of obstacles and issues that you and your family have to consider and face. This can feel even more difficult if you have concerns about the treatment that your child has received, and whether this has contributed to their disability.

Although medical treatment in the UK is generally of a high standard there are occasions where children are not provided with medical treatment of an acceptable standard. This can leave children and their families to cope with lifelong disabilities and complex care needs.

If you are concerned about the treatment your child has received and are looking for an explanation or apology, then there are NHS complaints procedures which may assist. After making a complaint you may receive an explanation about the treatment you or your child received, and an apology. Your complaint may also help to bring about improvements in clinical practice, and reduce the chance of a similar incident happening to someone else.

If it is financial support that you are looking for however, then you may want to bring a claim for clinical negligence. Through this you may be able to obtain financial compensation which ensures that your child receives the financial support they need in the future to fund their care needs, specialist aids, therapies, equipment, and education.

### How can I bring a claim for clinical negligence?

To be successful in a claim for clinical negligence, it must be proved that:

- Breach of Duty: The standard of medical care given to you or your child was below that which could reasonably be expected at the time.
- Causation: The breach of duty caused your child's disability.

To find out whether your child has a claim for clinical negligence you should consult a solicitor. The law in this area is complex, and so make sure to find a solicitor with the right experience, understanding and knowledge. The majority of solicitors will offer you a free initial meeting, where they will discuss your case, explain your funding options, and provide more information about bringing a clinical negligence claim.

When you have instructed a solicitor, they will help you to obtain and review your and your child's medical records. They will then get independent and unbiased expert medical opinions about the causes of your child's disabilities and the standard of the care they received. In a case involving a possible birth injury, this may include opinions from an obstetrician, paediatrician, midwife, paediatric neurologist, or neuro-radiologist.

Your solicitor will then have a meeting with you, the medical experts, and a barrister, to explain and discuss all of the evidence and establish whether or not your child has a claim for clinical negligence.

If the evidence indicates that your child's medical treatment was in accordance with normal practice and was to an acceptable standard, then your child will not have a claim. Your child will not receive a financial award, but you will hopefully have obtained a better understanding of what may and may not have caused your child's disability.

If the evidence indicates however that your child's medical treatment was sub-standard and there was a 'breach of duty', then your child's case will proceed further. Your solicitor will write a letter, known as a Letter of Claim, to the defendant setting out the full details of your claim. This will include any likely allegations and the approximate compensation sought. The defendant will then have four months to respond.

This defendant's response to the Letter of Claim provides an early indication of the likely outcome of legal proceedings. The response can include an early admission of liability, which means that the case can be settled without a trial. If the defendant does not admit liability then your solicitor will continue to work on your case, including issuing the case at court and being given a trial date.

### If successful, how much compensation will my child receive?

If your child's claim for clinical negligence is successful, then they will be awarded financial compensation. The main purpose of this is to pay for the extra support and care your child will need in the future as a result of their injuries. This could include funds for:

- Adapted accommodation;
- Care;
- Specialist equipment e.g. Eye Gaze;
- Therapies e.g. Bobath Centre, Occupational Therapy, Physiotherapy, Hydrotherapy, SALT;
- Medical treatment;
- Transport;
- Mobility aids;
- Social and leisure pursuits.

Your solicitor will obtain evidence in relation to your child's future needs from a range of experts e.g. occupational therapists, physiotherapists, architects, accountants, employment consultants, and rehabilitation consultants. These experts would assess your child, provide evidence regarding their future needs, and make recommendations to enable your child to live a happy and comfortable life, and to make the most of their abilities.

Your child's financial compensation will also include money for past financial losses e.g. travel expenses. If you are considering making a claim for clinical negligence, it is therefore important to keep a diary of the extra costs you incur because of your child's disabilities, and to keep receipts relating to these expenses.

### What will happen to my child's compensation?

If your child is likely to have capacity to manage their own affairs in future then their compensation will be held in the court until they reach 18, and then paid out to them to control.

If your child is unlikely to have this capacity, then the Court of Protection will administer their money. Parents are usually involved in managing the award, and in the decision-making process regarding what it is spent on. The cost of administering your child's award in the Court of Protection can be included in their compensation.

### How do I pay for a claim for clinical negligence?

Bringing a claim for clinical negligence can be an expensive process, and so you should ensure that you are aware of the costs involved. The main options for funding the claim are:

1. Legal Expenses Insurance attached to your credit card, house insurance or contents insurance.
2. Legal Aid Agency funding if your child suffered a neurological injury at birth or at up to eight weeks old. There are conditions which apply, and your solicitor will be able to advise you further and help you to make an application.
3. Conditional Fee Agreement (No Win No Fee) from your solicitor's firm which ensures there is no financial risk to you if your child's claim is unsuccessful.

## How long do we have to bring a claim for clinical negligence?

There is a maximum period of time in which you are able to pursue a clinical negligence claim, known as a 'limitation period'. For most clinical negligence cases this is three years from when you first knew, or suspected that you were injured as a result of clinical negligence.

In the case of a child however, the three-year period does not start until age 18 and so you have up until your child is aged 21 to bring a claim for clinical negligence. However, it is best to start an investigation as early as possible, while things are likely to be clearer in your mind.

If your child suffers from a disability affecting their mental functions, which prevents them managing their day to day life, then there may be no time limit to bringing the claim for clinical negligence. The test for this is complicated however, and if you think this may be relevant to your child you should seek advice from your solicitor.

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