

# Personal Injury

## Making a clinical negligence claim



The personal injury (PI) department at Buckles Solicitors LLP has decades of experience helping clients seek compensation. This guide has been designed to provide an overview of the claims process.

### Who can bring a claim?

A claim may be brought by anyone who has sustained an injury. For a child, it can be made on their behalf by a parent or legal guardian.

Unfortunately, some accidents do result in death and in these cases the victim's dependants are usually able to start the claim process for the benefit of the deceased's estate.

### Clinical negligence

The UK has an outstanding reputation for the provision of quality healthcare services and it is widely accepted that our healthcare professionals are some of the best in the world. However, mistakes are occasionally made and the results can be severe. Often, clients are not interested in financial gain from taking legal action, but simply demand the knowledge of what happened to you or your loved ones and why it happened.

### Time limits

As with a normal accident claim, you have three years from the date of the act of negligence to bring a claim or three years from the date you knew or should have known that you might have a claim (whichever is later). In the case of children, the three year period runs from their 18<sup>th</sup> birthday.

### A successful claim

To bring a clinical negligence claim you will need to show that:

- ▶ The medical practitioner owed you a duty of care
- ▶ He or she breached that duty
- ▶ Loss was suffered as a result of that breach of duty

It can be difficult to show all three elements. Just because a medical practitioner may use a different method or

procedure they may not necessarily be negligent. The Claimant must show that the medical practitioner has followed a course of action which is not supported by any reasonable body of medical opinion. The Claimant must then show that this breach of duty caused their injury.

### The clinical negligence claim process

The process for claiming in clinical negligence differs slightly from accident claims.

### Instruction

Your first step is to inform one of our team about the facts of the case and upon that basis we will advise you as to the merits of bringing a claim. It is essential at this point to bring with you as much information and documentation as possible regarding your claim. One of our team members will also discuss with you the ways the claim can be funded should they feel you have a strong case.

### Medical evidence

With your permission we will obtain copies of your medical notes and records from your GP/hospital.

### Witness evidence

At this point, it would be useful to obtain statements from any witnesses to the alleged negligence.

### Expert's reports

Once we have your medical records we will instruct a medical expert to prepare a report providing their opinion about whether there has been negligence by the medical practitioner. We will then need to obtain a separate report dealing with the issue of whether the negligence caused injury.

## Letter of claim

Once we have received the expert's reports and, if they are helpful to your case, we will send a detailed letter of claim to potential defendants. They will have three months to provide a response.

## Settlement and Court proceedings

Once the defendants have investigated the claim they will either admit or deny liability. We will then take steps to put a value on your claim. We will need to obtain additional medical evidence dealing with the extent to which the negligence has caused your injury, namely the nature and duration of your injuries. If there is no admission of liability, the only way to proceed may be to issue and serve Court proceedings against the defendant. However, the vast majority of cases settle before going to Court.

## Part 36 Offer

Either party can make a formal offer at any time under Part 36 of the Civil Procedure Rules. If an offer is made or received, the implications of it will be explained at the time by our team member dealing with your claim.

## Damages

Damages are the recognised term used for compensation you will receive if your claim is successful. There are several different areas to consider when analysing the amount of damages available.

**General damages:** this includes compensation for the pain and suffering you have had to cope with after sustaining the injury as well as your inability to carry out day-to-day tasks and loss of quality of life (e.g. if you are no longer able to carry out your usual sports or hobbies).

**Special damages:** this may include compensation for money you have to pay out or have lost because of the accident. It may cover areas such as:

- ▶ Loss of earnings due to enforced statutory sick pay
- ▶ Loss of earnings due to having to take a lesser paid job as a result of your injury
- ▶ Loss of pension if you are unable to return to work
- ▶ Travelling expenses
- ▶ Purchasing prescriptions
- ▶ Cost of rehabilitation products for your injury
- ▶ Cost of a hire car

You should keep receipts for any losses and expenses including any journeys made relating to your injury as this will make it easier to claim money back. Any future losses and expenses will be awarded for the likely period of loss.

**Interim damages:** claims can take many months to settle and in some cases interim payments may be paid to you. This award of damages takes into account your immediate financial outgoings if you are away from work and not being paid your full salary. Any interim damages awarded will be deducted from the final award.

**Reduction in damages:** even if you were partly to blame for your accident you may still be able to recover some compensation. However, there may be a reduction in the amount of damages awarded, to take into account your contributory negligence (e.g. not wearing a seatbelt in a road traffic accident caused by another motorist).

## Costs

How the costs are paid depends upon how the case is being funded. With most successful cases the defendant's insurers agree to pay our legal costs. If we have entered into a conditional fee agreement with you there may be a deduction from your damages, but this can be no more than 25% of the compensation agreed and awarded.

## Personal injury Trusts

At the end of a successful PI claim you will receive a compensation payment. An alternative to putting your money in a bank account is to set up a PI Trust. There are two key reasons why: if you are receiving means-tested benefits, then a lump sum payment may result in those benefits being reduced or withdrawn; and it can also protect your compensation being swallowed up later in life when paying for Care Home Fees or for your own home. Please speak to one of our team members for more information.

## Key contact



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