Many people undergo medical procedures and receive treatment on a daily basis which results in an excellent outcome. We are fortunate that our medical care in the UK is of a generally high standard.

However, sometimes things do go wrong which can result in a patient suffering symptoms or injuries which have lifelong consequences. There is a difference between treatment being less than ideal and being ‘negligent’. Sometimes, a poor outcome from treatment cannot be prevented, even in the hands of the most skilled and experienced doctors. Where the care has fallen below an acceptable standard however, the law intervenes to provide a remedy. This area of law is known as medical or clinical negligence.

Types of Claim

Some common types of claim for clinical negligence include:

- GP care (misdiagnosing a condition; prescribing the wrong medication; failing to refer to hospital, or failing to detect serious symptoms such as a heart attack or stroke)
- General Surgery (including gynaecology, urology, keyhole procedures and bowel operations)
- Orthopaedic Surgery (missed fractures; inadequate fixation of fractures)
- Obstetric - mother and baby care (doctor or midwifery care during pregnancy and childbirth; baby complications including cerebral palsy)
- Cancer care (delayed diagnosis and treatment; incorrect treatment)
- Accident & Emergency care (including failure to diagnose heart attacks or strokes; missed fractures; deep vein thrombosis / pulmonary embolism)
- Nursing care (patient falls whilst in hospital; pressure sores, or district nursing mistakes)
- Anaesthetic errors, including awareness whilst under anaesthetic or use of the wrong type of drugs

What is clinical negligence?

Negligence occurs when a medical professional provides treatment which falls below a standard considered to be reasonable, either by doing something they should not have done, or failing to do something they should have done. When a patient suffers injury as a result, they may have the right to pursue a claim for compensation.

It is important to remember however that not all poor treatment outcomes are attributable to negligence. Sometimes, a patient can be left with ongoing problems despite the best efforts of their treating doctors, and a claim in negligence may not be successful.

Do I need a specialist solicitor?

Clinical negligence is a very specific area of law and it is important to ensure that you receive advice from a solicitor who has undergone specialist training and has
relevant experience. A clinical negligence claim is not the same as a personal injury claim, and your solicitor should have the necessary legal and medical knowledge in order to best assist you.

The Law Society of England & Wales (www.law society.org.uk) and the patient charity AvMA (www.avma.org) have specialist accreditation panels for clinical negligence solicitors.

**How do I prove my claim?**

In order for a claim in negligence to have reasonable prospects of success, you must prove two separate legal tests: breach of duty and causation.

To establish breach of duty, you need to prove that the standard of care provided by your treating doctor(s) fell below an acceptable level. This is a strict test. You must show that no responsible body of practitioners would have treated you in the same way. So, even if a minority body of practitioners would have acted the same in the circumstances, a claim will fail.

You also need to prove causation, i.e. that your condition and prognosis has been detrimentally affected by substandard treatment. You must show that you have suffered symptoms over and above those you would have suffered anyway, due to your underlying condition. Causation is proven on the “balance of probabilities”, which means 51% or more likely.

Both legal tests are proven by obtaining evidence from independent medical experts practicing in the relevant field of medicine.

**How is a claim pursued?**

The majority of clinical negligence cases progress in this way:

1. Obtain a full copy set of your medical records (i.e. GP and hospitals attended)
2. Obtain a witness statement from you, setting out details of your condition, treatment and concerns
3. Instruct an independent expert(s) to review your medical records and prepare a report addressing breach of duty and/or causation
4. If the expert evidence is supportive, a Letter of Claim will be sent to the Defendant GP/ hospital etc.
5. The Defendant will have 4 months to investigate the allegations raised and respond, indicating whether liability is admitted or denied.
6. If liability is admitted, evidence is then obtained to quantify the claim and settlement negotiations follow.
7. If liability is denied, it may be necessary to embark on Court proceedings.

**What is compensation?**

Compensation (often referred to as “damages”) is designed to put you back into the position you would have been in, had the negligence not occurred. Obviously in some circumstances involving permanent injury, this is not possible. Damages are therefore intended to compensate you for the injury itself, and to reimburse financial losses or cover the cost of future expenses.
Compensation consists of two separate elements: general damages (a rounded sum in recognition of your pain, suffering and loss of amenity), and special damages (for specific financial losses and out of pocket expenses, both past and future).

**Will I have to go to Court?**

Very few clinical negligence cases go all the way to a trial at Court – something in the order less than 5%. In all likelihood therefore, your claim is unlikely to result in a final Court hearing. However, if the Defendant GP / hospital etc denies liability for negligence, it may be necessary for your solicitor to start Court proceedings. This is essentially a series of procedural steps which both parties must comply with, in an attempt to narrow the issues between them.

**What is the time limit for making a claim?**

Time limits are vitally important in claims of this nature. The law provides that a Claimant has a three year window in which to bring a claim for clinical negligence. This three-year period starts to run from the date of the relevant treatment, or within three-years of your “date of knowledge”.

Date of knowledge applies where a Claimant could not have been expected to know their treatment was negligent at the time. An example might be where a GP fails to refer a patient to hospital for tests and they subsequently are diagnosed with cancer, perhaps two or three years down the line. In such a situation, the Claimant is entitled to rely on his date of diagnosis as being his date of knowledge.

If a claim is brought on behalf of a child, they have until their twenty-first birthday to bring a claim.

However, it is important to instruct a solicitor at the earliest opportunity so that events are fresh in your mind and it is easier to obtain disclosure of relevant documentation from treating doctors etc.

**How will I fund my claim?**

Before you commence a claim, your solicitor will need to determine how the legal costs and expenses will be funded.

You may have existing insurance which would cover the cost of investigating a claim (known as “legal expenses insurance”), which is attached to a household, car or credit card policy.

In the absence of any existing insurance, your solicitor may consider acting for you under a Conditional Fee Agreement (commonly referred to as a “no win, no fee”). Government changes in 2013 mean that a success fee is now deductible from client damages, but that the costs of pursuing the claim can still be recovered from the opponent if you win your case.

Legal Aid is now only reserved for children who sustain a serious neurological injury within the first eight weeks of life. We do hold a Legal Aid franchise and are accredited to act on behalf of children in clinical negligence cases who are funded publicly.
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