

HOW THE CLAIM WILL BE PURSUED

Every clinical negligence claim is of course different. Therefore, the individual circumstances of your claim may require some of the following steps to be carried out differently, or not at all. Nonetheless, these are the steps that need to be taken in order to pursue most clinical negligence claims.

Before filing your claim with the court, we must first approach the Defendants' solicitors and tell them in writing what the claim is about and why it is being made. The Defendants' solicitors will then have a reasonable time (usually three months) to respond when they can either admit your claim and offer to pay compensation or reject the claim and explain exactly what they dispute and why.

If the claim is admitted we will attempt to negotiate a fair and reasonable amount of compensation for you. This will include payment of your legal costs but the amount of your compensation that you receive will be reduced if the Defendants are required to repay to the Benefits Agency some or all of any welfare benefits that you may have received. See the "Repaying Welfare Benefits if the Claim Succeeds" section of this Guide.

If it is not possible to settle the claim at this stage we will advise you to issue court proceedings.

Obviously we will discuss with you the exact procedures that will apply to your claim and will then keep you fully informed as the claim progresses.

If the claim relates to medical treatment that was given to someone who has died (either because of the alleged negligence or otherwise) it will be necessary for the court proceedings to be issued in the name of the personal representatives of the deceased. If the deceased left a will this will be the Executor named in the will. If the deceased did not leave a will someone (usually the closest surviving relative) will have to apply to the Probate Registry to be appointed to act as Administrator of the deceased's estate. If no Administrator has already been appointed we will take the necessary steps for the appointment to be made.

If the Claimant is under the age of eighteen when the proceedings are issued or if the Claimant is unable to manage his or her own affairs because of learning difficulties, it will be necessary for the proceedings to be issued in the name of a friend or relative acting as a "Litigation Friend" of the Claimant. The Litigation Friend will have to accept personal responsibility for all of the costs of the claim, both the Claimant's and the Defendants', should the claim be lost, unless the Claimant has either Community Legal Services funding or the costs are covered by insurance.

The proceedings will probably be issued in the High Court at the Royal Courts of Justice, The Strand, London, WC2.

In the proceedings that we issue we will make the following claims:-

- Compensation for pain, suffering and disability

Reimbursement of both past and future out of pocket expenses and loss of earnings. We will prepare a fully itemised schedule that sets out full details of this part of the claim, which we will then send to you for your approval.

- Interest on the sums that you are claiming. The basis upon which interest can be claimed is somewhat complicated but basically the courts will normally award 2% per annum on your claim for pain, suffering and disability from the date the proceedings are served on the Defendants and at the rate of 4% on your claim for past out of pocket expenses and loss of earnings.

- Payment of your legal costs.

The Claim Form

The first step that gets the court proceedings under way will be for us to issue a Claim Form on your behalf at the court. Before that can be done however, we (or a barrister whom we employ for the purpose) will have to prepare a document

known as a Particulars of Claim, which sets out in writing details of your allegations and the reasons for them. You will need to check through and sign both the Claim Form and the Particulars of Claim to certify that the contents of both documents are true. The claim cannot be issued unless you do this.

We will then file the Claim Form and the Particulars of Claim and other necessary documents with the court and pay the court fee. After we have done that we will send copies of the Claim Form and the Particulars of Claim to the Defendants.

The Defence

The Defendants will then have a short period of time in which to file a Defence, which is a document setting out why they reject the claim together with their version of events. In many cases they will contact us and ask for more time in which to do this. Usually, we will be willing to grant a short extension of time of a few weeks because if we refuse they will have the right to apply to the court for an extension and if the Judge takes the view that the refusal was unreasonable you may be ordered to pay the Defendants' costs of the application to the court. As soon as the Defence has been received we will send a copy to you and may (depending upon the content of the Defence) need to see you in order to discuss it in detail.

Medical examinations

At an early stage after serving the Defence the Defendants will almost certainly ask that you submit to a medical examination by one or more of their own medical and other experts. You will not be able to refuse this if you wish to continue to pursue your claim.

The Defendants will however, be required to reimburse to you your travel and subsistence expenses in attending the medical examination. We will therefore ask you to let us have full details immediately afterwards and we will then arrange for immediate reimbursement. If, however, you prefer to be paid your anticipated expenses beforehand, we will be happy to submit the claim in advance.

During the examination the Defendants' expert will undoubtedly ask you questions with regard to your medical history and your present medical condition. You should answer those questions freely and honestly. You should not however disclose the identity of our experts and should not discuss with their expert what you think went wrong or who is to blame for your continuing problems.

Case Management Conference

The solicitors and a Judge will usually then meet at a Case Management Conference in order to decide how the claim should thereafter be dealt with. At this conference (which you will not have to attend) a timetable will be set for the steps that will have to be taken by the solicitors before the claim can be brought on for trial before a Judge. The usual timetable deals with the disclosure of documents, exchange of witness statements and exchange of expert reports.

Fixing the date for trial

At an early stage after the hearing of the Case Management Conference the date for the trial will be fixed by the court listing officer. Once the trial date has been fixed by the court it is extremely unlikely that the court will be willing to agree to the trial date being moved.

Disclosure of documents

We will be required to serve on the Defendants (usually within fourteen days of the case management conference) a list of all the documents in your possession that relate in any way to the claim and they will likewise have to serve a list of documents on us.

The list must include all documents that are or have ever been in your possession or under your control, which relate in any way to any issue that is relevant to the claim. Obviously this will include the medical records (copies of which by then we will already have) but must also include any other documents that you may have and which are in any way relevant, including receipts for any out of pocket expenses that have been incurred (e.g. travel expenses, prescription charges, costs of appliances, costs of special clothing etc). It is not essential to have receipts for every item for which you are claiming, because of course it is quite possible that you will already have destroyed or lost them, but if you do have any receipts then we must include them in the List of Documents that we serve on the Defendants' solicitors.

Because of this obligation to disclose all relevant documents it is important that in future you retain and do not destroy any documents that could possibly be relevant to your claim.

It is important to note that the list that we will have to prepare will not just be a list of the documents that we intend to rely on at the trial to support your claim. We are obliged to list all the documents that you hold and which are relevant to your claim whether or not we intend to use them at trial and irrespective as to whether or not they are helpful to your case. We must also include any documents that are unhelpful and which we would prefer the other side not to see. The only documents that we are entitled to withhold are those documents that came into existence solely as a result of the preparation of your claim.

We will therefore need you to let us have at that stage any other documents that are in your possession and which may relate in any way to your claim and which you have not already given to us. We will also need you to let us know if there are any such documents that you have access to but which are not actually in your possession and any documents that you have had at any time but no longer have. In that event we will need you to let us know what happened to those documents and where they are now.

We will then be able to prepare the list of documents, which we will then send to you for your approval and signature.

We will then send a copy of the list to the Defendants' solicitors and they will send to us a copy of their list in exchange. Each party will then be entitled to inspect the other party's documents within seven days after the service of the lists of documents. In practice this is usually dealt with by supplying copies.

Witness statements

Each party must then serve on the other (usually within three months of the Case Management Conference) copies of signed written statements of all witnesses of fact (i.e. other than expert witnesses) whom they intend to call to give evidence at the trial. This obviously includes your statement, which we will already have prepared and we will also consider at this stage if there is anybody else who could give useful evidence for you. If so, we will need to see them in order to take a signed statement from them.

Similarly, the Defendants will have to serve on us copies of the signed witness statements of all their witnesses of fact including all the treating doctors and nurses whom they intend to call to give evidence. We will of course send you copies of the Defendants' witness statements as soon as we get them and we will also send copies to our experts so that they can check if they contain anything that leads them to want to alter their previous opinion about your claim.

Expert reports

The parties must then exchange with each other copies of all expert reports dealing with breach of duty and causation issues upon which they intend to rely at the trial. This is usually done within three months after the exchange of witness statements. We will already have reports from those experts whom we instructed whilst investigating the claim but will need in due course to consider with you whether or not we should obtain any further expert reports.

It is likely that before exchanging expert reports we will want to meet with you together with all of the experts and the barrister whom we intend to use to conduct your case at court. The purpose of the meeting will be to review all of the expert evidence in the light of the Defendants' witness statements and be sure that the experts are still willing to support your claim.

As soon as we receive the Defendants' expert reports we will let you have copies and also send copies to the experts to check that they are still willing to support your claim.

Schedule of financial losses

We will also have to serve on the Defendants (usually within three months after the Case Management Conference) a schedule setting out your claim for out of pocket expenses and loss of earnings (including future expenses and losses) together with medical reports on your medical history, present medical condition and prognosis and witness statements, documents and non-medical expert reports relating to the value of your claim.

The Defendants will then have to serve a counter schedule within two months thereafter setting out the extent to which they agree to our schedule and at the same time they will have to let us have their own medical reports, documents and witness statements that they intend to rely upon. We will let you have copies of these documents as soon as we get them and will probably need to meet you in order to discuss them.

Meetings of experts

It will then be necessary for the experts on both sides to meet (or at least speak to each other over the telephone) in order to identify what issues they agree about, what issues they disagree about and in relation to the issues they disagree about, the reasons for their disagreement. They will then prepare a joint statement summarising their discussion which will be sent to us and which of course we will copy to you. It is at this stage that we will know for certain the precise nature of the Defendants' case and the basis upon which your claim is being defended.