This is a fact sheet about clinical negligence. This is intended to give you an overview of what is involved in bringing a clinical negligence claim.

This fact sheet will include the following information:

- Points to consider before bringing legal action
- Funding
- Should I consider legal action?
- What does clinical negligence mean?
- The steps involved in bringing a clinical negligence claim
- When to bring a claim
- How are medical records used in clinical negligence cases
- The role of medical experts in clinical negligence claims
- The role of Counsel in a clinical negligence claim
- When will cases proceed to court?

**Points to consider before bringing legal action**

Before you decide to take legal action you may wish to consider pursuing the complaints procedure of either your general practitioner or Primary Care Trust. You must seek advice quickly as there are strict time limits in making a complaint. Usually complaints must be made in writing within 12 months of the treatment, which you wish to complain about. We can advise as top how best to proceed.

**Funding**

There is various ways to fund a clinical negligence claim and most cases are dealt with by way of ‘no win no fee’ and there are normally no costs that you have to pay personally.

If we do not believe that a ‘no win no fee’ agreement would be suitable we are able of fund cases by way of public funding (also know as Legal Aid) as Swain & Co have a franchise with the Legal Service Commission that enable us to conduct clinical negligence claims.

Claim can also be funded by way to legal expenses insurance or if you are a member of a trade union you may be eligible for help with costs for a legal claim from them.
What does clinical negligence mean?

Clinical negligence can take many forms and can occur in all areas of medicine. In order to bring a successful claim for compensation you must show that the treatment that you have received has fallen below a reasonable standard. This is known as ‘breach of duty’. And that because of this treatment you have suffered an injury, damage or loss. This is known as ‘causation’.

Should I consider legal action?

If you have suffered an injury as a result of medical treatment you may be entitled to compensation.

You will need to instruct a specialist clinical negligence lawyer in order to bring a claim on your behalf, as this is a highly complex area of the law. Swain & Co solicitors are specialist in clinical negligence.

The steps involved in bringing a clinical negligence claim.

The first stage of the clinical negligence claim is to investigate your claim and collect all relevant information and medical records regarding the claim. This is within the ‘investigative stage’. It will also be necessary to take a witness statement from you.

Clinical negligence claims are complex and it is necessary to obtain your medical records and to obtain an independent medical opinion.

When should I bring a claim?

There are strict time periods in order to bring a claim for clinical negligence. Generally you have three years from the date of the damage in order to bring a claim of clinical negligence.

In some cases the ordinary 3-year time limitation period may not run until three years from the date that you knew or ought to know that a claim could be pursed.

The Court has the power to extend the three-year period but the circumstances that it can exercise its discretion are limited.

If the claim concerns treatment that a child has received the three-year limitation period doesn't begin to run until a child's 18th birthday.

If the claim concerns a ‘patient’ which is the legal term for someone who is over the age of 18 but does not have capacity to manage his or hers own affairs. The three year limitation period in such circumstances commences from the date that patient ceases to be under such a disability, if at all.

How are medical records used?

Relevant information in relation to any medical negligence claim is likely to be within your medical records, this could be within your GP notes or hospital notes. Every medical step taken, advice given, x ray made or medical condition complained of should be properly recorded.
Patients have the right to have copies of their medical records. The law concerning this is contained mainly in the Data Protection Act 1998 and the Access to Health Records Act 1990. The record holder can charge a fee for supplying you with the copies, which under the Data Protection Act cannot exceed £50.

The role of medical experts in clinical negligence claims

The defendant clinical practitioner or Primary Care Trust will have access to medical experts to defend it’s case and any claim will need to be defended by equally qualified experts.

There are a growing number of senior practitioners in most branches of medicine who are prepared to give unbiased opinions in cases where something seems to have gone wrong.

One or more medical experts will be instructed to analyse your case. They will look through the case notes, and may also meet and examine you. On the basis of this evidence, any expert will produce a report setting out their views on the treatment you have received.

Due to recent changes in case law an expert who provides a report which is given in evidence before a court no longer enjoys immunity from a claim of professional negligence being brought against them.

The role of Counsel in a clinical negligence claim

After medical expert opinion has been obtained the next step is to instruct an independent barrister to assess your claim and prepare claim documentation if appropriate.

The barrister will be given all the details of your case and asked to advise. Your barrister will decide on the viability of the claim and the next steps to take.

Clinical Negligence Court Cases

Prior to involving the Court in any claim we will write a letter of claim to the Defendant General Practitioner or NHS Trust outlining the claim. The Defendant will then have three months in order to conduct an investigation into the matter and then respond to the letter of claim.

If all attempts to settle the claim without litigation have failed, your solicitor will commence court proceedings. The proceedings will be pursued in either the High Court or County Court. Very few cases proceed to a hearing as most cases settle.
7 reasons why to instruct Swain & Co for your clinical negligence claim:

- We have a caring and dedicated team of clinical negligence lawyers who understand that bringing a claim for clinical negligence can be extremely distressing and can assist you through this difficult time.
- We have the extensive medical and legal knowledge
- We have panel membership to Law Society Clinical Negligence Panel.
- We have a network of highly experienced trusted independent medical experts
- We have experience with all types of funding
- We have expertise in a wide range of clinical negligence claims.
- We have a proven track record of successful clinical negligence claims

CONTACT OUR SPECIALIST CLINICAL NEGLIGENCE TEAM TODAY:-

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