



MAKING A MEDICAL NEGLIGENCE CLAIM

What is Medical Negligence?

Medical negligence is substandard care that has been provided by a medical professional to a patient, which has directly caused injury or caused an existing condition to get worse. There are a number of ways that medical negligence can happen such as misdiagnosis, incorrect treatment or surgical mistakes. However, a successful medical negligence claim will be required to meet the legal tests required to qualify for compensation as outlined below. Whilst patients may be dissatisfied with care provided not all claims will satisfy these legal tests.

How do I make a claim?

If you wish to pursue a claim you should make contact with a solicitor in the first instance, who can advise on the merit of a claim and the chances of success. You may find solicitors who specialise in clinical negligence claims by using the following link to the Law Society of Northern Ireland website: <https://www.lawsoc-ni.org/solicitors> - 'Find a Solicitor'

It is important to understand that making a claim can be stressful and it is not possible to provide a timeframe for how long the process can take to complete. It is also important at the beginning of the process that you discuss potential costs and funding which may be available with your solicitor.

The following steps are a short guide and should be talked through with your solicitor:

Step 1: Criteria

You must provide evidence of the following:

- The Defendant had a duty of care to the Patient
- There was a breach of the duty of care to the Patient
- The breach of duty caused harm/loss to the Patient

Step 2: Legal Tests – What is breach of duty of care?

Your solicitor will be able to provide full clarification on “Legal Tests” and an assessment on whether there has been a breach of duty of care, but the following points may be helpful:

- The health practitioner must have acted in a way which fell short of acceptable professional standards. Known as the ‘Bolam’ principle, this test is not about what ‘could have been done’ – that other health professionals might have done something differently, but whether it ‘should have been done’ – would a ‘responsible body’ of health professionals support the action taken?
- There is also a further test known as ‘Bolitho’. This means that the court should not accept a defence argument as being ‘reasonable’, ‘respectable’ or ‘responsible’ without first assessing whether such opinion is susceptible to logical analysis.
- You must prove a claim on the balance of probabilities i.e. more likely than not.



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Step 3: Pre-Proceedings Stage

- Your solicitor should have an initial consultation with you, they will request the relevant records to include medical records and commence an initial assessment of your claim.
- If the claim is to be progressed your solicitor is required to send a Pre-Action Protocol complaint Letter of Claim to DLS, setting out: the facts, breach of duty alleged, causation, alleged injuries and potential value of case.
- DLS (who act on behalf of the Trust) will offer streamlining to those cases that are eligible which includes the progression of a “Joint Expert Report”. This is a bespoke arrangement put in place for neurology cases. The streamlining route will require agreement from both parties, will fast track claims and costs will be covered by the Defendant.
- The Defendant will then provide a ‘Letter of Response’ setting out its position within 4 months. (*extensions can be sought in complex cases*).
Both parties will usually rely on expert evidence from independent medical experts.

Step 4: Court Proceedings

Some cases may settle prior to issue of proceedings. Some cases may be withdrawn by the patient and their solicitor once investigations are complete (i.e. at the pre-proceedings stage). This can be for a variety of reasons, including - unfavourable expert medical opinion, lack of supporting evidence, the case lacking merit, contact being lost or issues in funding the litigation.

However, if a case does not resolve prior to issuing proceedings, your solicitor will issue court proceedings.

- These cases are timetabled by the Court and subject to a strict Judicial Case Management Process, overseen by the High Court Master and/or Judge.

Where the matter is unresolved and issues remain, a hearing is arranged and the case is determined by a Judge.

Glossary:

Plaintiff – the Patient, or person making the claim on behalf of someone.

Defendant – the person defending the claim, for example the Belfast Trust.

Health Practitioner – the person providing the health care.

Pre-Action Protocol Letter of Claim – the letter setting out details of the claim from the Patient/Plaintiff’s solicitor to the Directorate of Legal Services (DLS).

DLS – Directorate of Legal Services, the legal team acting on behalf of the Belfast Trust.
