



**Prosperity**  
**Law LLP**

➤ Medical Negligence

# Medical **Negligence**

A guide to making a claim



# Millions of people are treated every year by the NHS and in private healthcare

Doctors, nurses, dentists and other healthcare professionals treat patients successfully.

They do not intend to deliberately harm a patient but sometimes things can go wrong. When it does go wrong, most people want to know what happened and assurance that steps are taken so it does not happen again. The consequences can be devastating and sometimes life changing. If someone has suffered harm as a result they may need compensation to pay for the care and treatment they need.

You can make a complaint to the hospital, GP, dentist or other healthcare provider. You can also complain to the professional body such as the GMC, NMC or GDC.

*If you want financial compensation the only way to obtain it is by making a legal claim.*

## Medical Negligence claims are also referred to as Clinical Negligence claims.

There are many types of claims that can be pursued, these include:

- Negligence during pregnancy, childbirth and postnatal care leading to complications for mother or brain injury to the baby including cerebral palsy
- Failure or delay in diagnosis
- Delayed or incorrect treatment
- Surgical errors such as retained instruments inside the body, operating on the wrong part of the body, or causing additional injury during surgery
- Failure of GP to refer patient to a specialist when necessary
- Failure to carry out vital tests at all or in time
- Failure to properly monitor patient's progress
- Medication errors; wrong dose or wrong administration
- Prescription errors
- Accident and Emergency; failure or delay to diagnose, treat or refer
- Orthopedic claims; failed hip or knee surgery, failure to diagnose or treat broken bones

# What is Duty of Care ?

A health professional owes a duty of care to their patient. This can usually be established if a health professional agrees to treat a patient, they will owe a duty of care.



## How a legal claim works

In order to make a legal claim, you have to prove 4 elements

- The health care provider, i.e Doctor, nurse or hospital owed the patient a duty of care.
- There was a breach of duty of care.
- That the breach caused an injury or loss, known as causation
- The injury must be reasonably foreseeable

**You have to prove all of these in order for your claim to succeed.**

## What is Breach of Duty, Negligence?

Breach of duty is often referred to as negligence or liability. Whether or not there has been a breach of duty is based on what is done in practice. It is measured on whether a reasonably competent health professional would have acted in the same way. A health care provider has a duty to provide a reasonable standard of care. To prove negligence it is necessary to show that the treatment fell below that reasonable standard.

Not all injuries are a result of a breach of duty. Some injuries occur which are a known risk such as getting an infection. You may have signed a consent form telling you what the risks are.

## What is Causation?

If there is a breach of duty you then have to show it directly caused or contributed to your injury.

## Can I Claim Against The NHS And Private Care Providers?

Yes. Many people feel guilty about the idea of suing the NHS because it is a beloved British institution and is quite literally a 'lifesaver'. People are sometimes concerned that making a claim or complaint may impact their future care. It should not affect your future care and making a claim or complaint can assist in identifying risks and where improvements in healthcare can be made.

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## How much Compensation Can I Get For Medical Negligence?

The level of compensation, sometimes referred to as damages, depends on the severity of your injury and your financial loss. There are two elements; General damages and special damages.

**General damages are awarded based on the severity of your injury for pain and suffering.**

**Special damages include expenses such as loss of earnings, care and equipment.**



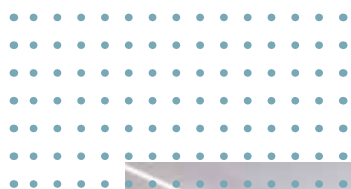
# How long after an incident can I claim?

There is a time limit for commencing Court actions in medical negligence cases. This is known as the “Limitation Period”.

There is a time limit for commencing Court actions in medical negligence cases. This is known as the “Limitation Period”. The time limit to commence a Court action is 3 years from the date of the negligent treatment or 3 years from the date you realised that you have suffered an injury. This is known as the “date of knowledge”. If you fail to issue Court proceedings within the limitation period you may be prevented from pursuing your claim.

There are some limited exceptions where the time limit may vary or be waived by the court, such as lack of mental capacity, minors under the age of 18 years who have 3 years from your 18th birthday to make a claim, or some other exceptional circumstances.

It is important to start your claim as early as possible, and ideally with over 2 years remaining of the 3-year limit. Many claims take a long time to investigate and resolve, so not all solicitors are willing to take on a case unless there is sufficient time. If you only have one year left to start your claim, you may struggle to find legal representation.



# How long does it take to make a claim?

This will depend on the nature of the claim, severity of the injury and whether the injury has settled down, whether the claim is disputed and whether it proceeds to Court.

The majority of medical negligence claims take up to 3 years to settle. Complex claims and severe injuries can take much longer.

## How much does it cost to make a claim for medical negligence?

Your solicitor may offer to deal with your case on a 'no win, no fee' agreement, meaning you do not have to provide initial funding. If your claim is successful the costs are paid by the losing party. Your solicitor will provide you with details of how this applies in your case.





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## Why choose Prosperity Law?

The legal process for making a claim for medical negligence is complicated and it is recommended that you seek advice from a genuine specialist in medical negligence who is accredited by the Solicitors Regulation Authority for Medical Negligence,

As a victim of clinical negligence, dealing with the consequences and injuries can be devastating. If you or someone close to you has suffered medical negligence, we understand that you may need emotional support in addition to legal representation – we deal with clients with empathy and compassion and guide them through the process. Our expert team at Prosperity Law use a practical, open approach and we are proud of our culture that encourages addressing issues head-on, so if you have a problem during the claim, we are here to help you.

If you are suffering as a result of medical negligence, Prosperity Law are accredited by the Solicitors Regulation Authority for medical negligence and our specialist solicitors can help you with your claim.





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