

## Children's Claims – Fact Sheet

### Medical Negligence

---

#### How is a child's claim investigated?

1. The complaints process is wholly separate from a legal claim and solicitors cannot be involved directly with the complaints process, although you can run a civil claim alongside making a complaint should you wish to do so.
2. Once you have decided to consult your chosen solicitor to pursue a claim for damages for your child, the first step will be to arrange funding for the case. In all claims for children who suffer a neurological injury (which includes a brachial plexus nerve injury) during birth Legal Aid via the Legal Aid Agency is still available. This is commonly called "public funding" as the government agency will fund the costs on investigating and pursuing the case, so long as there are reasonable grounds on which to do so. There has to be evidence that, on the fact of it, there was a medical error causing a neurological injury.
3. If it applies we will apply for a Legal Aid Certificate on your behalf; if granted the first stage of the case is to obtain all medical records for the mother and also the injured child/adult. These records will then be independently sorted by a nurse so that they are indexed, paginated and a chronology prepared.
4. If your child is not eligible for public funding then we will fully advise you of all the other options available and investigate whether you hold any legal expenses insurance which may cover the costs of the case. We offer "no win, no fee" agreements in acting on behalf of children.
5. If you wish to act on behalf of your child in a case you will need to take on the role of a "Litigation Friend", this is a responsible adult (usually one of the child's parents) who will assume a formal role in bringing the claim on behalf of the child. You will be expected to make decisions in the best interest of your child during the case. We will fully advise you on your rights and responsibilities in acting on behalf of your child and provide you with support throughout the whole process.
6. It is best to pursue a claim for negligence as soon as possible, this is particularly important for teenagers or young adults as the hospital will be entitled to destroy paediatric medical records once the child reaches 21 years of age. In addition, witness statement evidence on the circumstances of the birth can be very important, so having a fresh recollection of events can assist a lot.
7. Once the sorted medical records are with us we will arrange to see you to review them together and to take a detailed witness statement on what you believe went wrong with the medical treatment given to your child.
8. In the meantime we will make enquiries of suitable independent medical experts who could report in the case. The expert will review the medical records and your statement and provide a report on the documents available, including any internal investigation reports or complaints correspondence. The medical expert will not in any way be linked to the Defendant trust and we always ensure they are leaders in their field.
9. In order to prove a case you need to establish 2 key legal tests; the first that there was a breach in the duty of care owed to your child by the medical staff caring for them, i.e. that they received negligent medical care; secondly that the identified negligence caused or materially contributed to the injury, this is commonly known as "causation".
10. Once we have obtained all expert evidence we then usually have a meeting with a barrister. The barrister will take each expert through their evidence and test their opinion and the strength of their views, this way we know the case is as robust as possible.
11. The burden of proof is on the Claimant (the Litigation Friend on behalf of a child) to establish the case on the balance of probabilities and therefore it's important that we are clear on what our arguments are and that if the case went to trial our experts will stand by their views.
12. After this meeting the barrister will prepare a document entitled "Particulars of Claim", this is a legal document which summarises the circumstances of the case and sets out the allegations of breach of duty of care and causation, inviting the Defendant to prepare their Defence in response.

13. We work under the "Clinical Negligence Protocol for the Resolution of Clinical Disputes." This is a system both parties work to in an effort to avoid having to litigate the case through the Court system, as once we issue proceedings in Court the costs in the case become extremely expensive. Under the Protocol the Defendant Hospital Trust will have 4 months to provide their response, although this is often extended to 6 months or longer in very complex cases.
14. Once we have the Defence from the Hospital or GP we will be in a position to advise you on the next steps in the case. The Defendant may admit liability in full, or deny it in full or partially. Dependent upon their response we will advise you on the next step in the case.
15. If liability is admitted we will issue Court proceedings and obtain Judgment that the Defendant is liable to pay compensation for the injuries caused. We will then value the case.
16. If liability is denied then we may need to issue and serve Court proceedings to fight the case through the Court system; the stages are complex and we will advise you on those in much further detail at that stage.
17. The length of a case is dependant on the complexity of the investigation needed, how long the Defendant takes to respond and whether they admit liability early or not; most cases do take some time to resolve, but Royds Withy King work in teams to ensure your child's case is progressed as quickly as it can be.
18. Once a case is hopefully valued and settled the damages will either be paid out (if the Claimant is over 18 years of age) or invested if the Claimant is still a child at the time of settlement. If the damages require investment then this will be done either through the Court Funds Office or privately, quite often through a personal injury Trust fund. The options are complex and we will provide full advice at the time of settlement.
19. If your child will lack capacity to manage their own affairs on reaching 18 years of age then a Deputy will be appointed under the Court of Protection to manage the funds going forward.
20. Royds Withy King can offer a bespoke service from beginning to end and will do all in our power to fight for a positive outcome in the case and to continue to look after our clients thereafter if required.