

Birth Injury Claims – Fact Sheet

Medical Negligence

How is a birth injury claim investigated?

1. Quite often parents will have undertaken the complaints procedure with the Hospital Trust involved and will have gained important information from that process, albeit that even if you have you may not have been satisfied with the outcome.
2. 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.
3. Once you have decided to consult your chosen solicitor to pursue a claim for damages for yourself or your child, the first step will be to arrange funding for the case. In all claims for children injured before, during or within the first 6 weeks after 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 face of it, there was a medical error causing a neurological injury.
4. 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. These records will then be independently sorted by a nurse so that they are indexed, paginated and a chronology prepared.
5. 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 care during pregnancy, labour or in the neonatal phase.
6. 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.
7. 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 you by the medical staff caring for you, i.e. that you received negligent medical care; secondly that the identified negligence caused or materially contributed to the brain injury, this is commonly known as “causation”.
8. Commonly if the negligence occurred during pregnancy or childbirth we will instruct an obstetrician and/or midwife to comment on breach of duty of care. If those reports are supportive of a case in negligence we will then instruct “causation” experts to look at whether it is linked to the brain injury. Those experts often include a paediatric neurologist, a neonatologist and a paediatric neuro-radiologist.
9. Once we have obtained all expert evidence we then usually have a meeting with a Senior Barrister, called Leading Counsel. 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.
10. The burden of proof is on the Claimant to establish their 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.
11. 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.
12. 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.
13. Once we have the Defence from the Hospital we will be in a position to advise you on the next steps in the case. The

Trust 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.

14. 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.
15. 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.
16. 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 Withy King work in teams to ensure your case is progressed as quickly as it can be.
17. Once a case is hopefully valued and settled the Court will appoint a Deputy (under the Court of Protection) to act on behalf of the injured child or adult to ensure that their compensation is protected and appropriate spent. This will only be required if the brain injury is so severe that the person lacks capacity to manage their own affairs.
18. 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 through our Court of Protection Department.