

Birth injury & cerebral palsy - the claims process

Clinical Negligence

What is cerebral palsy?

Cerebral palsy is a term which encompasses many different movement disorders. There are three main types of cerebral palsy:

- spastic (stiff and difficult movement),
- athetoid (involuntary and uncontrolled movement)
- ataxic (disturbed sense of balance and depth perception).

Patients who are unable to change their position in bed naturally are even more at risk.

Although the cause of cerebral palsy in a new-born child is often obscure, certain types of cerebral palsy are associated with oxygen deprivation to the foetus during labour, causing brain damage.

Expert evidence from paediatric neurologists, neonatologists and neuroradiologists will help determine the link between any incident during labour and the type of disability suffered.

Medical Records

We will obtain your child's GP and hospital records and also the general practitioner and obstetric records of the mother. This enables our medical experts to consider the mother's health prior to and during the pregnancy as well as understanding what went on during the labour and delivery.

The hospitals and GPs aim to provide the records within 40 days of our request, although it may take longer, particularly if your child is receiving on-going treatment and their records are with a particular hospital department.

Medical Experts

As part of the claim process we will need to obtain reports from a number of medical experts.

- An expert consultant obstetrician and gynaecologist will consider what went on during the labour and delivery to assess whether the care provided to you and your baby before he or she was born was appropriate.
- Once we can identify that there were shortcomings in the standard of care, we then seek expert medical evidence from a neuroradiologist and/or a paediatric neurologist to consider the precise timing of the brain injury. Our expert paediatric neurologist is also likely to examine your child and prepare a report on condition and prognosis.

Waiting for expert reports can be a lengthy process as we try to use experts with particular specialism. In the case of a very young child this delay can be helpful, as it helps the experts to evaluate what the future is likely to hold. When a child is very young, it is sometimes difficult to predict how the child will develop and what the extent of the disabilities will be.

Assessing the Medical Experts' Evidence

Once we have obtained the relevant Medical Experts' reports, we will usually need to assess the medical evidence by holding a meeting with all of the experts involved and a barrister who also specialises in Clinical Negligence. It will be very helpful if you are also able to attend that meeting.

Letter of Claim

Before starting any court proceedings it is necessary to send the Defendant a Letter of Claim identifying our allegations of negligence. The Defendant has four months in which to prepare their Letter of Response. This should provide details of their defence if they do not accept that there were shortcomings in the standard of care afforded to you.

Court proceedings

Unless a case can be settled without court proceedings becoming necessary, proceedings will be started in court once we have the Defendant's Letter of Response. We will have to prepare a Claim Form, Particulars of Claim, which are usually drafted by the barrister involved, a medical report setting out the child's condition and prognosis and a Schedule of Damages, which details past losses and likely future losses, such as the cost of care, aids and equipment, suitable accommodation and lost earnings etc.

Once court proceedings have been started, the court will impose a strict time-table, leading up to trial. The vast majority of cases settle without the necessity for a trial to take place.

Funding

Despite the removal of public funding for Clinical Negligence cases (by the Legal Aid Sentencing and Prosecution of Offenders Act 2012 which comes into force in April 2013) most children with a birth injury will continue to be eligible for public funding (Legal Aid) because they are a limited exception to the removal of public funding and will continue to be assessed on their own financial means, not those of their parents.

If public funding is not available for some reason, a legal expenses insurance (LEI) policy may cover the costs of the case, and we can investigate the case on that basis.

For those who are not eligible for public funding and do not have the benefit of a legal expenses insurance policy, we will investigate other ways of funding the claim.