

Injuries to mothers during childbirth – Fact Sheet

Clinical Negligence

How is a claim investigated?

1. You may have undertaken the complaints procedure with the Hospital involved in your care. 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, the first step will be to arrange funding your case. There are a number of options available to you and we will discuss with you the best option for you.
3. Once funding has been secured, the next step in all cases is to obtain copies of all of your relevant medical records. These records will then be sorted by an independent nurse/midwife so that they are indexed, paginated and a chronology prepared.
4. We will then arrange to review your medical records together with you and to take a detailed witness statement from you about your treatment and what you believe may have gone wrong and how you have been affected.
5. In the meantime we will make enquiries of suitable independent medical experts to advise in your 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 Hospital and we always ensure they are leaders in their field.
6. 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 you suffering injury, this is commonly known as “causation”.
7. Commonly if the negligence occurred during pregnancy or childbirth we will instruct an obstetrician and/or midwife to comment on the standard of care provided to you. If those reports are supportive of a case in negligence we will then instruct “causation” experts to look at whether the negligence has caused you injury. It will depend on the nature of the injuries you have suffered as to the type of independent medical expert we need to instruct.
8. Once we have obtained all expert evidence we may then have a meeting with you, the experts and a specialist clinical negligence 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. The burden of proof is on you, the Claimant, to establish your 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.
9. After this meeting, if the experts remain supportive of a case, we will then prepare a Letter of Claim to send to the Defendant Hospital setting out the allegations of negligence in your care and how this negligence caused you to suffer injury. Sometimes it is possible to prepare such a Letter of Claim without having a meeting with the experts and involving a Barrister if the issues are clear.
10. 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, either admitting or denying the allegations. The Defendant sometimes requires longer than 4 months.
11. Once we have the response 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, and this will determine what happens next.
12. If liability is admitted we will work with you to assess how much compensation should be claimed for you. This will often involve asking you to meet with one or more of the independent experts involved in your case so that they can advise on the extent of the injuries you have suffered, and the prognosis for your injuries. We will also investigate with

you the extent of your past and any future financial losses where these have been incurred as a result of your injuries. We will then take your instructions on making an offer of settlement, and will then strive to negotiate the best possible settlement for you. If we cannot agree an appropriate settlement for you then we may need to issue Court proceedings to continue to fight for the best settlement for you.

13. If liability is denied then we will 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.
14. It is unlikely that you will need to attend Court as the majority of cases do settle out of Court. It is only necessary to go to Court if you cannot ultimately reach agreement with your opponent out of Court either as to (1) whether they are liable for your injuries, or (2) as to the amount of compensation you should be paid.
15. How long a case takes 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. As a rough rule of thumb, many cases conclude in approximately 2 years, but it can be more or less time depending on the issues in your particular case.