



CLINICAL NEGLIGENCE

FREQUENTLY ASKED QUESTIONS

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I THINK SOMETHING MIGHT HAVE GONE WRONG OR BEEN MISSED, WAS IT NEGLIGENCE?

Being in hospital or undergoing medical treatment is always a stressful time for patients and their loved ones. However, sometimes patients and their families feel even more anxious because they have concerns that the care they are receiving is not what they would expect. For example, a new mother might have concerns that the midwifery staff rarely saw her during her labour or there were delays before the decision was made to perform a Caesarean section. Another example might be concerns about very long delays in A&E before a child was seen by a doctor. Another common example is a patient who is worried that a doctor dismissed their concerns and in doing so missed an earlier opportunity to diagnose cancer.

It is often the case that people speak to a solicitor when they simply have a gut instinct that the care was not as it should have been. Most people would not know whether or not there was negligence, however, a solicitor can look into this and advise you.

Care is negligent if it is so poor that no reasonable body of clinicians would agree with the approach taken. Sometimes there is a range of approaches the clinician could have taken and it might be that the care a patient received was not ideal but would be supported by some clinicians, though not others. However, there are instances where the care was so poor that no clinicians would agree with it. For example, there might have come a time during labour when all clinicians would have said that a baby needed to be delivered, however, if this did not happen then the care provided to that mother and baby would have been negligent. Another example would be an unreasonably long wait in A&E which no clinicians would say was acceptable, in which case that would have been negligent. This legal test is known as “breach of the duty of care”.

If there was a breach of the duty of care owed to a patient then the patient must next prove that had it not been for the breach of duty the outcome for the patient would have been different. In other words, if the patient received the care they should have received then they would not have come to harm or would have made a better recovery. This is the legal test of “causation”.

I DON'T WANT THIS TO HAPPEN TO OTHER PATIENTS IN THE FUTURE, WHAT CAN I DO?

This is a very important concern for many patients who have received unacceptable care. Nobody wants to see another patient or family go through the same trauma they did. By making the hospital aware of what they went through the hospital might make changes which protect other patients in the future. If you make a complaint or a clinical negligence claim the hospital management should then conduct an investigation that might find particular errors or system failures. For example, they might find that certain members of staff need additional training or the computer system in A&E needs to be improved.

The hospital's internal investigation can take many forms. Sometimes it is quite an informal investigation or it might be a major investigation such as a serious incident report, for example where there was an unexpected or avoidable injury which resulted in serious harm or a “never in event” (e.g. performing surgery in the wrong place). All health organisations registered with the Care Quality Commission are under a statutory (legal) duty to be open and honest with patients and their families when something goes wrong which appears to have

caused significant harm or has the potential to cause significant harm in the future (GPs only have to report if there has been harm, not potential future harm). They must tell the patient and / or family what has happened. This is known as the “duty of candour”, which all NHS hospitals and GPs owe to their patients.

WHAT WILL HAPPEN TO THE DOCTORS AND NURSES IF I BRING A CLINICAL NEGLIGENCE CLAIM?

It is important to know that a clinical negligence claim is against the NHS Trust responsible for the hospital or the defence/insurance organisation for the GP or private clinician. It is not the individual doctor or nurse who is sued. Making a claim does not mean the clinician will lose their job. It is the regulatory body such as the General Medical Council or the Nursing and Midwifery Council make decisions about a clinician’s fitness to practice and being struck off.

As part of the internal investigation the clinicians involved in your care might give accounts or witness statements about what happened. This might be triggered by your complaint or claim, or it might happen regardless because of the duty of candour.

It might be that a clinician is given additional training or, if their errors were very serious, there might be disciplinary proceedings but that will be entirely separate to the complaint or claim process.

WILL IT AFFECT MY MEDICAL TREATMENT?

There should be absolutely no impact on your medical treatment or your relationship with the doctors and nurses caring for you. None of the medical clinicians should try to talk to you about the claim.

WHAT CAN A CLINICAL NEGLIGENCE CLAIM ACHIEVE?

A clinical negligence claim is essentially a civil court case by a victim who is entitled to compensation in law. The legal focus is compensation for the victim to make up for their financial losses and to reflect the injury and suffering they experienced. Of course compensation can never undo what has been done.

Often during the course of a clinical negligence claim the patient learns more about what happened than they would have known otherwise, even if there was a complaint and internal investigation.

Sometimes a clinical negligence claim can also result in an apology for what went wrong or reassurance that errors will be remedied but this is not always the case.

IS THERE A DEADLINE TO BRING A CLINICAL NEGLIGENCE CLAIM?

Yes, clinical negligence claims must be formally started at court before the 'limitation' deadline. This means submitting paperwork to court and starting the case in the court process – not just instructing a solicitor.

The limitation deadline is usually 3 years after the negligence (i.e. the care or treatment which went wrong). If the patient did not know that it went wrong at the time, then the deadline is 3 years after they found out that they had been injured and should have suspected that might have been a result of the care they received.

If the patient was a child at the time of the care or treatment, the deadline is instead their 21st birthday.

If the patient was an adult but did not have the mental capacity to conduct litigation at the time of the care or treatment (i.e. the mental ability to undertake litigation without support from others, for example because they suffered a brain injury which impaired their mental functioning or dementia), the deadline is instead 3 years after they regain the mental capacity to conduct litigation. If they do not recover enough to regain mental capacity for this, then the 3 year time limit does not start to run.

WILL A CLINICAL NEGLIGENCE CLAIM COST ME ANYTHING?

This depends on how the legal costs of the claim are funded. There are various options including legal aid (thought rarely available) and pre-existing legal funding arrangements such as cover in a house insurance policy or part of trade union membership. The most common legal funding option is a Conditional Fee Agreement, which is commonly known as a “no win no fee agreement”. A solicitor would explain the detail of the Conditional Fee Agreement option to you.

SHOULD I SPEAK TO A SOLICITOR?

You may want to speak to a solicitor just to see if there is something that should be investigated. Anthony Collins Solicitors offer a free, no obligation initial consultation with a solicitor. You could also speak with our nurse medico-legal advisor. We will listen to your concerns, explain your options and discuss with you how we could help you and your family. It is entirely up to you to decide whether to bring a claim or not - you should not feel pressurised by anyone to do so.

Please feel free to contact Ann Houghton on 0121 212 7478 or ann.houghton@anthonicollins.com if you have any questions or would like to discuss any concerns about the treatment you or a loved one have received.