

# A Roadmap for Making a Medical Negligence Claim



If you think you may have a medical negligence claim, it can feel quite daunting knowing where to start with the process.

Ison Harrison Solicitors have put together this handy roadmap to show you some of the steps involved in a claim. Each case has to be approached based upon its own unique facts, but hopefully the following gives an idea as to what is involved. Remember, it is your lawyer's job to guide and advise you at each and every step. Always ask questions if you have any. A Lawyer's should present their advice in clear plain English, but even the best of us slip into using legal terminology by habit.

1

Choose a specialist clinical negligence solicitor recommended by the Erb's Palsy Group. Many solicitors hold themselves out to be clinical negligence specialists, but the reality is most are not. You get one shot at a legal claim and it is therefore important that you choose wisely.

2

Pick up the phone and have a chat. Tell us about what has happened and when. We will listen carefully and ask you questions in order to illicit the information we require in order to determine whether we consider there is merit in the potential claim. Jotting down a timeline in advance may help you. If you have any complaints documentation or copies of any internal investigations, please ensure you have these to hand and can email them across so we can have a read of the same.

3

If we consider there is merit in a potential claim then we will arrange to have a further conversation in which we will set out your funding options and talk these through with you. You will have sight of the terms in writing before you agree to anything. Only once you are happy that you understand the agreement and agree to the terms will a retainer, (contract) be formed.

4

Discuss Funding Options & Put in Place.

5

We will then start the process of obtaining all relevant evidence, (e.g. medical records, text messages, photographs, complaints documents, hospital protocols and witness statements) and instruct medical experts such as Midwives and Obstetricians to comment on the standard of care provided and a nerve expert to comment upon whether this is likely to have caused an avoidable injury.

Once the necessary reports have been obtained you will be sent a copy and we will contact you to discuss the next steps.

*Side Note: If a report is unresponsive, the claim may not be able to proceed past this point.*

6

We will prepare and send a Letter of Claim to the defendant. This letter sets out the facts of the case, the allegations of negligence and the injuries caused as a result.

The Defendant then has 4 months to investigate and respond to the allegations however they may require extra time in order to investigate the matter fully before they respond.

The response should provide either admissions and/or reasoned denials. You and your experts will be provided with a copy. Provided your experts remain supportive of the claim it will continue.

7

## Two different paths

### ✗ Liability in dispute

If liability is denied we are likely to instruct a Barrister to consider the merits of the claim in conference with you and your experts to determine whether the claim is strong enough to commence court proceedings.

Following the commencement of court proceedings a timetable will be set down to proceed to trial. The trial may be to resolve liability alone or it may be for both liability and quantum, (i.e. the value of the claim - see below). Along the way each side will exchange the evidence upon which they rely and every attempt will be made to try and settle the claim without the trial taking place.

8

We will then turn our attention to quantum, (i.e. the value of your claim). This is done by gathering more evidence, including additional expert evidence in order to prove what your past and future losses are and are likely to be. E.g. past care provided voluntarily by friends and family and likely future care required because of your Erb's injury, loss of earnings and pension if you have been unable to pursue your intended career path, adaptations to vehicles to enable you to be able to drive a car and so on.

The Defendant will carry out their own investigations and instruct their own set of experts.

*Please Note: At this point you/your child will need to attend appointments so that they can be seen by both sets of experts and you may need to be visited in your home.*

9

In line with the court timetable expert evidence will be exchanged with the Defendant and there will be an opportunity for the experts to have meetings to see if they can narrow down the issues in agreement/disagreement.

A conference with the Barrister and your experts will usually take place before anything is exchanged.

### ✓ Liability Admitted

If the Defendant admits liability, we will be able to enter judgement to formally record the fact that you have won your claim and request a payment on account of damages.

Interim payments are when you receive part of your personal injury compensation before your claim has finished.

These payments can be used to put in place and fund a care package which might include (but not be limited to) aids and equipment, private therapies and care.

10

There will be an opportunity to have a meeting with the Defendant to discuss settlement and try to reach an agreement.

*Please Note: Offers can be made at any point during the claim.*

11

Settlement of your claim will usually be achieved during a joint meeting or shortly after. If you are under the age of 18 or do not have capacity court approval of the settlement will be required to ensure the settlement amount is right and to consider how the damages should be held and controlled. Will will advise you on the options. Often a trust is appropriate so as to provide the balance between accessibility, security, investment of part of the monies and to avoid losing out on means tested benefits now and in the future.

If a settlement is unable to be agreed the case will proceed to a Trial.

*Please Note: Only a very small number of clinical negligence cases ever go to Trial.*

For help and advice on starting a clinical negligence claim, our team are always here to help. Call Ison Harrison solicitors on **0113 284 5000** or visit [www.isonharrison.co.uk](http://www.isonharrison.co.uk) to send an enquiry.