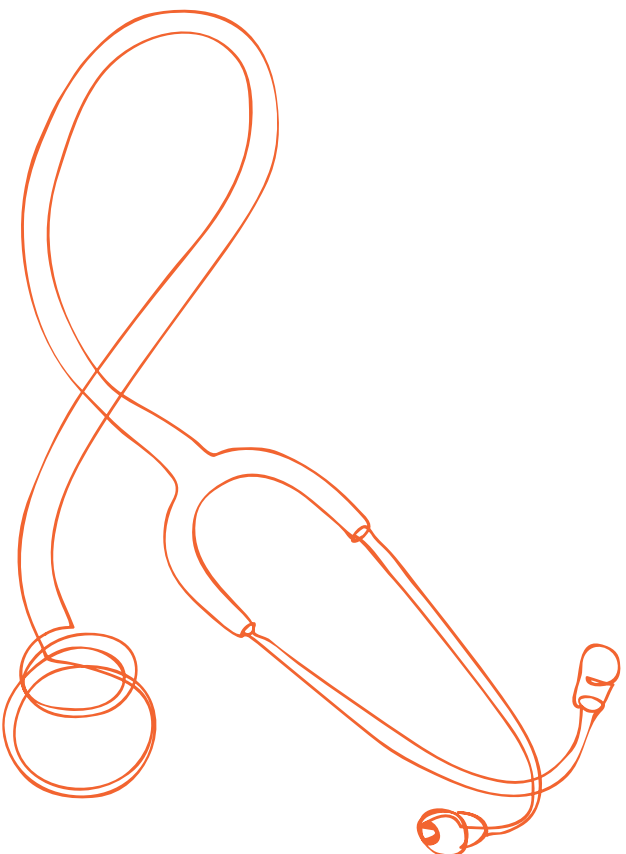


Our specialist team has a wealth of knowledge and experience in dealing with claims arising from **clinical negligence**. We work in a supportive, considered & clear way, dedicated to gaining the best possible outcome for each of our clients.



Supportive, considered & clear

What is clinical negligence?

Clinical negligence arises when a healthcare professional has provided care or treatment which fell below a generally accepted standard and this caused physical or psychiatric injury to the patient.

Negligence may arise from treatment that has gone wrong, use of the wrong treatment, delay or failure to diagnose and/or treat a condition, or failure to obtain valid consent.

Cases include:

- GP negligence
- NHS or privately funded hospital negligence
- privately funded health practitioner's negligence
- negligence claims against other health professionals
- dental negligence
- defective medical products (e.g. drugs, implants).

“Dedicated, informative and display excellent judgement – the team has an intuitive sense of what clients need, and delivers a tailored service to a superb standard.”

Chambers UK

Time limits

Court proceedings must generally be commenced within three years from the alleged negligence or three years from the date the patient should have realised that their treatment had caused significant injury.

Different time limits apply to children and people who lack mental capacity, and there is discretion to extend the time limit. In certain circumstances a claim may be allowed to proceed even if time has run out. The law on this matter is complex and we would need to advise on any potentially time barred case as a matter of urgency.

Can I get a fair hearing?

Many people believe that they will never be able to prove their case because the doctors will cover up the truth or “they will never blame one another”.

The first suggestion is extremely rare indeed. The second is similarly mistaken and we know a wide range of experts who are willing to criticise unacceptable practice or standards in their profession.

Funding a case

The funding of clinical negligence cases has become increasingly varied and complex. As a general guide the following options are available:

Public funding

Public funding (legal aid) is available from the Legal Services Commission (LSC) for cases that meet its criteria for merits and value. Funding is not usually available for cases worth less than £10,000 and the LSC is reluctant to back low value cases. Funding is means tested and is generally available only to those of modest means. Children and people receiving Income Support will invariably qualify. We have an LSC franchise. You can find out if you are financially eligible by visiting the LSC website (www.communitylegalservice.org.uk) and using the legal aid eligibility calculator. Only firms with such a franchise are authorised to undertake legal aid work.

In the majority of cases the LSC will only agree to provide funding if you have complained about your treatment using the NHS Complaints Procedure.

Legal expenses insurance

Frequently legal cover is included as part of motor, buildings and home contents or motor breakdown policies or as a benefit of credit card membership. If a person has insurance we prefer to be instructed straightaway and before they approach the insurer themselves.

Conditional fee agreements (CFAs)

Claimants can now pursue their cases safe in the knowledge that, if they lose, they will not have to pay legal costs. A conditional fee agreement is complicated and your lawyer would explain it to you in detail at the start of the case. Put very simply, protection is given to you, the client, by entering into a 'no win, no fee' agreement with the lawyer and taking out an after-the-event insurance policy to cover the expenses of the case, i.e. the cost of medical reports etc, and the other side's costs if the case is lost.

We are increasingly dealing with cases funded by CFAs. Before entering into a CFA we must undertake a detailed risk assessment which is required as an essential pre-condition of the CFA. We therefore need to obtain detailed instructions and take an initial view on the medical issues involved.

Do not be afraid to contact us for fear of having to pay legal costs. We recognise that you need advice before you can commit to a case and we offer a free initial consultation.

Union membership

Funding may be available as a benefit of belonging to a trade union or similar organisation.

General Medical Council (GMC)

The GMC is the body responsible for the regulation of doctors.

It is frequently confused with the British Medical Association which has been described as the doctors' 'trade union' and has a representative rather than a supervisory function. The GMC is principally concerned with fitness to practice rather than negligence.

“very personable individuals who really care about their clients.”

Chambers UK

Fitness to practice includes consideration of conduct, competence, illness and training.

The GMC does not usually wish to get involved in negligence cases, except in extreme circumstances, and it does not award compensation for negligence. However, if a person’s principal concern is that a doctor should be disciplined, and is not seeking compensation, then a complaint to the GMC may be appropriate. We can assist with this. Similarly the NMC (Nursing and Midwifery Council) disciplines nurses and midwives.

Inquests

A medical accident involving death will occasionally lead to the local coroner ordering an inquest.

There is widespread misunderstanding about the role and powers of coroners. The purpose of the inquest is to ascertain the cause of death and the coroner does not have power to award compensation or make a finding of negligence. It is often very helpful to be represented at an inquest in order to get an early understanding of what actually happened and to be able to ask questions of the medical staff concerned. Legal aid is very rarely available for inquests. However if a subsequent clinical negligence claim is successful it should be possible to recover the costs of representation at the inquest.

Fatal accidents

Occasionally negligent treatment will lead to a patient’s premature death.

If this happens their estate and their dependants can claim compensation. The law relating to fatal accidents is complex but essentially the family and/or dependants may be able to claim for:

- funeral expenses
- bereavement damages. These are set by law at £11,800 and are payable to the spouse of the deceased and the parents of an unmarried child under the age of 18
- dependency damages for those who were dependant on the income and/or services of the deceased. These may be very substantial especially if the deceased was working at the time of their death.

“Many thanks for all your support and hard work through a torrid 2½ years. We both appreciate it could have ended very differently without your dedication and attention to detail.”

Client

Complaints procedures

The NHS places great emphasis on its complaints procedure and general practitioners are also required to have a complaints procedure in place.

Hospital complaints must be made within twelve months although there is discretion to deal with a complaint made later than this. GP complaints must also be made within twelve months of the incident.

The NHS hospital complaints procedure is fairly informal and is initiated by the patient, or their representative, simply writing to the hospital concerned. The matter is then investigated and a letter of explanation sent to the complainant. Sometimes meetings are held between the patient, the hospital staff involved and the hospital's complaints handling representative.

The benefits of the complaints procedure are that it does not cost the complainant any money and it may lead to an apology or promise from the hospital to improve its procedures. The drawbacks are that compensation is very rarely provided and complainants may not have confidence in the independence of those dealing with their complaint.

The Independent Complaints Advocacy Service (ICAS) is a government funded independent body, established to assist patients in utilising complaints procedures of both NHS hospitals and general practitioners. If complaints are not resolved at a local level the matter may be referred by way of 'independent review' to the Health Service Ombudsman.

Court proceedings and mediation

Many cases settle without the need to issue court proceedings, especially if liability is admitted and the only issue in dispute is the value of the claim.

Defendants are keen to avoid proceedings where liability is admitted in order to save costs. In certain circumstances mediation is a more suitable remedy. There are a number of advantages including informality, the opportunity for the patient to be heard in person and the possibility of obtaining remedies that are not available in court proceedings. These include an apology and a pledge to change clinical procedures to ensure that an error is not repeated.

**“the client’s
interests at heart.”**

Chambers UK

About us

Members of the clinical negligence team are highly experienced in dealing with all types of clinical negligence claims, including maximum severity claims such as cerebral palsy and catastrophic injury. We also have extensive experience of representing clients at inquests.

We listen and question in order to understand our clients’ individual circumstances, needs and objectives. We draw upon our experience to provide practical insight and relevant advice to all our clients, applying common sense to their situation and responding in an informed, straightforward manner.

The clinical negligence team has several Law Society clinical negligence and AvMA panel members. It has built up its reputation over 25 years. The department maintains a close working relationship with leading medical experts and barristers. All members of the team are accredited by APIL and the firm is APIL accredited.

Clients benefit from the support and collective experience of the firm. As well as clinical negligence claims, we offer a strong network of lawyers to provide a comprehensive service, including the Court of Protection, provision of wills, trusts and tax planning plus buying or selling a home and all aspects of family law.

We regularly publish information sheets covering all aspects of law to help guide you through what can be a stressful process. Please visit our website, www.ts-p.co.uk, or make direct contact with specialist lawyers on 01892 510000.

The content of this booklet is correct at the date of publication (March 2010) and is intended to provide a general guide to the subject matter. It should not be considered comprehensive and is not a substitute for seeking professional advice on a specific issue.

Thomson Snell & Passmore is a law firm with a reputation for providing high quality, intelligent advice. We provide a comprehensive legal service and build long-term relationships by encouraging a culture of respect, understanding and excellence. **It's a common sense approach that's surprisingly uncommon.**

Member of the Law Society Clinical Negligence Panel

Member of the Law Society Personal Injury Panel

Panel member of the Headway Personal Injury Solicitors' List
(National Head Injuries Association)

Member of AvMA (Action Against Medical Accidents)

Legal Services Commission Franchise

Member of APIL (Association of Personal Injury Lawyers)

Tunbridge Wells Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
DX 3914 Tunbridge Wells 1
T 01892 510000
F 01892 549884

Thames Gateway Office

The Old Rectory
St Mary's Road
Greenhithe
Kent DA9 9AS
DX 157310 Dartford 12
T 01322 623700
F 01322 623701

www.ts-p.co.uk

Thomson Snell & Passmore

Lexcel
Practice Management Standard
Law Society Accredited