



What if I am involved in a claim?

Does a compensation claim involve criminal sanctions?

No; it is a civil, not criminal, matter. This does not involve a referral to your regulator.

What does the patient have to prove in a civil claim?

That there was a breach of duty of care and that this caused injury/loss that would not have happened otherwise.

What can I expect at the start?

A patient might file a complaint or simply request a copy of his or her medical records. They then normally serve a letter of claim setting out their allegations. A clinician has four months to respond, in a 'letter of response'.

What happens if the claim is not resolved after the letter of response?

If the claimant wants to proceed they would need to issue court proceedings. This means issuing a claim form in the court and formally serving the proceedings, i.e. sending the papers to the defendant or their legal representative.

What is a claimant and a defendant?

A claimant is the individual (i.e. the patient) bringing the claim. A defendant is the person or body against whom the claim is brought. A defendant can be an individual doctor, dentist or nurse, for example, or a hospital trust or other private company.

Is there any time limit?

Broadly, a claimant has three years from the date of the alleged negligent treatment to issue court proceedings.

If they did not know about the negligence until a later date, the three year period would run from this later 'date of knowledge'.

What happens after court proceedings have been served?

A defendant has a strict 14 day deadline to acknowledge the proceedings, either by serving a defence or by filing a document called an 'acknowledgment of service'.

If a defence is filed this must respond to the claimant's allegations. If an acknowledgment of service is filed the defendant has an additional 14 days to file a defence. Extra time beyond this has to be agreed with the claimant or approved by the court.

What happens after the defence has been served?

The court will set a timetable for dealing with deadlines including disclosure of relevant documents and exchange of witness statements and expert evidence.

What is expert evidence?

To prove his or her case, a claimant would need to have supportive independent expert evidence on breach of duty and causation. An expert who practises in the same field as the defendant – such as a GP – would be required to provide an opinion on breach of duty, and a specialist would usually provide an opinion on causation and what injury, if any, the breach caused.

Will I have to give evidence in court?

If you provide witness evidence then there is a small possibility you may be required to give evidence in court. However, the vast majority of cases like this are resolved before trial; they are either abandoned/withdrawn or settled.

How is a claim valued?

'Judicial College Guidelines' give an indication as to the appropriate level of damages (compensation). Previous cases settled or decided by the courts are also used as a comparison.

Will a barrister be involved?

It is likely a barrister will be involved at some point. Barristers often draft documents, such as the defence. They also provide written advice and sometimes advise in a conference. A barrister would almost certainly be involved at the trial stage.

How long does a claim take?

Typically it takes around two years from the date a claim is issued to when it is heard in court, but every case is different and in some cases it takes considerably longer. There may also be a fairly significant period before court proceedings are issued whilst the claim is investigated and a letter of claim/letter of response are served.

What happens at the end of trial?

The court would enter judgment either for the claimant if they had been successful in proving their claim or for the defendant if the claim fails. Either way, there would be a public record of the court's decision.



FIND OUT MORE

Sarah Woodwark

Partner and Head of Healthcare Sector, BLM

T: +44 161 838 3932

E: Sarah.woodwark@blmlaw.com

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