

**Wolferstans**  
SOLICITORS



## **MEDICAL NEGLIGENCE LITIGATING YOUR CLAIM**

This leaflet is designed as a brief guide to provide practical information. It is not a complete explanation of the law relating to the issues which are dealt within the leaflet. You should always seek specific legal advice regarding the particular circumstances of your claim.

**Wolferstans Solicitors  
Deptford Chambers  
60/66 North Hill  
PLYMOUTH  
Devon, PL4 8EP**

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## **Litigating Your Claim**

### **1 Issuing Court Proceedings**

If your opponent has denied liability or it has not been possible to negotiate a settlement of your claim, it will be necessary to issue Court proceedings to pursue the claim.

A number of documents which will need to be lodged with the Court to start proceedings. These are:

- The Claim Form – this is the document which starts your claim.
- The Particulars of Claim – this is the document which sets out your case in considerable detail.
- The Schedule of Damages – this is the document which sets out your claim for special damages in full and may also contain details of your anticipated future financial losses and expenses.
- A Medical Report(s) – this is the document which contains details of the injury which you have suffered, your current condition and prognosis.

Technically, you can commence Court proceedings simply by lodging the Claim Form with the Court. However, where the other documents are all available, it is preferable to lodge them all with the Court at the same time.

### **2 Serving Court Proceedings**

The Claim Form must be served within four months of the date upon which it was issued by the Court.

The Particulars of Claim, Schedule of Damages and medical report(s) must be served with fourteen days of serving the Claim Form and, in any event, must be served within the four month period for service of the Claim Form.

If it is not possible to serve the Particulars of Claim, Schedule of Damages and/or the medical report(s) within the four month period for service of the Claim Form, it will be necessary to make an application to the Court to seek an extension of time for doing so.

### **3 Service of Defence**

Now that you have started Court proceedings, you are called the “Claimant” and your opponent is called the “Defendant”.

The Defendant is usually required to serve its Defence within 28 days of receiving the Claim Form, Particulars of Claim, Schedule of Damages and medical reports(s). However, it is very often the case that a Defendant will seek an extension of time for serving the Defence. It is usual to agree an initial extension of time for Service of the Defence, but how long an extension would be considered reasonable will be determined by the particular circumstances of your case.

If the Defence contains an admission of liability (i.e. the Defendant accepts its responsibility for causing your injury), it will possible for you to apply to the Court to enter Judgment against the

Defendant for damages to be assessed. This effectively means that you have won your case and it simply remains to assess the value of your claim.

In the (unlikely) event that the Defendant does not serve a Defence, you can apply to the Court to enter judgement in default of Defence. Once again, this effectively means that you have won your case and it simply remains to assess the value of your claim. However, a Defendant can apply to set aside a default judgment in certain circumstances.

If the Defence contains a denial of liability, the Court will list your case for a Case Management Conference.

#### **4 Case Management Conference**

After the Defence has been served, the Court will list your case for a Case Management Conference.

At the Case Management Conference, the Court will decide exactly what steps the parties need to take to prepare the case for Trial. The usual steps which will be provided for are:

- Disclosure of Documents
- Exchange of Witness Statements
- Exchange of Expert Evidence
- Meeting of Experts
- Updating Schedules of Damages
- Settlement
- Trial

There maybe other specific Directions made depending upon the particular circumstances of your case.

The Court will also impose a timetable upon the parties for completing each of the above steps. A trial date is likely to be fixed at a relatively early stage after the case management conference so that the parties are aware of the final date which they are working towards for the resolution of your claim.

#### **5 Disclosure of Documents**

You are required to provide the Defendant with details of all the documents which you have in your possession or that you have access to, if they are held by third parties. These documents will not only relate to your medical treatment but to any other aspect of your life that may be relevant.

If you do not have personal possession of these documents, it may be necessary for Solicitor to apply to third parties to obtain copies of them.

These documents may include:

- Your medical records

- Your employment records
- Your educational records
- Your Department of Work and Pension records
- Your receipts for financial losses and expenses
- Your social media posts

You have an obligation to disclose all relevant records whether they exist in hard copy format or digitally on a computer, tablet, mobile phone or other such device.

## **6 Exchange of Witness Statements**

We will prepare a witness statement for you. This will explain what happened to you during your medical treatment, describe the nature and extent of the injury which you have suffered, detail the affect which any continuing symptoms have upon your life and particularise your financial losses and expenses.

We will also prepare witness statements for anyone else who may be able to provide evidence in support of your claim.

These witness statements will be served upon the Defendant's Solicitor and, in return, we will receive copies of the witness statements which the Defendant intends to rely upon. These witness statements are usually limited to statements which have been prepared on behalf of the doctors, nurses or other healthcare professionals who were treating you at the time that you suffered your injury.

## **7 Exchange of Expert Evidence**

We will send all the witness statements to your experts and invite them to reconsider their earlier opinions in the light of the factual evidence served by the Defendant.

It is possible that we may wish to arrange a meeting with your barrister and your experts to review all the evidence before your experts finalise their reports.

These reports will be served upon the Defendant's Solicitor and, in return, we will receive the Defendant's experts' reports.

## **8 Meeting of Experts**

After the expert evidence has been exchanged, the experts instructed on your behalf will consider the evidence which has been served by the Defendant's experts. On occasions, experts' opinions may change, as a result of their having had the opportunity to consider the opinion of the other party's experts.

On the assumption, however, that the experts instructed on your behalf maintains their opinions, it will be necessary for a meeting to be arranged for the experts to meet to discuss your claim, in an attempt for them to resolve their differences.

This process is often very helpful in narrowing the issues which remain in dispute between the parties or, on occasions, in resolving those differences completely. If this happens, it may be

possible to settle your case rather than going to trial.

## **9 Updating Schedule of Damages**

We will have served a Schedule of Damages detailing your claim in respect of your past financial losses and expenses, at an earlier stage.

If you have continued to incur any financial losses or expenses and particularly, if you are going to incur financial losses and expenses, in the future, it will be necessary to update your Schedule of Damages. It is probable that until this has been done, it will not be possible to accurately assess the value of your claim for damages.

The Defendant will have the opportunity of serving an up to date Counter Schedule, setting out their valuation of your claim.

If your claim includes a significant claim for future financial losses and expenses, it is often not possible to commence negotiations with the Defendant in an attempt to settle your claim until after the updated Schedule of Damages and Counter Schedule have been served.

## **10 Settlement**

You or your opponent may make attempts to settle your claim and can do so throughout the conduct of your claim.

Your Solicitor will undertake negotiations with your opponent's Solicitor and either party may make offers to settle. If negotiations result in a settlement being reached, your claim will be brought to a conclusion. If the negotiations prove to be unsuccessful, however, either you or your opponent may suggest that one of a number of methods of Alternative Dispute Resolution be arranged.

It is very often the case that if informal negotiations fail to settle a claim, attendance at a joint settlement meeting or a mediation may resolve the claim.

The vast majority of claims are settled, thereby avoiding the need to ask the Court to make a final determination of your claim. However, if it proves completely impossible to settle your claim, the matter will proceed to a trial.

## **11 Trial**

At Trial, you will be represented by a Barrister and your Solicitor, as will your opponent.

You will need to attend the Trial to give evidence. Factual evidence may also be called from other witnesses who can help to explain to the Judge what has happened.

The experts who have been instructed by both parties will also attend and give evidence.

Ultimately, the Judge will need to assess the evidence and decide whether you have proved your claim. If the Judge finds in your favour, he or she will enter Judgment against the Defendant and award you a sum of damages. Alternatively, if the Judge finds in the Defendant's favour, he or she will dismiss your claim, in which case you will receive no compensation.