



MEDICAL NEGLIGENCE SETTLING 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 with in the leaflet. You should always seek specific legal advice regarding the particular circumstances of your claim.

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Settling Your Claim

There are various ways which can be used to try and settle your claim without the need to go to trial. These means of settling disputes outside of the courtroom include negotiations between the parties' solicitors and various methods of alternative dispute resolution (ADR) including mediation, round table meetings and independent evaluations.

1 Negotiations

When all the relevant evidence has been obtained, and the value of your claim has been assessed, your solicitor will be able to commence negotiations with your opponent.

The parties' solicitors will attempt to negotiate a settlement of your claim, and, very often, such negotiations will result in a settlement being reached which brings your claim to a conclusion.

Sometimes, however, negotiations are unsuccessful. When this happens Court proceedings will need to be issued or pursued and the case will be prepared for trial.

As part of the preparation for the trial, both parties are required to consider the use of alternative dispute resolution (ADR). If one party wishes to engage in ADR but the other party refuses, the party who refuses to do so may have a Costs Order made against them which can prove very expensive.

2 Mediation

Mediation involves the help of an independent person whose role it is to try and assist the parties in reaching a negotiated settlement. A mediator cannot force parties to enter into an agreement and cannot decide the outcome which means both parties maintain control throughout the mediation.

Prior to the mediation, the mediator will require some background information. A bundle of documents is prepared by each party and provided to the mediator for their consideration. The mediator may also contact the parties by telephone in advance of the mediation to prepare them for the process and raise possible matters for their consideration.

Mediation is confidential, and a mediation agreement is signed by all the parties prior to the start. The agreement will confirm that all discussions will be private and confidential and without prejudice to any court proceedings, and that the persons attending have authority to settle the claim.

The fact that the mediation is held on a "without prejudice" basis means that nothing which was discussed or disclosed at the mediation can be used subsequently by either party in the court proceedings, unless both parties agree.

There is no set format for mediation, but it is usual for the mediator to meet the parties separately at the beginning to explain how the process will proceed and to deal with any questions. The mediation will then commence with each party invited to make a brief opening statement. There will then be private sessions between the mediator and each party to explore each party's position before the mediator moves between the parties exploring the scope for settlement. The parties remain apart until either settlement is reached or the process is abandoned, or the mediator may decide to bring the parties together to address certain issues.

If an agreement is reached this will be set out in a written agreement which the parties will normally draft themselves although the mediator can assist, and which will be signed before the parties leave.

3 Round Table Meeting/Joint Settlement Meeting

A round table meeting or joint settlement meeting is a meeting held to discuss your case with a view to achieving settlement. Either side can suggest holding a Round Table Meeting with the aim of settling the claim without the need to go to trial.

At the Round Table Meeting the claimant and defendant teams (comprising solicitors, barristers and the clients themselves) occupy separate rooms and the solicitors and barristers for both sides meet in a third room to discuss the case and will report back to you any offers made. Unlike mediation, there is no independent third-party present and all discussions are led by the parties themselves. All discussions are again confidential and are on a without prejudice basis.

Both sides can make offers and counter-offers until a settlement is reached. Round Table Meetings may not always result in a conclusion of the dispute but can narrow the issues ahead of a trial and can help both parties understand the other parties' position.

4 Independent Evaluation

An independent evaluation is another form of ADR that can be used to reach a settlement before going to trial.

The solicitors and barristers for each side attend the independent evaluation along with their client, and, on some occasions, their witnesses and experts, although this is not always necessary.

A former Judge or other senior barrister acts as an evaluator for the case and considers the evidence put before them. Like mediation, a bundle of evidence will be prepared to be considered by the evaluator ahead of the independent evaluation. The evaluator may ask any questions they feel necessary either before or during the independent evaluation.

As the Claimant, you will be given the opportunity to give evidence without being cross-examined by the defendant's lawyers.

The evaluator will deliberate on the evidence provided by both parties and give their opinion, if required, on both liability (i.e. whether you will win your case) and quantum (i.e. the amount of damages you should receive). Both parties can then negotiate, using the evaluator as a facilitator, until a settlement is reached.

The evaluation is non-binding and all discussions are again confidential and are on a without prejudice basis, but settlement is normally reached at an independent evaluation. It is also a good indicator of what a Judge is likely to decide, if the case did go to trial.

5 The Court's Requirements

The Court expects ADR to be considered by both parties throughout the claim and a party may be penalised in costs for failing to use ADR.

The stage at which ADR can be considered will vary from case to case and will depend upon the issues that are in dispute. It is often necessary to wait until both parties have obtained all their evidence before considering ADR.

6 Possible Benefits of Alternative Dispute Resolution

It has often been said that ADR has a high success rate. Most cases which use one or other form of ADR do settle at the meeting, or shortly afterwards.

ADR enables the parties to be more open with one another and can provide the opportunity to raise issues which are not dealt with at trial.

ADR is generally shorter than a trial would be and can result in an earlier resolution of your claim. In addition, the terms of the settlement agreement are final and cannot be appealed.

ADR may also reduce the ultimate costs which would be incurred, if the case proceeded to trial.