

# Investigating a claim after a death

If someone you love has died, it will be a distressing time for you and your family. This is especially the case if you have concerns that the death may have been the result of an accident or poor care they received.

You may want to bring a claim to investigate whether something went wrong that caused their death, to obtain financial compensation to support you or your family, or to hold those responsible to account and ensure that lessons are learnt.

This guide summarises the key stages of bringing a medical negligence claim when someone has died and what to expect along the way.

## Investigating the claim

When you first speak with us, we will take details about you, about the person who died and discuss the concerns you have about the treatment or care they received prior to their death. This is to help us establish whether you are the right person to bring a claim and whether we think that the death may have been caused by negligence.

### Who can bring a claim?

Only certain people can bring a claim after someone has died. This is either the person named as Executor in a Will, or where there is no Will then the legal 'next of kin'. In some cases, a claim can also be brought by a person who was dependent on the person who died for income or care.

### Initial investigations

We will use the information you provide, as well as any documents such as medical records, to consider the strength of your potential claim.

There is a strict legal test which must be met to succeed with a claim for negligence. First we need to show that the care provided to your loved one was substandard to such a degree that no reasonable physician or care provider would have given such poor care. Second, we must then prove that the specific substandard care caused or contributed to their death, which would otherwise have been avoided.

To investigate the claim, we gather in the deceased's medical records and other relevant documents and, where appropriate, prepare a witness statement from any family members that have information that helps detail the chronology of events leading to the person's death. If there has already been an inquest then it may be that much of this information is already available from the coroner's investigation.

In most cases, we will instruct an independent medical expert to comment on the circumstances of the claim and to advise whether the legal test has been met. We use specialist experts who are trained in medico-legal work. An expert can only comment on treatment which relates to their own area of professional expertise. In some cases, multiple experts may be required to comment on different aspects of the case.

## Setting out the allegations against the Defendant

Once we have investigated the claim fully, we will then write to the Defendant (the hospital, care home or other care provider who is responsible for the substandard care). We will notify them that we intend to bring a claim and tell them the allegations of negligence.

If the Defendant accepts responsibility early on then we will proceed to focus on valuing the claim and negotiating a financial settlement.

In many cases we are also able to help obtain an apology from those found responsible for the death, or for assurances as to the changes that have been made to avoid others suffering in the same way.

If the Defendant denies liability and no further progress can be made through negotiating with them in writing, then we will consider issuing court proceedings to progress the claim. When this happens, we would discuss it in detail with you and let you know the next steps.

**"Ali always made sure we were updated with the progress of the case and responded immediately to any questions or concerns and always offered a lot of ongoing support and comfort throughout, always being sensitive to the painful nature of our case."**



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## Valuing the claim

Once we are confident of establishing that the Defendant is at fault then we will begin to assess the value of the claim. The amount of compensation will depend on your specific circumstances and the circumstances of your loved one before they died.

Typically, claims can include compensation for the following:

- Compensation for pain, suffering and loss of amenity that the deceased suffered as a result of the negligence prior to their death.
- Statutory bereavement payment. This is a fixed amount that can be claimed by certain family members after someone has died.
- Financial losses incurred by the deceased prior to their death.
- Funeral expenses and associated costs.
- Financial losses suffered by others, for example, where there is a shortfall in the amount of household income because of the death, perhaps through lost earnings, loss of employment benefits, or loss of pension.
- Loss of care or other services, where the person who died provided care or other services such as gardening, DIY, or household chores for others.

## Time limits

There are time limits for bringing a claim after someone has died. In most cases, you have 3 years in which to formally commence a claim in the court. However, in some cases an additional claim for compensation can be made under the Human Rights Act and in these cases the deadline is just 1 year after the death.

We recommend contacting a specialist solicitor as soon as you feel ready to ensure these deadlines are not missed.

## Funding a claim

There are a number of ways that your negligence claim can be funded without any upfront cost to you or your family, including through 'no win no fee' agreements (known as Conditional Fee Agreements) or if you have an existing insurance policy. We will always discuss the funding options with you to find the best option for your specific situation. You can always call our team for a free discussion about a claim and what options may be available to you should you want to explore legal representation.

## Your key contacts



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