

# Bringing a legal claim



This leaflet explains the process of bringing a legal claim when you or a relative have suffered the loss of a baby during pregnancy, labour or birth, or during the early neonatal period. It also applies where you have suffered a traumatic birth and you and/or your baby have been injured.

This leaflet helps explain the legal process and how you can obtain free, no-obligation advice from the point of view of a fictional couple, Nicola and David.

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## Why did Nicola and David decide to pursue a legal claim?

Nicola and David's baby, Millie, was stillborn at 41 weeks. They were concerned that the hospital where she was born made mistakes in her care. Following the birth, an internal investigation was started, but they still had questions they wanted answering. They wanted an objective opinion as to what had happened and whether their loss could have been avoided.

Nicola and David suffered psychologically because of the trauma they experienced and wanted some private counselling. They were also keen that lessons should be learnt within the maternity services from their experience to avoid it ever happening again.

## What did the process involve?



Nicola and David contacted Fieldfisher and spoke to a lawyer who took time to listen to their experience and gave them advice about the prospects of bringing a claim and the process involved.

Nicola and David were informed that to succeed in a medical negligence claim, they would need to prove a breach of duty had caused their loss. They would have to prove that the care of the doctors and nurses involved in their treatment fell below a reasonable standard of care. They would also need to prove that 'on the balance of probabilities' (that is more than 50% chance) the breach of duty caused or materially contributed to their loss or injury.

Fieldfisher agreed to work with them to take their claim forward based on the information they provided. The first step to investigate was to obtain a copy of the medical records and other relevant hospital documents. Once all of these were collected, an independent obstetrician, midwife and neonatologist were instructed to provide their view of the standard of care provided.

This evidence was supportive of a case that there had been breaches of duty which led to the avoidable loss of their baby.

Fieldfisher sent a Letter of Claim to the hospital setting out various allegations of negligence, as supported by the experts. The hospital responded and admitted negligence and provided an apology for the substandard care provided.

## What was the outcome?

Through the process of bringing a legal claim, Nicola and David felt that they had obtained answers to their questions and felt vindicated by the independent experts who had supported their claim, and by the admission of liability that followed. They were supported through the process by their lawyers.

Importantly, they were able to obtain funds (damages) some of which was used for counselling and other support. Both Nicola and David needed a lot of care and support from their family and Nicola had not been able to return to work following their loss. The funds achieved through the claim helped them through a very difficult time in their lives.

## How was the claim funded?



There are several potential options for funding a legal claim.

- **Legal Aid**

Legal aid is only available in claims relating to neurological injuries sustained in pregnancy, birth or the early neonatal period (within 8 weeks of life) and does not extend to neonatal deaths or still births.

- **Legal Expenses Insurance**

Legal expenses insurance, known as 'before the event' insurance, may be available as part of an existing pol-

icy of insurance or some bank account or credit card services, which may cover the costs of a legal case.

- **Conditional Fee Agreement (no win, no fee agreement)**



A Conditional Fee Agreement is often referred to as a no win, no fee agreement between you and your legal representative. With a 'conditional fee agreement', your lawyer shares the risk so that if you lose your claim, they will not charge you their costs. If you win your claim, then a reasonable and proportionate percentage of your legal costs will be recovered from your opponent and/or their insurers.

If you lose the case, although you will not usually be liable to pay your lawyers' fees, you will still have to pay the costs of the experts instructed on your behalf and the court fees incurred on your behalf. You may also be required to pay the other side's costs.

Your lawyer will normally take out an insurance policy for you to cover these expenses and in most claims, the premium will not be payable until the end of the claim and will be deducted from your compensation. If the claim is lost, you do not have to pay the insurance premium at all - it is self-insured.



If your claim is successful, you may have to pay money from your compensation to cover part of the insurance policy and a success fee. The success fee reflects the shared risk that your lawyer has taken. The success fee is based on a percentage of the basic costs, it is not calculated as a percentage of the compensation. The success fee is set by Court Rules. There is a limit to how much can be deducted.

Not all solicitors charge the same success fee or insurance premium. Some have a clause in their agreement that entitles them to take other costs and expenses they have spent on your behalf, from the damages, but not all solicitors do this. Not all 'no win no fee' agreements/CFAs are the same. It is very important to discuss terms with your solicitor so that you understand how this will impact your claim. Certain solicitors are also better at securing higher damages than others. Before you instruct a solicitor, you should be confident they are the right person to run your claim and secure enough compensation for your injury.

At Fieldfisher we offer our clients 'no win no fee' funding arrangements bespoke to each case supported by insurance cover and we will be open and clear with you from the outset how we are going to charge for our work on your case. We will keep you informed throughout the case.

## Important information about claim time limits



Generally, there is a **three-year time limit** for starting a medical negligence claim. This will usually run from the date that the negligence occurred or from the date that you became aware that the treatment you received was negligent (when you might reasonably have been expected to have knowledge that the injury was significant and was caused in by negligence). In a baby loss claim, the limitation date is usually three years from the date you became aware of your baby loss.

## How can I get further information and advice?

Fieldfisher is an award winning, leading firm of medical negligence specialists, recognised for going the extra mile for our clients. To get more advice about your own circumstances, or to assist you in supporting a family you are caring for, please contact one of key contacts Caron Heyes or Christina Gardiner, or contact us on our **free helpline 0800 047 2791** or email us on **maternitylaw@fieldfisher.com**.

*Simply fantastic in dealing with my medical negligence claim, listened to my thoughts about the situation. Legal knowledge and instinct are amazing, always professional, positive and unbelievably supportive during sad and challenging times.*



**Caron Heyes**

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**Caron Heyes** is a Director in the medical negligence team and has worked in the medical negligence sector for many years specialising in bringing claims for adults and children injured during the antenatal, birth and neonatal period.



**Christina Gardiner**

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**Christina Gardiner** is a Senior Associate Solicitor and runs a varied caseload, including complex, high value cases involving birth injury. She works with medical related charitable organisations AvMa and sits on the board of trustees for the Open Hands charity.