Bringing a legal claim



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

It also explains how to obtain free, no-obligation advice from the point of view of 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, suffered a brain injury during birth. 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 Millie's injury could have been avoided.

Millie is now 5 years old, has cerebral palsy and requires round-the-clock care.

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, on Millie's behalf, would need to prove a breach of duty had caused Millie's injury. They would have to prove that the care of the doctors and nurses involved in her 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 her 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, independent experts 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 injury to Millie.

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 Millie's 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 for Millie who needed a lot of support(damages), some of which was used for suitable accommodation, carers, therapies and other support. The funds achieved through the claim will help support Millie for her lifetime.

How was the claim funded?

There are several potential options for funding a legal claim.

- Legal Aid

Legal aid is available in claims relating to neurological injuries sustained in pregnancy, birth or the early neonatal period (within 8 weeks of life). It 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 policy 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 selfinsured. 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 more specialist and may be 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

It is important to note that there are time limits for bringing medical negligence claims we therefore recommend you contact a solicitor as soon as possible for further advice.

In a birth injury claim, the three-year time limit usually runs from the date your child turns 18.

How can I get further information and advice?

Fieldfisher is a leading, award-winning firm of medical negligence solicitors, recognised for its exceptional client care.

For advice about your own situation or those of a family member, please contact Caron Heyes or Christina Gardiner, or use our free helpline 08003583848 or email personalinjury@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 Director and runs a varied caseload, including complex, high value cases involving birth injury. She works with medical related charitable organisation AvMa and sits on the board of trustees for the Open Hands charity.