

## Information about cerebral palsy compensation claims

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### **I'm concerned about my/my child's medical care - should I make a formal complaint?**

The NHS gives every patient the right to complain about any aspect of their treatment or care. Patients (or their parents) can make their complaints directly or can request help from the Patient Advice and Liaison Service (PALS) located in most hospitals. When the complaint has been investigated, you should receive a written response and you may be invited to a meeting to discuss the investigation. The complaints procedure, regardless of outcome, will not result in a compensation payment.

There are time limits for making a complaint although the NHS does have the discretion to deal with a complaint whenever made.

A specialist medical negligence solicitor can help consider whether making a complaint is the best course of action.

### **Should I request my own/my child's medical records?**

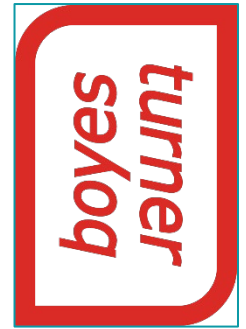
You can contact the hospital and/or GP to request your/your child's medical records. It can take a few months to receive all the records, and you may need to request records from more than one hospital. Alternatively, through a medical negligence investigation the solicitor, generally free of charge, can request and chase up the medical records for you. The solicitor will also check for any missing or illegible records (for example the hospital may not initially provide copies or continuous copies of CTG traces which monitor fetal heart rate and maternal contractions).

### **What do I do if I am contacted by the hospital / the Healthcare Safety Investigation Branch (HSIB) / NHS Resolution after the birth of my child?**

You may be told that an investigation is being undertaken by the hospital, its representatives, or HSIB.

When a baby is thought to have suffered a brain injury from lack of oxygen at birth the hospital is required to notify both HSIB and NHS Resolution. HSIB or NHS Resolution may then make contact with the parents to ask questions or to inform parents that an investigation is taking place.

There are many cases where babies may have suffered avoidable brain damage and no contact is made with the parents. The reasons for this vary but the lack of contact should not be taken as a



sign the hospital does not think mistakes may have been made or that any brain injury could not have been avoided.

If you are contacted by the hospital / HSIB / NHS Resolution we advise you to seek specialist independent legal advice straight away. You do not need to wait for the outcome of the investigation to seek legal advice.

Parents should know that, if after an investigation, the hospital does not admit to any failings this does not mean their child has no claim. Specialist medical negligence legal advice should be sought. Equally if the hospital does admit that mistakes were made or that an injury has been suffered specialist legal advice should be sought to properly protect the child's interests.

### **When should I contact a solicitor to start an investigation/claim?**

We recommend that parents or guardians of an injured child seek legal advice as soon as possible. Solicitors can ensure essential evidence is preserved and witness statements taken while recollections are clear.

You don't need to wait until your child's review appointments or a formal diagnosis of cerebral palsy (or otherwise) before contacting solicitors if you have concerns about the medical care you/your child received.

If it has been some years since events this is no bar to investigating and bringing a claim. Parents or guardians should not hesitate to contact specialist solicitors as soon as they feel ready.

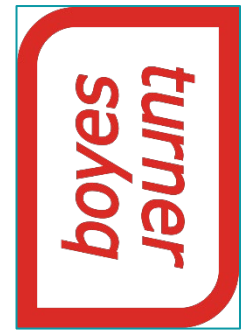
### **Are there time limits for bringing a medical negligence claim?**

For those who suffer from cognitive injury such that they do not have the mental capacity to give instructions to bring a claim there is no strict time limit within which a claim must be started.

For those injured at around the time of birth or before the age of 18 and who do have the mental capacity to bring a claim court proceedings must generally be started by the age of 21.

In other cases those who have been injured as a result of medical negligence generally have three years from the date of the negligence (or date of knowledge) to start court proceedings (this would generally apply to injury suffered by the mother during delivery).

The law around time limits for starting a medical negligence claim can, in certain situations, be complex. For those who have fluctuating capacity (i.e. at times have the capacity to bring court proceedings themselves and at other times do not), or where the injured person does not have sufficient 'knowledge' at the time of negligence/injury, or where a defective product causes injury, or the injured person dies before the limitation period expires detailed discussion might be required to establish the relevant time frames within which a claim should be started at court.



The court does have the discretion (other than in a claim arising from a defective product) to allow cases started after expiry of the relevant time period to continue however this is a discretion and should not be relied upon.

### **How are compensation claims funded?**

Legal Aid funding (paid for by the state) is generally available to those who have suffered a brain injury from medical negligence in utero, at birth, or within the first few weeks of life. Generally, no deduction is made from the child's compensation for legal costs where the child has Legal Aid funding.

If Legal Aid is not available or if the parents prefer not to utilise Legal Aid funding a claim can be funded on a no-win-no-fee basis (also known as conditional fee agreement or CFA). Where a claim is run under a CFA with associated insurance, there are no legal costs to pay if the claim is unsuccessful. When a claim is successful, the defendant pays most of the costs, with the client usually paying a capped contribution from the compensation award.

Only certain law firms are eligible to offer Legal Aid funding and for CFA funding there is a large variance between law firms' approaches to the extent of the client's contribution to legal costs in a successful claim.

### **I've contacted a solicitor, what happens next?**

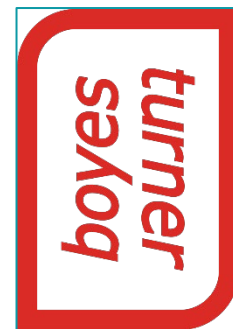
If the claim is accepted for investigation the next steps will involve discussion about the most suitable funding arrangement, taking detailed statements and applying for medical records. Once the records are received and reviewed, specialist medical experts are instructed to consider the care you/your child received. The solicitor will let you know the timescales for receipt of experts' reports.

If the claim is not accepted by the first solicitor you contact, you should consider seeking a second opinion. It is important you speak to specialist medical negligence solicitors with expertise in acting for children.

A solicitor can tell you if they will accept instructions to investigate a potential claim. However it is not until reports have been received from independent medical experts (often between 5 and 6 experts) that the full strengths and weaknesses of a claim can be properly assessed.

### **How long will a claim take?**

It is best to view a claim in two parts, firstly establishing mistakes were made which caused injury (liability) and secondly assessing the amount of compensation to be paid.



Establishing liability can take as little as a year if the defendant makes an early admission or as long as up to five years if a claim is defended to trial. In the majority of cases it is likely to take around three years from first approaching solicitors for issues of liability to be resolved.

Once liability has been established judgment is entered and an interim payment on account of the eventual compensation award is made to meet ongoing needs.

Before a final award of compensation can be made the experts must be able to predict the injured child's future development, capabilities and needs, with sufficient certainty for a final compensation award to be made. In general it is not until the child is around seven years old that sufficiently accurate predictions can be made with the final award of compensation being made when the child is around nine years old (allowing two years for the court process).

### **What experts are required?**

To establish liability experts in the disciplines of midwifery, obstetrics, neonatology, paediatric neurology, paediatric neuroradiology and sometimes in the disciplines of ultrasonography, microbiology, and feto maternal medicine can be required.

To value a claim experts in the disciplines of paediatric neurology, educational psychology, care, occupational therapy, assistive technology, physiotherapy, speech and language therapy, accommodation and deputyship/trust management are generally required. Additional experts in the disciplines of orthopaedics, orthotics, ophthalmology may also be required.

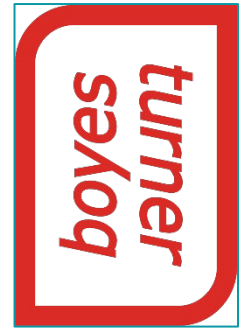
### **How is a cerebral palsy claim valued?**

No amount of compensation can make up for the injury and so the purpose of a compensation award is to put the injured person, as far as money reasonably can, into the position they would have been but for the injury.

In practice compensation ensures that money is available to properly fund care, education, therapy, equipment, accommodation and other needs resulting from the injury.

Any compensation award in a cerebral palsy claim is made up of a sum for 'pain, suffering and loss of amenity' (depending on injury possibly between £200,000 and £350,000); recompense for the additional costs incurred due to injury to the nominal date of trial, including recompense to parents for the additional care provided; and an award to meet the future anticipated expenses which will be incurred and the injured person's loss of earnings. The award for future expenses is made as part capital sum and part guaranteed annual payments for life.

Depending largely on life expectancy, care, therapy, equipment and accommodation needs the total compensation payment often exceeds £10,000,000 and in many cases is substantially greater.



### **What is an interim payment?**

Following an admission of liability or negotiated liability settlement the court will order the defendant to make a payment on account of the final compensation award. This ensures that the injured person's needs are met while the valuation of the claim takes place.

An interim payment of compensation can fund care, accommodation, transport, education, equipment and therapies until the claim is concluded and a final award of compensation made.

### **Will I need to go to Court?**

Whilst it cannot be guaranteed that any individual claim will settle and a trial be avoided nearly all successful cases are settled without the need for a trial.

### **Can I get help with my child's special educational needs and choice of school?**

Every child has the right to an education which meets their needs. Sadly, whilst the law gives rights to children with special educational needs, in practice local authorities may be unwilling or unable to provide adequate support and funding. Special Educational Need (SEN) specialists can help families with the process of setting their child's Educational and Health Care Plan (EHCP) to secure the right school placement and/or additional special educational support to meet their individual needs.

### **Will my child need a Deputyship or a Trust?**

Money, whether it be compensation from a claim or personal finances, can be managed through a deputyship if a person does not have the mental capacity to make financial decisions, or through a Personal Injury Trust if a person has a physical disability or is vulnerable but has or will have capacity to make financial decisions.

A Deputy or Trustee/s usually becomes involved once an interim payment for compensation has been made or funds are available. The Deputy or Trustees can offer protection and support for the family and injured child.