

Time Limits or 'Limitation' in Clinical Negligence Claims

Do not wait, seek legal advice without delay.

There are often strict time limits for pursuing legal actions.

Where someone is concerned that they may have suffered injury and consequential loss as a result of having received substandard medical treatment, they may have a right to claim damages (compensation) for their suffering, to fund rehabilitation, treatment and cover their losses and expenses.

A Defendant is likely to be able to refuse such a claim if it is brought too late though. It is therefore very important that injured people are aware that there are time limits and that, if they are at all considering making a claim, they should seek legal advice without delay.

Do I have 3 years to contact a solicitor? No.

Some people have heard that an injured person has 3 years from the date on which they were injured to issue their claim at Court but the rules are far more complicated than that.

- It is important that an injured person does not think that they can comfortably wait 3 years from the date of the injury to contact a solicitor.

For example – cases take time to investigate and prepare for Court. There may also have other actions that they could pursue that have different 'limitation periods', such as claims brought pursuant to the Human Rights Act 1998 (e.g. in relation to death) or the Consumer Protection Act 1987 (in relation to defective products, such as faulty prosthesis).

If the treatment complained about was more than 3 years ago, is there any point seeking legal advice? Yes. It is very important that specialist advice is obtained as soon as possible.

Many clinical negligence claims relate to treatment that happened years ago.

- It is also important that an injured person does not think that, if they are concerned about treatment that took place more than 3 years ago, that they cannot succeed with a claim.

An injured person may not know that they had suffered injury as a result of negligence until years after the event itself. In a lot of cases arising as a result of substandard medical treatment, it is not clear that they have suffered injury as a result of negligence until much later. In such circumstances, the time limits for bringing a claim are normally calculated with reference to the date on which they ought reasonably to have been expected to have suspected they had suffered injury as a result of substandard practice.

What about if the injured person is a child?

- The limitation period for a child bringing a clinical negligence claim differs. An injured person under 18 normally has until their 21st birthday to issue their claim at Court before a Defendant can legitimately argue that their claim is brought out of time.

What about if the person who suffered injury has died?

- If a person bringing a claim dies before the limitation expiration date, the normal limitation period for clinical negligence claims is extended to 3 years from the date of death, or from the Personal Representative's date of knowledge.

What about if the injured person does not have mental capacity?

- If a person bringing a claim does not have mental capacity, then a limitation period does not run. However, if at any point a person bringing a claim did have mental capacity, and this was lost during the duration of the claim, the position will be complicated because normal limitation rules will likely apply.

Is it always important to seek legal advice as soon as possible? Yes.

- It may be that an injured person is concerned with a defective product, such as prosthetic devices, hip replacements or cosmetic implants they may want to pursue a 'Product Liability Claim'. The rules on limitation can be more complicated if the claim is being brought against the producer of the defective product, there is generally a rule of ten years to bring a claim from the date the product was introduced to the market.
- If a person is bringing a claim to seek remedy for a breach of their human rights, the limitation period is only a year. This means the claim must be brought within one year from the date that the human rights were breached.
- If a person wishes to claim for a 'Vaccine Damage Payment,' the claim must be brought on or before the disabled person reaches 21, or if that person has died, when the 21st birthday ought to have been, or within six years from the date of the vaccination.
- To make a claim for compensation for infected or contaminated blood, the limitation period is three years from the date of incident, or in some cases, the date of knowledge if the effects of the symptom or virus is delayed.

What if I think I have waited too long to seek legal advice? Seek legal help as soon as possible.

You may be mistaken because the rules are complicated and there are lots of exceptions.

Furthermore, a Judge can, in certain circumstances, grant an injured person an extension and consider the merits of their Claim.