

## Medical Negligence Claims: The Three Key Elements

For a claim to be successful the person bringing the claim (known as the 'Claimant') must be able to prove:



Medical negligence is where there has been a breach of duty of care (negligence) which results in an injury being caused. There are three key elements to the legal test:

1. For a claim to be successful the person bringing the claim must be able to prove that they were owed a duty of care by the person treating them. However, it is well established that clinicians, whether that is a doctor, nurse, paramedic or healthcare assistant, owe a duty of care to their patients so this is rarely an issue.
2. The treatment or advice provided was negligent i.e. there was a breach of that duty of care; and
3. The breach of duty of care caused that person to suffer an injury or be in a worse position than they would otherwise have been had it not been for the negligent treatment or advice (i.e. that injury will make the person's life more difficult or change their prognosis for the worse). this is known as causation.

In a claim concerning meningitis this will usually concern whether diagnosis and treatment should have started earlier and whether you suffered a worse outcome and longer period of ill health as a result.

We will look more closely at the key elements of 'breach of duty' and 'causation' below.

# Medical Negligence Claims: Breach of Duty

Every doctor owes a duty of care to their patients. For a medical negligence claim to be successful you (the Claimant) must prove, with support from independent medical experts, that the duty was breached:



## **Breach of Duty**

If you have suffered an injury as a result of medical treatment this does not necessarily mean the treatment was 'negligent'. The test to prove there was a breach of duty of care is quite high and it isn't enough to say that the treatment or decision caused you harm, you have to be able to show no other reasonably competent clinician specialised in that field would have acted that way.

This makes breach of duty difficult to prove as medicine is not an exact science, there is often a range of opinion as to the best way to treat different injuries or illnesses and clinicians have to weigh up the potential risks and benefits of those options when treating anyone. That means just because one doctor might do one thing and another doctor might do something differently, it doesn't necessarily mean that one of them is wrong or negligent.

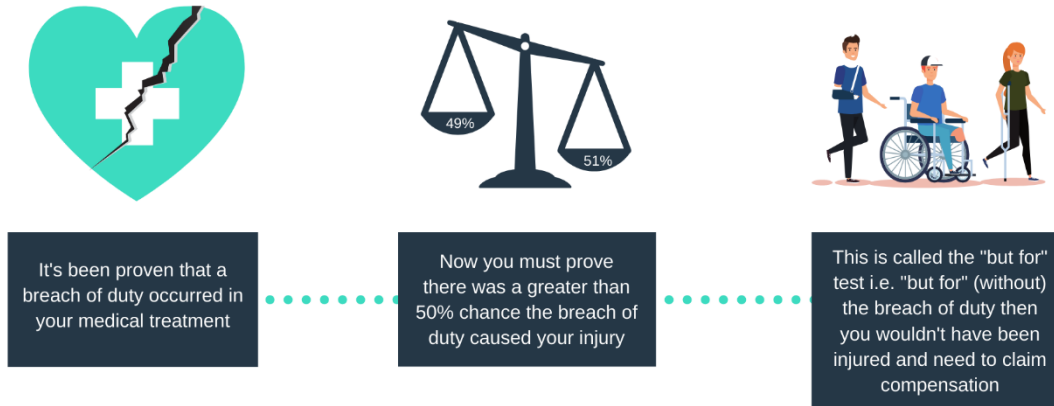
However, there are occasions where things are missed, treatment is done badly or decisions are made that result in harm that cannot be justified. If you can show that the treatment or lack of treatment was not logical and that no other reasonable and responsible clinician would have made the same decision in that situation, then that would be considered a breach of their duty of care in law.

In meningitis claims breach of duty of care tends to come in when considering whether the diagnosis was made quick enough, whether there was a delay in treating the condition or where the treatment offered was not appropriate.

You will need a specialist lawyer to help you bring your claim, normally your lawyer will use independent medical experts to help you prove breach of duty of care. They do this by looking at your individual circumstances and reporting on what the reasonable and responsible range of treatment was and why the treatment you received fell below that standard.

# Medical Negligence Claims: Causation

If there was a breach of duty then you must also prove, again usually with evidence from a medical expert, that the breach likely caused your injury:



## Causation

In law, it is not enough to prove that the treatment you received was negligent. In order to bring a claim for compensation, you must also prove that as a result of the negligence you suffered harm or injury or are in a worse position than you would otherwise have been had the negligence not occurred.

Sometimes this can be straight forward. For example, if someone had a leg operation on the wrong leg it would be easy to prove where harm was caused. However, a lot of the time it can be much more complicated because it is hard to predict what the outcome would have been had things been done differently.

In a claim involving meningitis, the breach of duty of care is often that the infection wasn't treated promptly – for example, if the symptoms were incorrectly diagnosed, or there was a delay in referring the patient to hospital for treatment. In that situation you would need to prove that earlier diagnosis and treatment would have given you a better outcome.

The law in relation to causation can be quite complex and you will need the assistance of medical experts and a specialist lawyer to help you prove your claim.

The main thing to be aware of is that you will not have to prove what *definitely* would have happened, you only have to prove what *probably* would have happened. In law this tends to be referred to as the 'but for' or the 'balance of probabilities' test, which essentially means establishing there was a more than a 50% chance of something.

In a meningitis case where you have suffered very serious injuries from the infection it may not always be possible to prove that everything you suffered could have been avoided with proper care, but if you can prove your injuries were more severe or you were ill for longer or you contracted other conditions such as sepsis because of the negligence, you will be able to bring a claim for compensation.

If you are concerned about the medical treatment provided when you or your loved one contracted meningitis it is recommended you seek legal advice from a lawyer specialising in medical negligence that has experience bringing meningitis claims who will be able to help you claim for compensation.

## **Why should I make a claim for compensation?**

If you have suffered harm because of medical negligence you are entitled to compensation to help you move forward with your life. This may mean getting money to help you fund medical treatment and therapy, money to adapt your house or even help you buy a new house if your disability means your home is no longer suitable for your needs. Compensation can also pay for care whether that is provided by loved ones or if you need to employ a carer; it can also provide for things like medical aids and equipment, adapted vehicles as well as provide for things like lost earnings if you have had to take time off work or even cannot return to work as a result of what has happened.

If you have suffered psychological trauma as a result of medical negligence, then a compensation claim can also help you get psychological therapy to support you. In addition, you should be compensated for your physical and psychological pain and suffering.

The right lawyer will make sure you receive exactly what you need and should be able to guide you through the process in a way that you feel comfortable with and can understand.

Aside from compensation, bringing a claim can allow you to share your story with the right people to try to make sure that what happened to you doesn't happen to anyone else. That may be by asking for a change in hospital procedures, asking for staff to receive more training or even reporting the doctor to the General Medical Council if appropriate. Even though money cannot change what has happened to you, compensation can change your future for the better.

If you are contemplating pursuing a claim for medical negligence and are worried about suing the NHS please be reassured that the NHS has insurance for these types of claims.

The first step in bringing a claim is to speak to a specialist lawyer.

**This factsheet has been produced by Enable Law to explain the process of bringing a medical negligence claim for meningitis survivors in association with Meningitis Now.**