Medical Negligence

PEARSON
SOLICITORS AND FINANCIAL ADVISERS

Advice Sheet

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Pearson Solicitors is an established law firm practising from Manchester, Oldham and Ashton-under-Lyne. We have specialist departments dealing with a range of legal services. Our medical negligence department was set up with the aim of providing the ordinary man, woman and child just as good, if not better, legal representation than the NHS.

Who we are

Pearson's Medical Negligence Department is headed by John Pollitt who is a Partner with the firm. Also working in the department are Matthew Cox (Partner), Kenneth Lees (Solicitor), Jacqui White (Solicitor) Janet Dunkerley (Nurse), Yvonne Batty (Mr. Cox's secretary) Susan Shears (Legal Assistant), Kendyl Moore and Gemma Birchall (Legal Assistants).

If you have had medical treatment that went wrong or did not work properly, you may be able to get compensation for your injuries. This advice sheet explains what you can do if you have suffered a medical accident.

What is a medical accident?

"Medical Negligence" is the legal term used to describe a medical accident where a patient has been harmed, not because of an avoidable complication, but because a doctor or other health care professional has not given the proper standard of care. It does not mean that this person was incompetent. It can just mean that in the particular case, they made a mistake which they should not have. Medical negligence includes things like:

- Making a mistake during surgery.
- Giving you the wrong drug or,
- Making the wrong diagnosis or delaying a diagnosis unnecessarily.

Medical negligence can also include not doing things that should be done, such as:

- Not giving you treatment you needed.
- Not getting your consent to treatment or,
- Not warning you about the risks of a particular type of treatment.

What should I do if I have suffered a medical accident?

If you have been injured during treatment, you must first make sure that you are getting the right treatment, to try and correct the injury. You may also need to get a second opinion or ask your doctor to refer you to another hospital or clinic.

You may be feeling distressed and confused by what has happened and, may want advice and support. This could be from friends, family or specialist groups. You could also talk to your doctor about what has happened to see if they can help, if you think they will be understanding.

If you cannot work because of the accident you should get advice about claiming benefits and how to deal with any debts that have built up. You should also get advice about benefits if your partner contributes to the household income but cannot work because of a medical accident. Your local Citizens Advice Bureau is a good place to start. You could visit the Community Legal Service direct website at www.clsdirect.org.uk. They have two leaflets which could help:

- Dealing with debt.
- Welfare Benefits.

We can supply you with copies of these leaflets.

What action can I take?

After you have taken steps to take care of your health, you should think about what you want to do next. You should think first about what you want to happen. You may want:

- An explanation and an apology.
- To make sure that the same mistake is not made again (this may include a hospital changing its procedures or the person responsible being disciplined or re-trained) or,
- Compensation.

How do I find out more about what happened to me?

You should first get a detailed explanation from your doctor or from the health care professional who was involved in your treatment. The doctor's professional code of conduct says that a doctor should give you an explanation of what happened during your treatment and, if necessary, an apology. This does not always happen and you may not get all the information you want. If so there are several other steps you can take including the following:-

The NHS Complaints Procedure
Patients and their representatives have a right to complain about any aspect of NHS treatment and the relevant health body has a responsibility to respond to each complaint. Complaints about NHS services can be made to any health care provider either verbally or in writing. Verbal complaints can, and should, be dealt with "on the spot" whenever this is possible. However written complaints must be treated formally.

A complaint can be made by a patient, someone on behalf of the patient (with their consent) or on behalf of any person who has died. If the person affected is a child the complaint must be made by a parent or the person with parental responsibility. If the person affected lacks the appropriate mental capacity a relative or other adult may make a complaint on that person's behalf.

The Patient Advisory and Liaison Service (PALS) is available to act as a point of contact for patients and their carers to address matters of concern. They provide the following service:-

- Confidential advice and support to patients, families and their carers.
- Information on the NHS and health related matters.
- Confidential assistance in resolving problems and concerns quickly.
- Information on and explanation of NHS complaints procedures.

Whilst not being independent of the Trust PALS is expected to act on behalf of patients in investigating concerns at local level and trying to reach agreed solutions for both patient and Trust.

In addition patients and their carers/representatives can access the services of the Independent Complaints Advocacy (ICA). This service provides patients and representatives with free advice and support throughout all stages of the complaints procedure. Support includes help with letter writing, accompanying patients/representatives to meetings and acting as the advocate for the complaint. The local ICA service can be reached on 0808 801 0390.

Formal complaints are dealt with in two stages as follows:

- Local resolution.
- The Health Services Ombudsman.

First stage - Local resolution

The normal time limit for bringing a complaint to the attention of the relevant health provider is 6 months from the date of the event giving rise to concern or 6 months from the date on which the matter came to the complainant's notice providing this is not more than 12 months from the date of the event itself. However, there is discretion to extend this time limit in exceptional circumstances.

The complaint should be sent in writing to the Chief Executive or the Complaints Manager within the relevant organisation. An acknowledgement should be provided within 2 working days and a written reply to the complaint should be provided within 25 working days of receipt. Often the health care provider will ask for an extension of time.

The complaint will then be investigated internally by the health care provider so that a written response can be provided. There is no specific requirement to offer a meeting with you but it is thought to be good practice to do so particularly in cases where the questions involve complex issues.

The reply should include reasoned apologies where appropriate and should acknowledge areas of care which fell below an acceptable standard. The replies should include a detailed point by point response to all the issues. The health care provider can offer a small amount of compensation in the form of an ex gratia payment but this is not common and often limited to minor financial losses such as, for example, lost personal effects.

The principle objective of local resolution is to provide the fullest opportunity for investigating and resolving a complaint in an open, fair, flexible and conciliatory manner.

Second stage - The Health Service Ombudsman

The Ombudsman will normally only take on a complaint after you have first tried to resolve that complaint with the healthcare provider. The Ombudsman's role is to investigate complaints that individuals have been treated unfairly by the healthcare provider. His aim is to provide an independent high quality complaint handling service that rights individual wrongs, drives improvements in healthcare provision and informs public policies.

Once the complaint has satisfied preliminary checks the Ombudsman will move onto investigate it. Sometimes the Ombudsman service will talk directly to the healthcare provider to achieve a resolution. In other cases a full investigation will be undertaken. This will involve looking at all the facts and sometimes gathering additional evidence/expert evidence.

If the Ombudsman finds that the healthcare provider has done something wrong that needs to be put right he will work with them to get that done. This could involve acknowledging the mistake, apologising and taking steps to ensure this doesn't happen again. Further information can be obtained from **www.ombudsman.org.uk** or by telephoning 0345 015 4033.

Use of the complaints procedure as a route to litigation

If the complaint letter indicates an intention to take legal action the health care provider need not respond. Nevertheless the complaints procedure can be a useful method of gathering information and obtaining an initial response from the health care provider.

Getting your medical records

Obtaining your medical records may help formulation of the complaint letter.

You have a legal right to these under the Data Protection Act 1998. You may have to pay up to

£50 to get copies of the records (including copies of x-rays and scans). In the case of a deceased patient the £50 limit does not apply.

NHS hospital records should be provided within 40 days of written request. You can also see adverse incident investigation documents and the complaints file.

Refusal to disclose the notes is rare but often an incomplete disclosure is provided. If you are not sent all the records to which you are entitled an application to the Court can be made for order that disclosure be made if it can be shown that you and the health care provider are likely to be parties to subsequent legal proceedings.

What if I want to complain about a professional's behaviour?

You may want to complain about an individual doctor or health care professional, for example, because you think they acted unprofessionally or are a danger to other patients. Most health care professionals are a member of a profes sional organisation. There are different organisations for different professions. For example, the General Medical Council for doctors and the Nursing and Midwifery Council for nurses, midwives and health visitors.

These organisations have the power to stop a health care professional from treating patients but will normally investigate only more serious complaints. Less serious complaints (for example rudeness) would normally be investigated through internal disciplinary procedures.

Claiming compensation

If you have been injured physically or psychologically by a health care professional's negligence, you may be able to claim compensation. The injury needs to be serious enough to make it worthwhile paying the costs of making a claim. It is probably not worth taking legal action if your injury:

- Is fairly minor and you recover within a few days or weeks and,
- Hasn't caused you to lose a lot of money, for example, earnings because of time off work.

It is important to understand that the Courts cannot:

- Discipline a health care professional by, for example, stopping a doctor from practising.
- Force the hospital to change how it works or,
- Make a doctor apologise.

Having said that it is increasingly common for health care providers to give open apologies once it has been established that they were in the wrong and it is reasonable to ask them to explain how they intend to improve practice for the benefit of other patients.

You can claim compensation against any health care professional who hasn't given you the right care or treatment resulting in injury.

This includes:

- Health visitors, nurses, midwives, physiotherapists, osteopaths, private practitioners, mental health care teams, laboratory services, dentists, medical or dental technicians, opticians and the ambulance service.

Before deciding whether or not to take a legal claim you should consider asking to be treated by a different health care provider to the one that has injured you. Whilst we pride ourselves on providing a sensitive empathetic service you should also bear in mind that pursuit of a claim will provide inevitable reminders of what happened to you and this can be upsetting.

Paying for the case (funding)

During our first meeting with you we will provide you with an estimate of our likely fees and will advise you upon the funding options. These include the following:

Before the event Legal Expense Insurance

This is a form of Legal Expenses Insurance which is often an add-on policy to a general household insurance policy. You should check your insurance policies to see if these include Legal Expenses cover for a personal injury claim. These policies can provide cover for legal costs up to a set limit although not all will cover Medical negligence claims. Cover varies but often includes both your fees and disbursements and your opponent's

fees and disbursements.

In most cases a report must be made to the insurer within 6 months of the event complained of.

Your insurance company may want you to use one of its solicitors but it has been decided (by the Financial Ombudsman Service) that in complicated cases (such as many Medical negligence claims) the insured should have the right to choose a solicitor.

The policy will require you to show that there are reasonable prospects of success.

Public Funding (formerly known as Legal Aid)

Since 1st April, 2013, Medical negligence cases has no longer been eligible for public funding (Legal Aid) unless the claimant is a child with neurological injury resulting in severe disability which arises during pregnancy, child birth or in the eight week post natal period.

Conditional Fee Agreements (CFA) otherwise known as No Win No Fee Agreements

If we are satisfied that the prospects of success are good enough and no other form of funding is appropriate, we may offer you the opportunity to fund the case through a CFA. This would usually only be appropriate after we have completed investigations to ascertain the strength of the case.

If we work for you under a CFA you will not have to pay for our charges if the claim fails or is abandoned. It is important however, to remember that there is more to the costs of a legal case then our charges alone. If the case is started in Court and then lost or abandoned you may still have to pay the following:-

- Your opponents legal costs and,
- Your and your opponent's disbursements (other expenses or charges such as fees for expert witnesses).

We can advise you upon arranging a policy of insurance to cover these expenses if the claim were to fail.

If you win the case we will be entitled to charge a success fee although this would need to be agreed with you in advance. Although our work on an hourly basis, VAT and disbursements are recoverable from the opponent, the success fee is not and would be payable from your damages. The amount we can recover from your damages however is capped at 25% of compensation for your pain, suffering and loss of amenity and damages for past financial losses net of any recoverable benefits.

Trade Union help

If you are a member of a trade union or similar type of organisation it may be able to help you with legal costs.

Paying for the case (funding)

Our first meeting is likely to last for about 90 minutes. During this meeting we will find out more about your case, identify your concerns and objectives, provide an initial advice (about how to deal with your concerns, funding of the case and the strength and value of a claim). We will also advise you upon what action needs to be taken and by when. It will be helpful to see any medical records, complaint letters or other papers which support your case.

Proving medical negligence

A claim for Medical negligence damages can only succeed if we can establish (with the benefit of supportive medical expert opinion) that the conduct of the health care provider would not have been approved of by any responsible body of opinion in that discipline at that time.

It is therefore a defence for the health care provider to show that they acted in accordance with a practice rightly accepted as proper by a responsible body of medical people skilled in that particular field and this defence will succeed even if something went wrong with your treatment.

This therefore means that if the medical person who treated can show that they complied with an accepted medical practice the claim will fail. We therefore need to prove that no responsible health

care provider would have treated you as this one did.

Because Medical negligence cases involve both medical and legal issues we will need to get a report on the medical issues from a medical expert skilled in the particular kind of treatment which you received.

Having established that you were the victim of Medical negligence, if your claim is to result in an award of compensation, we will need to prove that it is more likely than not that it was this negligence which caused the harm or loss which you went on to suffer.

Who is the Defendant?

If your claim arises from treatment in an NHS hospital the hospital will be the Defendant rather than the individual medical person who treated you.

If your claim is directed at a family health practitioner such as a GP, Dentist, then the claim will be brought against the individual. This is also the case if the medical person treated you on a private paying basis.

It may be that even after the medical accident you continue to receive treatment from the person responsible. In this event the medical practitioner should not discuss the case with you.

If you were to receive an approach or communication about the case from a person or institution representing the person responsible for your medical accident we would ask you to tell us and to avoid responding personally.

How soon should your claim be started in Court?

Your claim must be started in Court within 3 years of the date of your medical accident. The three year time limit starts from either:

- The date when you had your medical accident or the treatment that caused your injury or,
- The date of knowledge of facts sufficient to bring a claim (to allow a claimant who failed to start his action in time to go ahead in circumstances where he was unaware that he had been injured by someone's negligence).

The date of knowledge is defined as the date on which a person first has knowledge of the following facts:-

- That the injury in question is significant and,
- That the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence and,
- The identity of the defendant.

If the injured person dies before the expiry of the appropriate three year period the proceedings have to be started in Court within three years of the date of death.

Different rules apply to children (those under the age of 18) and those of unsound mind (those incapable of managing and administering their property and affairs by reason of mental disorder). Children and persons of unsound mind are described as being "under a disability". In the case of children the three year period starts to run from their 18th birthday. In the case of a person of unsound mind the case must be started in Court within 3 years of the date when that person ceased to be under a disability or died (which ever occurred first). The extension on the ground of disability only applies when the disability exists at the date of the alleged negligence.

The Court has a discretion to disapply any of the above time limits when it is fair to do so. It will take into account all the circumstances and in particular the following:

- The length of and reasons for the delay.
- The impact of delay on the cogency of the evidence.
- The conduct of the defendant after the alleged act of negligence happened (including cooperation provided in the investigation of the case).
- Duration of any disability from which the claimant suffered after the alleged negligence took place.
- The extent to which the claimant acted promptly and reasonably once they had acquired sufficient knowledge.
- What steps if any the claimant took to obtain medical, legal or other expert advice (and the nature of the advice received).

What you can claim

If your claim succeeds you would generally be entitled to both general damages and special damages.

General Damages

Are those which are not capable of precise mathematical calculation including for example pain, suffering and lost amenity. This can cover physical and psychological injury, loss of life expectation and loss of the enjoyment of life (including interference with sex life, holidays, sports and hobbies).

We will assess these damages by reference to published guidelines and previous awards in cases similar to your own. You may be entitled to damages arising from handicap in the open labour market. The purpose of this award if to compensate you for potential difficulties in obtaining another job due to the injuries sustained in the medical accident. To recover these damages we will need to show that your competitive position in the open labour market has been weakened and that there is a real risk of losing your present job at some stage before the estimated retirement date. It is sometimes possible to recover damages arising from reduced life expectation.

Special Damages

A. Lost earnings.
B. The cost of someone looking after you.
C. Paying someone to perform services you would otherwise do for yourself (eg: DIY or gardening).
D. Medical expenses.
E. The increased cost of transport.
F. The increased cost of a change of diet.
G. Loss of pension entitlement.
H. The increased cost of laundry.
I. The cost of aids and equipment.
J. Additional fuel costs due to being at home for longer periods.

iN BEREAVEMENT CASES

K. Funeral expenses
L. The cost of a memorial.

Interest is payable on both special and general damages to compensate you for having to wait to receive compensation. Interest on special damages run from the date of negligence to the date of settlement or trial. Interest on general damages runs at a lower rate from the date of service of proceedings on the opponent to settlement or trial.

Finally you will be entitled to recover the cost of future special damages which are likely to be incurred as the result of negligence.

You are under a duty to keep your losses to a reasonable minimum. This means, for example, that if your medical accident caused you to be absent from work you will need to show that all reasonable steps were taken to get back to work as soon as you were fit to do so.

Compensation in fatal cases

It is possible to continue a claim for Medical negligence damages to which a deceased was entitled at the time of death. These claims are normally brought by the personal representatives of the deceased so that Letters of Administration or a Grant of Probate should be obtained before the claim is commenced.

The deceased's estate inherits the right to sue to recover the losses which the deceased could have claimed.

Damages recoverable by the estate include those for:-

- The deceased's pain, suffering and lost amenity (assuming a period of survival).
- Loss of net income from the date of the medical accident to the date of death.
- Reasonable funeral expenses.
- The value of services rendered to the deceased by a third party.
- The cost of a modest memorial.

Damages recovered by the estate are distributed in accordance with the deceased's will or the intestacy rules (specifying those relatives to benefit in the event of no will being left).

In addition specified dependants can bring claims (through the personal representatives) for loss of their financial dependency on a

on a deceased who died as a consequence of Medical negligence. The dependency has to be referable to a personal family relationship with the deceased. The specified relationships include a partner or a civil partner.

The following relatives are entitled to bereavement damages (which were increased from £10,000 to £11,800 for cases arising after the 1 January 2008):-

- The spouse of the deceased.
- Parents of a legitimate unmarried deceased minor (under the age of 18).
- The mother of an unmarried illegitimate deceased minor.

How we will investigate your case

We will begin by considering all the relevant documents which you can provide to us. If it is necessary to begin the case in Court we will have to tell the opponent about the existence of documents which you have, have had or which are/have been under your control and which are relevant to the issues in the case. Please therefore provide us with all relevant documentation.

We will then take your detailed statement identifying your concerns and objectives. It will be important then to ensure that a complete set of the relevant medical records is obtained to establish what happened in the medical accident, the injuries sustained, the treatment of them, and your previous medical history.

Having accumulated all the relevant records we will summarise and analyse these providing you with an opportunity to comment.

We will then identify appropriate medical experts to report on negligence and the impact of negligence upon you. It is important, when dealing with negligence, to obtain the reports of experts who are specialist in the area of practice about which you complain. We select experts carefully by reference to their reputation for fairness, impartiality, eminence, speed of response, cost and expertise as a medical expert witness.

If the medical evidence suggests the case is strong we will move on to deal with the value of the claim. This will probably involve arranging for you to be examined by an appropriate medical expert to prepare a report on condition and prognosis. Depending upon the injury you suffered, we may need to obtain reports from experts dealing with the following:-

- Care
- Occupational therapy
- Accommodation
- Physiotherapy
- Information technology etc.

In the meantime we will write a Letter of Claim to the health care provider. This letter will deal with the following:-

- A summary of the facts on which the claim is based including the adverse outcome.
- The main allegations of negligence.
- A description of your injuries and present condition/prognosis.
- Details of your financial losses

with an indication of the heads of damage to be claimed.

The health care provider generally has 4 months to reply to the Letter of Claim before proceedings can be commenced in Court. Frequently there is a request for an extension of time. The Letter of Response should deal with the following:-

- Whether the claim is admitted.
- If only part of the claim is admitted precisely what is admitted and denied and why.
- If the claim is denied specified comments on the allegations of negligence and the health care providers own version of facts.

Sometimes, because there is an urgent need to start the case in Court, it may not be possible to write a Letter of Claim.

After the Letter of Response is available it may be appropriate to obtain a Barrister's opinion (perhaps at a meeting with the experts present). The Barrister will then provide a view upon the prospects of success, the likely value of the claim and any further investigations which need to be undertaken.

Should it then be necessary to begin proceedings in Court we will provide you with further advice upon the Court process.

How long will it take for the case to finish?

It is very difficult to give precise information about how long your case will take because each case depends on its circumstances.

The following are therefore only intended as general guidelines:-

• If you were to instruct us to assist you through the complaints process we would expect you to have a reply to complaint within 2 months of our first meeting.
• If it were then necessary to obtain your medical records this would probably take about another 3 months.
• If we were then to obtain expert evidence much would depend upon how many experts will be necessary and their discipline. In some disciplines there are only very few medical experts willing to assist and their waiting lists are long. It may be advisable to obtain the expert's reports in sequence. We will provide you with customised advice upon how long it is likely to take experts to report in the particular circumstances of your case.
• If we were then to write a Letter of Claim we would generally expect to have a reply within 5 months of completing the expert evidence.
• If the Barrister were then able to advise without a meeting, we would expect to have his/her opinion within 2 months of the reply to the Letter of Claim. If the Barrister wanted us to arrange a meeting with the experts present, we will advise you upon the likely timescale which would be dependent upon the availability of experts.
• If it were necessary to begin your case in Court it is still unlikely that the claim would have to be decided at a hearing. This is either because settlement is achieved before the case goes to Court or the case has to be abandoned due to information coming to light revealing that it is unlikely to succeed.
• In the unlikely event that the case is decided in Court you would probably need to give evidence in support of the claim. We appreciate that giving evidence in Court can cause inconvenience and personal distress but we will endeavour to guide you through the hearing process and avoid unnecessary problems. If your case had to be decided at a Court hearing it could well take as long as 3 years from start to finish. In some cases (where the evidence is complicated or the prognosis unclear) it may take even longer than that.

Other matters

Children/persons of unsound mind (persons under a disability)

Persons under a disability may not bring proceedings in their own name and if proceedings are necessary a litigation friend (usually a close relative) is appointed to bring them on behalf of the person under a disability.

Settlement involving a person under a disability has to be approved by the Court to ensure that it is reasonable.

Money recovered on behalf of a person under a disability must be dealt with in accordance with the directions of the Court to ensure that it is invested wisely for that persons benefit (although payments out of the investment can be made to meet expenses already incurred and reasonable expenses to be incurred).

Consent to treatment

In order to be valid consent must be voluntarily given by a person who is appropriately informed (either the patient or a person with parental responsibility where the patient is under 18) and who has the requisite capacity either to consent to or refuse treatment. Consent may be either express or implied. There is no requirement that it be in writing although model consent forms are good practice where surgery is planned.

Valid or real consent involves a broad understanding on the part of the patient of the nature and purpose of the procedure. Health care providers are judged, for this purpose, against the standards of the reasonable health care provider in the same discipline. All material risks must be disclosed. The health care provider must take reasonable care to give a warning which is adequate in scope content and presentation and to take steps to see that the warning is understood. The advice should therefore be balanced and tailored to the individual patient.

If inadequate consent is obtained there may be a claim for damages for battery and/or arising from negligence but it is also necessary to establish that, if properly advised, you would not, at that time, have consented to the treatment.

In relation to children aged 16 and over there is a presumption of capacity to consent to treatment of most sorts. Even a child under the age of 16 may give a valid consent on his or her own behalf provided they have sufficient maturity and understanding of the nature and implications of the proposed treatment.

Recoupment of benefits

The Department for Work and Pensions (DWP) operates the recovery of the benefits system. Recoupment of certain benefits (on a like for like basis) is allowed against some special damage items such as those for lost earnings, care and lost mobility. No deductions are made against future loss, general damages or for medical expenses.

Only those benefits paid during the period of 5 years from the date of the medical accident are recoverable.

From time to time we will send you Certificates of Recoverable Benefits so that you can check the details provided.

Personal Injury Trusts

If the claim succeeds and you recover damages we will advise you upon the impact of the award on your eligibility for means tested benefits both now and in the future. In particular we will advise you of your right to place the compensation awarded into a Personal Injury Trust.

If a personal injury payment is held in trust the capital value and the right to receive money from it is disregarded for the purposes of calculating entitlement to means tested benefit. Setting up a Trust would require you to transfer personal injury compensation to two or more trustees with instructions that they hold the money for your benefit. The trustees must then look after the money for your benefit and act in your best interest.

Much control rests with you. You have the power to appoint the trustees and to bring the trust to an end by asking for the money back.

If a capital payment is made to you from a personal injury trust then so long as the capital payment is for a specific purpose it should not be taken into account when assessing entitlement to means tested benefit.

Income generated from a personal injury trust is no longer assessed in determining eligibility for means tested benefits.

The trustees are entitled to charge for the cost of setting up and maintaining the trust.

Interim payments

In appropriate cases we can ask for an interim payment on account of the compensation you can expect to receive at the end of the day. This will be appropriate where the following apply:-

- The defendant has admitted liability or,
- You have a judgement for damages to be assessed or,
- You are likely to obtain judgement for a substantial amount of money.

Interim payment is appropriate where the above apply and there is likely to be a significant delay before you receive the final award.We can ask for an interim payment at any stage but the Court can only make an order that you receive an interim payment after proceedings have been commenced in Court and the defendant has acknowledged service of the proceedings.

The amount of the interim payment must not exceed a reasonable proportion of the likely amount of the final award.

Mediation

Because taking Medical negligence cases through Court is known to be expensive and time consuming, alternative dispute resolution such as mediation has become increasingly popular. Statistics suggest that a relatively high percentage of mediated cases settle. The Courts are increasingly requiring parties to consider alternative dispute resolutions such as mediation rather than taking cases to trial.

For a mediation to be successful both sides need to have enough information available to them to form a view about whether or not settlement is appropriate (and how much the settlement should be). The case should therefore have at least been investigated before mediation is attempted.

It would be important to select a mediator with the appropriate qualities for use in Medical negligence cases. There are a number of commercial organisations with trained mediators who have a specialist interest in this area.

A Public funding certificate may meet the cost of mediation so long as the process can be shown to be effective and useful. If there is no public funding certificate the general rule is that both parties pay half the mediators fees in advance. Subject to any contrary agreement between the parties the cost of

mediation will be a recoverable disbursement in the legal costs payable in the claim.

If no settlement is achieved the parties are free to resume the Court process.

The Human Rights Act

The Human Rights Act may give remedies beyond the ordinary limits of the law of negligence. Relevant provisions include the following:-

- The right to life.
- The right not to be subjected to inhumane or degrading treatment.
- The right to respect for private and family life (including the physical and psychological integrity of the person).

These provisions will not permit double recovery. Therefore if there is a valid claim in negligence they will not enable you to recover damages over and above those available for the act of negligence. They do however have the potential significantly to enlarge the scope of damage for which you may recover compensation.

Inquests

A Coroner's Inquest can provide the opportunity to investigate the detailed circumstances of a death where a failure of care has played a role. The Inquest may assist in exploring issues which may subsequently form the basis of a claim for Medical negligence damages.

Coroners will call Inquests where there is reasonable cause to suspect that the deceased:

- Died a violent or unnatural death.
- Died a sudden death of which the cause is unknown or,
- Died in prison or in such a place or in such circumstances as to require an Inquest.

The Coroner is assisted by an officer who makes enquiries on his behalf and provides him with information about the death. Ultimately the Coroner is responsible for the Inquest procedure and decides which witnesses will be called and what documents produced.

Once informed of the death (probably by the GP or hospital) the Coroner may ask for a post mortem. The family must be informed of the post mortem and are entitled to be represented at it by a doctor. The post mortem report is often a vital piece of information in a Medical negligence case. You are entitled to obtain a copy of it from the Coroner's officer.

If the Coroner decides that an Inquest is necessary there will be a preliminary Inquest (an opening) during which no significant evidence will be called. At this hearing the Coroner will usually take initial evidence of the identity of the deceased and will issue an order for disposal of the body. The Inquest is then adjourned to a more suitable time for further evidence to be called (whether orally or in writing) the family will have an opportunity to put questions to the witnesses. In cases where there is a suggestion of Medical negligence doctors will probably be represented by solicitors.

The Coroner will wish the questions at the Inquest to focus on the following limited issues with which the Inquest is concerned:-

- Who died?
- When they died?
- Where they died?
- How they died?

Coroners have traditionally limited questions concerned with Medical negligence. Having said that the Human Rights Act which came into force on the 2 October 2000 has had an impact on the scope of the Coroner's enquiry into how the deceased died in cases where the state was potentially responsible for the death. Where there is an arguable case that a death in the hands of NHS staff was caused or contributed to by negligence it is arguable that the Inquest should deal more fully with how the deceased died by looking at the circumstances of the death in a more wide ranging sense. This type of more wide ranging Inquest could provide still more useful information for the purpose of investigating a claim.

"Inquest" is an organisation providing a free legal and advice service to bereaved families and friends on the Inquest system. Their website includes a useful information pack which you can access by logging on at www.Inquest.gn.apc.org/

Further Help

In addition to PALS and ICA referred to above you might find one or more of the following to be of help:-

Community Legal Service Direct

This is a free easy to use service to help you solve your legal problems. To speak to a qualified legal advisor about matters including welfare benefits and death or to find local advice services for other problems.

Phone 0845 345 4345 or log on at www.clsdirect.org.uk.

Action against Medical Accident (AvMA)

This is a specialist charity providing a free service for advice on medical accidents, Medical complaints, making a claim for Medical negligence and finding the right solicitor.

Phone 0845 123 3252 or log on at www.avma.org.uk.

The General Medical Council (GMC)

As mentioned above this organisation deals with complaints about individual doctors.

Phone 0845 357 3456 or log on at www.gmc-uk.org.

The National Patients Safety Agency (NPSA)

Phone 0800 015 2536 or log on at www.npsa.nhs.uk.

NHS Direct

For information on medical conditions local and national self help and support groups, your rights as a patient and how to make a complaint.

Phone 0845 4647 or log on at www.nhsdirect.nhs.uk.

The Nursing and Midwifery Council (NMC)

For serious complaints about Nurses, Midwives and Health Visitor.

Phone 0207 637 1781 or log on at www.nmc-uk.org.

The Health Service Ombudsman

Please see above under 'Complaints'.

To speak to a medical negligence solicitor about any of the issues raised in this Advice Sheet, please call **0161 785 3500** or email: **enquiries@pearsonlegal.co.uk**