How to approach a lawyer for the first time

It is not uncommon for people to feel apprehensive or worried about approaching a solicitor for the first time. This leaflet aims to help you understand what to expect from your first meeting or telephone conversation and how to prepare for it and increase the chances of your case being taken on.

Contents

Choosing your solicitor 2

What is accreditation? 2

Points to note 2

What to expect when you first discuss your case with a solicitor 4

Risk assessment 5

Why can't I find a solicitor to take my case on? 5

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AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

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(03 calls cost no more than calls to geographic numbers (01 or 02) and must be included in inclusive minutes or there can be a cost per minute)
0345 123 2352

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Choosing your solicitor

Once you have decided to seek legal advice about your possible clinical negligence claim, this is probably one of the most important initial decisions you will make. Our best advice is to make sure you use a lawyer who is accredited with specialist expertise in clinical negligence.

What is accreditation?

It is one thing to be qualified as a solicitor, it is quite another to be able to show that you have expertise and experience in a particular area of law. Accreditation is the process by which an independent body assesses a solicitor's (sometimes legal executives) skill set and if they meet their standards is prepared to acknowledge that fact publicly.

In the field of claimant clinical negligence work there are three bodies who have an accreditation scheme. The three independent assessing bodies are: Association Personal Injury Lawyers (APIL); The Law Society and us, AvMA. Each body sets its own standards and assesses lawyers against that criterion, some standards are easier to meet than others.

AvMA was the first body to introduce an accreditation scheme, not only is our scheme the longest running and most established accreditation scheme but it is also recognised as demanding the most exacting standards and the hardest to achieve. There are two unique criteria which set our accreditation process aside from the other two providers, first is the need for lawyers to demonstrate a commitment to client care and second is the need for lawyers to show they understand the medicine and medical issues which is a vitally important skill when running a clinical negligence claim.

AvMA accredits individual solicitors, we do not accredit law firms. However, one of our criteria is the need to demonstrate that there are appropriate and effective supervision arrangements in place within the clinical negligence department of that firm and that supervision is performed in accordance with current best practice. In most instances, it is expected that the clinical negligence work will be overseen by an AvMA accredited lawyer. This means that even if your case is not run by an AvMA accredited lawyer, client's going to that firm can be assured that their case will be conducted to a high standard.

Television and radio are full of adverts featuring solicitors who say they do clinical negligence work, but not all of them can demonstrate that they have recognised experience and expertise in this highly specialised area of law. Our advice is, where possible, you should only use a solicitor who is accredited as having experience in clinical negligence matters; look for the AvMA accreditation logo which is a mark of excellence:

AvMA has accredited clinical negligence specialist lawyers around England and Wales, a list of our accredited lawyers can be found on our website: www.avma.org.uk/find-a-solicitor

Points to note

There is no guarantee your case will be taken on: Just because a solicitor is accredited, and you have obtained their details from our website (or through one of the other accrediting providers) does not mean that the solicitor is guaranteed to take your case on. This is where a little preparation on your behalf might increase the chances of a lawyer investigating your claim further.

You should be prepared to approach several firms about your case, so that if one firm turns your case down, you still have other options.

What is the firm looking for? Solicitors' firms are businesses, they are looking to ensure, so far as is possible that any case they take on has reasonable prospects of success. Success in this context means a likelihood of a case settling without the need for a full trial or if that is not possible succeeding at trial. There are no guarantees with litigation so solicitors will constantly assess and reassess your case as it goes through the litigation process. The first assessment is to:

i. identify whether there appears to be a legal case and if so

ii. whether it is likely that your claim is going to be worth more by way of compensation (damages) than the cost of bringing the claim (proportionality, see below).

Part of the purpose of this leaflet is to help you maximise the chances of your claim getting through that initial assessment hurdle. However, even if you do pass that hurdle, there will be other risk assessment hurdles as the case progresses, this is constantly reviewed as new evidence is received. You will be advised of any developments as they occur.

Preparing for your early discussion/meeting: To help you prepare for your first discussion or meeting we recommend you read our leaflet: Legal Action: Bringing a claim in clinical negligence (www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf). This leaflet is designed to help you understand the legal test for proving a clinical negligence claim, if you have any difficulties understanding any part of this leaflet you can telephone our free helpline and ask one of our professionally qualified and AvMA trained helpline volunteers to explain things to you. For more information on AvMA's helpline please see here: www.avma.org.uk/help-advice/helpline.

What documents do I need? The first thing to say, is you do not actually need any documents, so do not worry if you do not have any. However, if you do have additional information this can be very helpful and may improve your chances of your claim being taken on, although as a rule we would caution against getting too many documents together at this initial screening stage.

The type of documents that may be helpful in making an initial assessment of your claim will vary according to what your case is about, what investigation processes (if any) you have been through and so on. If you have any of the following documents in your possession you should get **copies** of these together or better still, if you are able to, scan them in so you can send them electronically to potential firms (***avoid sending original documents, there is a risk these will be lost***):

- **Write down what happened:** It is always helpful if you can write down what happened to you. When you write things down, think about what part of the treatment you believe to be negligent and if you can set out what injury has occurred because of the negligence. If you have lost money because of the negligent treatment, perhaps you have lost earnings or have had to pay out for additional things, like aids and equipment or a carer then include this information. It can also help if you can identify the name of the doctor and/or the hospital or GP practice or other healthcare provider involved. Try and include some information about when the events occurred, the dates do not have to be exact at this stage, a rough indication of when things happened can really help with assessing your case.

  This does not have to be a long document and it certainly does not have to be in any legal format, the best way to approach this is to simply write it in your own words. You can jot down a list of points or use numbered paragraphs if you prefer.

  Please do not worry if you do not feel confident about writing things down you will be able to tell your story although if you can get someone to write things down for you many people find that this helps them think more clearly about what happened.
- **Complaint correspondence:** If you have used the complaint process, then make sure you send in a copy of the complaint letter and any response you have received. You may not agree with the information in the response letter, in which case say what you do not agree with and why.
- **Serious Incident Report:** If you are not sure what this is, you may find it helpful to look at our leaflet (www.avma.org.uk/wp-content/uploads/Serious-incident-reports.pdf). If you have an incident report, make sure you have a copy you can send.
- **Duty of candour letter:** Sometimes hospitals will write saying when something has gone wrong, make sure a copy of this letter is available to be sent to the solicitors.
- **Medical records:** If you have obtained copies of your medical records, or the records of the person you are making enquiries on behalf of, then there are likely to be a lot of papers. Firms will not want to see all of these records at this stage. However, if you can identify a few pages which support what you are saying then it is likely the firm will want to take a look at these as part of the initial assessment of your case.
- **The inquest:** if you are bringing a claim on behalf of someone who has died or as a dependent of someone who has died you may find it useful to read our leaflet, Compensation for someone who has died (www.avma.org.uk/wp-content/uploads/Compensation-death.pdf). If you have attended an inquest where the coroner has carried out an enquiry into how someone died, then you may have additional documents such as a post-mortem report, or statements from treating clinicians. It would be helpful if you can make copies of these available together with any conclusion the coroner may have reached. Of course, you may be making enquiries about

having representation or advice at the inquest in which case this will not apply to you.

Why do solicitor firms assess cases? Firms specialising in clinical negligence claims receive many enquiries about clinical negligence claims from the public every day, most of those enquiries will not turn into legal claims. To help firms identify which claims are most likely to succeed they often train people (not always lawyers) to filter the initial enquiries. If you get through the initial filter or triage stage your case will most probably be referred to a solicitor who will explore your case, read any documents you send in and discuss the issues with you themselves.

What to expect when you first discuss your case with a solicitor

What to expect: In the first instance it is likely you will speak to someone at the firm who is trained to assess your case by phone. You should note that firms do vary in the way in which they approach new enquiries, but the scenario described in this leaflet is fairly common.

Following this phone call, you may be asked to send in some documents - see the section on preparing for early discussions/meetings above.

Your case may be turned down at the trained advisor stage, so do be prepared for that. Assuming you are asked to send in more information you can usually expect a solicitor to get back to you after they have read the additional information.

Will the solicitor charge for the initial discussion? Solicitors are running a business and like any business they are entitled to charge for their service. However, in practice many solicitors do not charge for the first meeting. You should always check in advance whether payment is expected and, if so, how much it will cost you.

What should I expect from my first meeting or discussion with the solicitor? Some solicitors may arrange to meet you at this stage but there are different ways of working, you should not be surprised if the first contact is by phone. If you are invited in for a meeting you should check that the interview is free.

When the solicitor speaks to you, they will likely ask you some additional questions, they may suggest that you undertake some enquiries yourself such as going through the complaints process if you have not already done this. Some solicitors will help you with this, others may refer you back to AvMA.

During this conversation you will be asked a bit more about your treatment and why you believe it to have been negligent. This is where you will find it helpful to look at any notes you have made about your treatment. If the solicitor has your written note of what happened you can refer them to it, or they may ask you questions based on information contained in your written account.

Following on from this conversation the solicitor may do a bit of research about your treatment or wait until you have sent in any other information they have requested.

When you speak to the solicitor, they will be assessing your potential claim with a view to identifying the likelihood of your case succeeding either by way of an early settlement and/or if it proceeds to court. They will do this by considering the nature of your allegations of negligence, the extent and nature of your injuries caused by any negligent treatment and the likely overall value of your claim.

If your case has good prospects of success, then it is more likely to be taken on by a solicitor. If your case is unclear, the solicitor may be less willing to take the case on because of the risk of losing. In these circumstances the solicitor may agree to investigate a bit more if you pay them privately for that work. Once the work has been done and providing the solicitor is prepared to then take the case on, they should discuss funding arrangements longer term, this is likely to be on a Conditional Fee Agreement (CFA) see below.

Confirmation that case taken on: After this initial assessment, solicitors will usually say whether they are prepared to take your case on for further investigation or not. If they do not take your case on, they will usually tell you why they have made that decision.

What happens if the solicitor agrees to take my case on? This is good news as it means the solicitor is prepared to investigate your claim further. This is the point at which they will discuss how that next stage will be funded. Some solicitors will ask you to sign a Conditional Fee Agreement (CFA) also referred to as a "no win, no fee" agreement at this point. Others may take the view the case is still risky and will investigate it further on the condition you pay an initial investigation fee. The amount of the initial investigation fee will vary, but it would not be unusual for solicitors to ask for £5,000 to include getting a brief medico-legal report, but each situation varies and you should be clear about what you are being asked to pay for.

Funding arrangements: For more information on the different types of funding offered and what it means for you, please see our leaflet "Understanding legal costs" (www.avma.org.uk/wp-content/uploads/Understanding-legal-costs.pdf)

Risk assessment

As explained above, your case is constantly being risk assessed, each time new evidence is received the solicitor will consider whether that information affects your case. Some information may be very helpful, others less so. This process of reviewing the prospects of whether your case is likely to succeed or not is known risk assessment. Typical examples of when the case will be risk assessed are:

- When all the relevant medical notes are received, sorted, paginated and reviewed by the solicitor.
- Upon receipt of an independent medico-legal expert's report
- Upon receipt of the defence and their documents such as their medical report, witness statement and so forth
- Following a conference (meeting) with counsel (a barrister)
- When any offer to settle has been made by the other side or is to be made by your solicitor
- Upon receipt of counsel's advice or opinion.

Following any one of these key stages the solicitor may advise you that the prospects of your case succeeding are less than 50% and they are therefore no longer able to continue with your claim. Solicitors can do that even though you have signed a CFA. However, you should remember that if the solicitor does have to stop acting at this point, you will not have to pay their legal costs although you may have to pay for your disbursements (money paid to a third party such as an expert).

What can I do if my solicitor drops my case? If after some investigation the solicitor says they no longer assess the prospects of your case succeeding as being good, then you can seek a second opinion from another firm of solicitors. If you do that, you should show the prospective new solicitor any new information your old solicitor had obtained, such as any medico-legal expert report.

If you do find a new solicitor, it is possible they will charge you for their initial investigations, very often, a new solicitor will start by obtaining another expert report or reports. It is likely that you will be asked to cover the cost of that report or reports.

Will I have to pay the first solicitor anything? The answer to this will depend on what you agreed with your solicitor when they first said they would act for you. The details will be contained in the retainer letter and/or the CFA if you entered a CFA with the solicitor – **you will need to check the terms of the retainer letter and/or the CFA**. If the solicitor has ended the arrangement with you because they do not think the case has reasonable prospects of success, there may be a clause in the CFA that says you do not have to pay anything at all.

However, the retainer letter and/or CFA is just as likely to have a term that says you will be liable to pay the solicitor's expenses and disbursements in which case your new solicitor (solicitor 2) may have to give a lien (an undertaking or promise) that if they are successful in bringing your claim that they will include solicitor 1 costs in the bill of costs. This is despite the fact solicitor 1 turned your case down. Your new solicitors will discuss this with you.

Why can't I find a solicitor to take my case on?

The two most common reasons why solicitors will not take cases on are because the claim is not seen as having reasonable prospects of success. Second that the cost of bringing the claim will outweigh what is expected to be recovered by way of damages (compensation).

Prospects of success (merits): A common reason for a solicitor not to take a case on is first because they do not think the claim has reasonable prospects of succeeding – this is sometimes referred to as the merits of the case. This will usually be because the medical evidence does not support the view that the treating healthcare provider fell below an acceptable standard of care in providing the treatment they did or did not deliver.

Even if the medical expert does consider the treatment to have been negligent the other common reason for claims failing is that it is not possible to show what, if any injuries have arisen because of the negligent treatment. This is referred to as causation. Understandably, people often find it very hard to come to terms with the fact that the treatment delivered was not considered acceptable, but the claim cannot proceed because they cannot prove that they have suffered harm or loss as a result.

Most solicitors want to be confident that a claim has a greater than 50% chance of success, but many are looking for more favourable prospects such as a minimum of 60% chance of success. You should make enquiries of several different solicitors as the benchmark will vary.

Proportionality: The courts require lawyers to make economic decisions about the type of cases they litigate over. For example, it would not be proportionate for a lawyer to run a case where the award of damages (compensation) is expected to £5,000 but it will cost £50,000 to achieve that outcome.

Where a solicitor signs a CFA with their client and succeeds in winning their case, they are entitled to recover their reasonable costs. However, the CFA enables the client to recover any shortfall in their costs from the client's damages.

Shortfall in costs: This occurs where the other side does not pay all your lawyer's costs, the lawyer is then left with the difficult choice of having to take money from their client's damages to cover the cost of their legal fees which have not been paid for (recovered) from the other side. The alternative is that the lawyer does not get paid which means they have worked for free.

The difference in the amount of money the lawyer is entitled to receive and what they receive by way of payment from the other side is often referred to as a shortfall in costs payable.

Recovering the shortfall in the hourly rate from a low value claim could potentially wipe out the client's damages. That is not a satisfactory situation for the client or the lawyer. For this reason, solicitors often turn down low value claims at the outset because they cannot justify the likely costs to be incurred against the sum of damages to be recovered. In this situation, the outcome, even if technically successful, is most unsatisfactory for both the lawyer and the client.

Do read our leaflets

- Understanding legal costs
  www.avma.org.uk/wp-content/uploads/Understanding-legal-costs.pdf
- How will I pay my legal costs?
  www.avma.org.uk/wp-content/uploads/Legal-costs.pdf

www.avma.org.uk/friends

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