

Dental cases

Although dental care is still available under the NHS as fewer dentists are prepared to work at NHS rates it is increasingly common for dental treatment to be provided on a private basis only. If you do intend to bring a claim against your dentist for negligence you need to pay careful attention to who you are going to sue. Dental claims are often quite low value, and it can be difficult to find a solicitor to take your case on.

Contents

Making a complaint	2
Privately funded dental care	2
The Dental Complaints Service (DCS)	2
NHS funded dental care	2
Will I be reimbursed for my treatment costs?	2
Making a claim for compensation for dental negligence	3
Negligence	3
‘Consent cases’	4
Causation	4
What compensation can I claim?	5
Time limits	5
Disciplinary action – complaining to a dentist’s regulatory body	5




The **charity** for
patient safety and justice


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.


For advice and information visit
www.avma.org.uk


Or call our helpline
*10am-3.30pm Monday-Friday
(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)*

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Registered charity in England & Wales
(299123) and Scotland (SCO39683)

Making a complaint

Regardless of whether your dental treatment was provided privately or under the NHS we advise that you start by using the complaints procedure. This gives provides an opportunity to set out the cause of your grievance and for the dentist to respond and possibly try and settle the complaint without the need for litigation.

Privately funded dental care

For information relating to the complaints process and private healthcare please read the following leaflet:

www.avma.org.uk/wp-content/uploads/Private-healthcare.pdf

Page 5 specifically relates to complaining about private dental care.

Complaints should usually be raised with the dentist within 6 months of the date of the incident giving rise to the complaint or within 6 months of you becoming aware that there was a cause to complain. After 6 months the dentist may consider a complaint, but this is only usually if there is a good reason such as ill-health. Most reputable private healthcare providers have copies of their complaints procedures online and must make a copy of this available to you if you ask for this.

The Dental Complaints Service (DCS)

You may be able to get your concerns resolved by contacting the Dental Complaints Service (DCS). Complaints to them have be made within 12 months of the treatment or of when you became aware of the fact that you had cause to complaint. They can help you to try and obtain:

- An explanation and/or apology for what happened
- A full or partial refund of fees in relation to the failed treatment
- Remedial treatment from your dental professional, if you are both in agreement
- A contribution towards remedial treatment so that the work can be completed by another dental professional at the same practice or at an alternative practice

The DCS can recommend reimbursement of some or all the treatment costs and a contribution to future remedial treatment up to the costs of the original treatment. It cannot recommend compensation for pain and suffering, loss of earnings or other financial losses. For these elements you would need to pursue a dental/clinical negligence claim.

You can contact the DCS at:

Telephone: 0208 253 0800 (Monday-Friday 9am-5pm)

Post: Dental Complaints Service, 37 Wimpole Street, London, W1G 8DQ

You can find more at: <https://dcs.gdc-uk.org>

NHS funded dental care

If the dental treatment was NHS care, you would have to use the NHS complaints procedure.

For information regarding the NHS complaints procedure please see AvMA's leaflet on complaining about NHS treatment:

www.avma.org.uk/wp-content/uploads/Complaints-England.pdf

With a dental complaint you have the option of asking the dental practice to deal with the complaint or the commissioner of the service.

Complaining to the commissioner may be the right option if you are uncomfortable complaining directly to your dentist or do not think this is appropriate such as if there has been a breakdown of the relationship with the dentist. Please note: if you have already complained to your dentist provider, the commissioner will not be able to re-investigate the same concerns. The commissioner for NHS dental services is the Integrated Care Board. Find your local Integrated Care Board at:

www.england.nhs.uk/integratedcare/integrated-care-in-your-area

Will I be reimbursed for my treatment costs?

Under the General Dental Council's Standards for the Dental Team, dentists are advised: *'If a complaint is justified, you should offer a fair solution. This may include offering to put things right at your own expense if you have made a mistake'*. We recommend that when you write your letter of complaint you to outline the dental treatment costs you have incurred and if you have any estimate of future costs, to submit these as well.

AvMA's template letter may assist you with formulating your complaint:
www.avma.org.uk/wp-content/uploads/Complaint-letter.pdf.

Making a claim for compensation for dental negligence

The legal test for dental negligence is the same as for other medical negligence claims. The test for negligence may vary slightly depending on whether you live in the United Kingdom. For further information on the legal test please see our leaflet on legal action in England which can be found at the following link:

www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf

Leaflets detailing making a claim for compensation in other countries in the United Kingdom can be found in our 'self help guides' section of our website.

Negligence

Just because a dentist makes a mistake does not necessarily mean that they are negligent. The courts have decided that a dentist is only negligent if they do something which no reasonably competent dentist would have done, something that is often extremely difficult to prove.

Negligence is not established by showing that different treatment could have been given, or even by proving management should have been better. A dentist is only negligent if their care, management, or treatment of a patient fell below an acceptable level such that no responsible body of dentists would consider it acceptable. However, if there is a responsible body of professional opinion that would support the conduct of the treating dentist then it is unlikely that you will be able to prove negligence. This is sometimes referred to as the Bolam test.

The expression a "responsible body" is a difficult one for most lay people to understand. A responsible body might be only a small group of dental professionals. Even if you can show that the majority of dentists faced with the same patient and dental presentation would have acted differently that on its own will not guarantee a finding of negligence.

Some examples of negligence

Wisdom tooth extraction

Nerve damage, particularly of the lingual nerve, is a known risk of wisdom tooth removal. You cannot claim compensation on the basis that a complication has occurred, there has to be fault. A dentist will only usually be negligent if for example:

- He/she removed a wisdom tooth where this was unnecessary such as it was not painful or impacted (such as to cause complications like infection and decay)
- Where he/she did not warn you or the risk of such nerve damage and that this can be permanent and if you had known of this risk you would have declined the removal. Whether the court would accept this depends on the seriousness of the reason for removing the tooth (for example if the tooth was badly impacted and has led to abscess formation which can only be managed by tooth extraction)
- You were not informed of the reasonable alternatives such as removal of the crown of the tooth alone
- That the dentist was inexperienced in the removal technique which made it more likely that damage occurred
- They did not take steps prior to removal to assess the position of the nerves eg via x-ray which would have indicated a likelihood of nerve damage
- The dentist uses a dental bur and cuts across the lingual aspect of the tooth without identifying the position of the nerve
- Failure to refer a patient who complains of pain or changes in sensation for surgical repair

Periodontal (gum) disease

This is an area where sizeable claims may be possible if there is extensive bone/tooth loss. Examples of negligence could include:

- A patient regularly attends their dentist and there is a failure to recognise deteriorating gum
- The dentist fails to take a full history to check for risks for gum disease such as smoking and alcohol intake and any medical risks such as diabetes

Dental cases

- There is failure to carry out a basic periodontal examination to assess gum pocketing
- There is a failure to carry out x rays to monitor bone levels
- If gum disease is found there is a failure to carry out a more detailed examination to identify any tooth loosening
- There is a failure to provide proper advice to the patient on cessation of smoking and oral hygiene
- There is a failure to provide appropriate treatment such as scaling, root planning and medication
- Failure to provide a referral to a periodontal specialist if the gum disease does not improve

The legal test may vary if you are bringing an action against your dentist based on matters to do with how they interpreted your dental x-rays for example. The courts tend to take a more pragmatic view on these sorts of issues focusing more on whether the treating dentist's diagnostic decision was right or wrong or reasonable. The court will still need to hear independent expert evidence to help them decide.

Essentially these issues are about whether the dentist exercised reasonable skill and care when interpreting your dental x-rays, samples, or similar diagnostic test. These sorts of issues are sometimes referred to as "pure diagnosis" cases, but you do not need to worry about this is called, your solicitor will help you with this if it is appropriate to your case.

'Consent cases'

The court will expect dentists to give their clients sufficient information to make an informed decision. This area of law was developed in 2015 when the Supreme Court decided in favour of the claimant (patient) in a landmark case known as *Montgomery v Lanarkshire Health Board*.

In practice the law around consent means that an adult person of sound mind is entitled to decide which of the available forms of treatment they wish to follow. It is important to remember that not undergoing any treatment is also an option. However, where there is more than one treatment option, those options must be explained including any risks associated with each option prior to any treatment commencing.

The dentist has a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. If you do bring a claim on the basis that your dentist failed to give you sufficient information for you to properly give your consent, a key question for the court will be whether a reasonable person in the patient's position would most likely have attached significance to the risk.

Consent may be an issue in dental claims when it comes to tooth extractions. In this sort of case common considerations are likely to be whether it was reasonable to extract the tooth at all? Were there alternatives to extraction? Was the patient aware of those alternatives? Consent may also be an issue in orthodontic cases or dental treatments provided for cosmetic reasons

Causation

This is discussed in more detail in the leaflets on legal action referred to above. Essentially this means that you have to show that any negligent treatment provided by your dentist caused you injury and/or loss that you would not otherwise have experienced. This can also be difficult to prove. You will normally need to obtain another report from an independent medical specialist to prove your case.

If the patient would have suffered the same outcome from their treatment, even without the negligence, then there is no "causation" and the claim will fail. Causation is difficult to prove in dental negligence cases when the negligent treatment is for a patient who is, in most cases, already having some problems with their teeth.

The fact that a dental practitioner can be shown to have been negligent is not enough, you have to be able to show that there is a direct causal link between the negligence and the injury for which you are claiming compensation. This link between cause and injury is not as obvious as it sounds and has to be supported by independent medical opinion

What compensation can I claim?

You will only be entitled to compensation if you can show that the care provided by the dentist fell below an acceptable standard and was negligent and that this negligence caused you harm and loss. For more information on the principles around what compensation you can claim please see our leaflet *"Medical negligence - what compensation can I claim?"*:

www.avma.org.uk/wp-content/uploads/Compensation.pdf.

General damages for pain and suffering in dental cases

The figures set out below have been taken from the most recent edition of the Judicial College Guidelines (15th edition). The Guidelines are a good indicator or what a claim may be worth but you should seek independent, specialist legal advice from a solicitor experienced in this work for a more accurate value of your claim.

In considering the amount of compensation to be awarded relevant factors will include the extent and/or the degree of discomfort endured. Cases which involve any degree of difficulty with eating, long term pain, for example where the patient has suffered pain from an untreated abscess may attract a higher award. The guidelines indicate that typically awards may be made as follows:

- Loss of or serious damage to several front teeth. £7,460 to £10,710
- Loss of or serious damage to two front teeth. £3,710 to £7,160
- Loss of or serious damage to one front tooth. £1,880 to £3,710
- Loss of or damage to back teeth: per tooth: £930 to £1,020

Time limits

As with any other claim for clinical negligence there is a strict time limit of 3 years from the date the incident occurred or from when you had knowledge that something had gone wrong. For comprehensive guidance related to the statutory time limits please read AvMA's information leaflet:

www.avma.org.uk/wp-content/uploads/Legal-time-limits.pdf

Disciplinary action – complaining to a dentist's regulatory body

The issues that may be investigated by a regulatory body include serious professional misconduct, criminal offences, repeated poor performance/issues over competency and health problems of the clinician such as addiction or mental illness.

The GDC also regulate other dental professionals such as dental nurses and dental hygienists.

If you consider that your dentist's conduct has been called into question or that you have concerns over their fitness to practice then you may wish to complain to the General Dental Council (GDC), the body that regulates dentists.

The GDC can:

- Give the dental professional a warning (private or published)
- Restrict through conditions the type of work carried out or how the dental professional works for a period of time (of up to 3 years)
- Stop the dental professional from doing any dental work for a fixed period of time (of up to 12 months) by suspending them from the register
- Take the dental professional off our register (known as erasure), which means they can no longer work in dentistry in the UK

The GDC cannot:

- Help you with a claim for a refund or compensation
- Give you a detailed explanation of what happened to you - this can only come from the dental professional or the dental organisation concerned
- Fine a dental professional
- Make a dental professional give you access to your dental records
- Make a dental professional apologise to you
- Make a dental professional reinstate or add you to their practice's list of patients
- Make a dental professional change their fees for private treatment
- Make changes to your dental records

Dental cases

- Investigate general concerns about how a dental practice is run
- Change the outcome of a local investigation into your complaint
- Look into complaints about healthcare professionals who are not dentists or dental care professionals
- Take action against a dental professional if there is no risk to patient safety, or to public confidence in the dental profession

In order to report a dentist to the GDC you can use their online form which can be found at:

<https://contactus.gdc-uk.org/Complaint/Process/1>

Alternatively you can contact the GDC via:

Address: 37 Wimpole Street
London
W1G 8DQ

Phone: 020 7167 6000

AvMA also has a comprehensive leaflet which details raising a concern about dental practitioners which can be found at:

www.avma.org.uk/wp-content/uploads/Raising-concerns-about-dentists.pdf

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patient safety and justice

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Our vision is a simple: **People who suffer avoidable medical harm get the support and the outcomes they need.**

This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

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avma
action *against* medical accidents

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