

Private healthcare – making a claim for compensation

Even though care can be provided through the private system the standard of care expected of doctors and healthcare providers is the same as with NHS funded care. This means that the legal tests applied when assessing a claim for compensation against a private healthcare provider are the same as those where the care is provided by the NHS.

However, there are some issues which uniquely apply to private healthcare claims but not NHS care. You should be aware of these if you are making a claim for compensation against a private healthcare provider.

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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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Claims for breach of contract

Prior to receiving treatment by a private healthcare provider, a patient typically signs up and enters into a contract either with the individual doctor and/or with the hospital itself. A contract will have a number of express or implied terms, for example to carry out a certain procedure with reasonable care and skill.

If it can be shown that the doctor did not carry out the procedure with reasonable care and skill then he/she may be in breach of contract as well as being negligent. The test for negligence is the same test as is applied to NHS healthcare providers, details of the test to be applied can be found in our leaflet *Bringing a claim for clinical (medical) negligence*, www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf. Some of the detail of how to bring a claim will vary according to whether you live in England, Northern Ireland, Scotland and Wales. For more information please see: www.avma.org.uk/guides.

If there is a breach then the patient may be entitled to damages for any pain and suffering incurred and may be entitled to compensation to put the patient in the same position they would have been if the contractual terms had been adhered to. For more information please see our leaflet: www.avma.org.uk/wp-content/uploads/Compensation.pdf.

However, where private care costs have been incurred you may also be entitled to receive a refund for any treatment paid for by you, or you can make a claim on behalf of your private insurer if they covered the cost of private treatment.

Care paid for using a credit card – the Consumer Credit Act 1974

If you paid for the whole or part of your medical treatment with a credit card you may be able to claim the money back from your credit card provider under Section 75(1) of the Consumer Credit Act 1974:

‘If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.’

The debtor in such claims would be the claimant/patient, the supplier would be the healthcare provider/doctor and the creditor would be the credit card company.

The Act generally applies to treatments that were valued at more than £100 but less than £30 000 although there are certain circumstances where amounts greater than £30 000 can be claimed.

Under the Consumer Credit Act if the claim is successful the claimant can recover the same damages as they would have done if they had a successful claim against the healthcare provider under breach of contract. This means that damages can be claimed from the credit card supplier or from the healthcare provider. This is particularly useful if the healthcare provider no longer exists or if their insurers refuse to indemnify and pay out on any claim. It should also be noted that a claimant does not have to try and pursue a claim against the healthcare provider in the first instance, they can make a claim against the credit card company in the first instance if they so wish.

Time limits involved

Where the transaction/contract is one involving medical treatment and claim is pursued to obtain damages as a result of personal injury, then the limitation period will usually be 3 years from when the date the cause of action arose or when the claimant had knowledge under section 14 of the Limitation Act 1980.

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patient safety and justice

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- 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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