

# How long do patients have to bring a claim?

A guide to limitation in clinical negligence claims

Clinical negligence claims can sometimes be brought many years after treatment. That is why it is important to pay attention to record keeping as the clinical records are contemporaneous evidence of the discussion that took place with the patient, the treatment decisions that were made at the time and the reasons for those decisions.

So that claims are not left outstanding indefinitely and are brought at a time when events can be recalled, the courts apply rules to the time period for bringing legal action, known as limitation. This guidance sets out how limitation applies in clinical negligence cases.

## The three year rule

The basic rule is that claims for damages arising from clinical negligence must be formally “issued” **within three years** of either:

- i) The date the cause of action arose (e.g. the date of the consultation or treatment during which complications arose); or
- ii) A later date of knowledge (i.e. the date from which the patient first became aware that they may have suffered an injury as a result of negligent treatment)

The patient may be able to rely on a later date of knowledge in cases where for example the patient only received the correct diagnosis some time after the consultation or treatment complained of.

This three year period is known as the ‘limitation period’ and it begins on the day after the cause of action (the incident causing the patient harm) arose – so if the allegedly negligent event occurred on 6 April 2019 the limitation period would start on 7 April 2019 and expire on 6 April 2022.

## When can the three year period be extended?

There are a number of scenarios in which the usual 3 year limitation period can be modified/extended.

You may receive a request from the patient or more likely their solicitors to extend the limitation period. Technically it is not open to the parties to extend limitation but as the potential defendant, you can agree not to raise limitation as a defence. You do not need to obtain NHS Resolution agreement to do this but we suggest that you follow the guidance below and if in any doubt telephone our helpline for guidance on 0800 030 6798.

- Carefully check the date the cause of action arose (usually the date of the treatment complained of) and/or any later date of knowledge. If the incident complained of was more than 3 years ago, you should not agree as by doing so you may waive a limitation defence and therefore enable a claim to proceed that otherwise would have been out of time.

- There may be merit in agreeing not to raise a limitation defence where a patient has only just started an investigation or where your own investigations are still ongoing or outstanding. Any agreement should be of a reasonably limited duration, i.e. no longer than six months.
- All agreements should be agreed on a moratorium basis using the following wording:

*“[I]/[GP’s name]/[Practice’s name] agree(s) that in any subsequent issue about limitation, [I]/[they]/[we] will not rely upon any period of time that elapses between the date of this correspondence and (date)”*

This approach will allow you to preserve existing limitation arguments while allowing the claimant to finalise investigations in a cost-effective manner.

### **Why might I want to extend limitation?**

- Costs will be incurred by forcing a patient to issue legal proceedings, especially in a case where investigations suggest that the claim should be settled.
- Similarly, be sensitive to the fact that an unreasonable refusal to agree may be construed adversely and affect the way in which we are able to manage the claim. For example, it could affect our chances of obtaining extensions of time for serving a response where such an extension is required. The claimant can also argue that the costs of issuing and serving proceedings were incurred only as a result of our conduct and ask that we be responsible for paying those costs.

If you have received a letter which indicates that a claim for compensation is made or you are asked about time limits and are unsure what to do, please do not hesitate to contact NHS Resolution and we will advise you on your particular circumstances.

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