

Cerebral palsy

A guide to claiming compensation



About Us

The Clinical Negligence unit of Boyes Turner was founded in 1986 and was one of the first specialist medical negligence units to be established in the country. We are now one of the best known and respected.

We regularly take referrals from Citizens Advice Bureaux, Insurance Companies, the Law Society, Action against Medical Accidents (AvMA) and other charitable bodies and non-specialist solicitors nationally.

Headed by partners Adrian Desmond and Susan Brown who are members of both the Law Society and the AvMA Specialist Panels, we have six specialist solicitors with their support staff undertaking the work. We also have nursing and paralegal support and one of the largest medical expert databases of any solicitors firm in the country.

We are members of the Spinal Injuries Association and Headway specialist solicitors panels and are "well connected" with the Association of Personal Injury Lawyers in the UK, the Pan-European Organisation of Personal Injury Lawyers in Europe and the Association of Trial Lawyers of America in the US.

We act for clients who have suffered injury as a result of mistakes made by all health professionals whether they be a GP, hospital doctor, nurse, midwife or other specialist. Whilst accepting referrals in cases where the injury is relatively mild, we specialise in major cases of profound injury (often brain, spinal or major sensory injury) and we have had notable success in representing clients in these complex cases.

We have recovered well over £100 million compensation for clients in recent years. The success and professionalism of the unit ensured that we became one of the first in the country to secure the Legal Services Commission's prestigious Clinical Negligence franchise when introduced in February 1999.

The unit has received widespread praise from the legal profession as well. For successive years we have attracted 'top billing' in the major directories of the legal profession who undertake objective research with clients, lawyers and others. We are referred to as one of the top units in the South of England and are praised for being "on the ball" and client friendly. We have a brain injury support group for over 100 of our current and past clients and their families.

Whilst remaining committed to legal aid work, we welcome "no win no fee" instructions and are at the forefront of the development of this form of funding and associated insurance products. This enables us to guarantee "nothing to pay, win or lose" to those of our clients who are eligible for this form of funding on the understanding that the client will at all times instruct us reasonably and act in good faith.

What is Cerebral Palsy?

It is estimated that 1 in every 500 children is born with cerebral palsy.

Cerebral palsy is a neurological condition that affects a child's movement and co-ordination and can affect cognitive function. It is caused by damage to the brain, which often occurs before, during or soon after birth. The condition can be so severe that it can leave the individual with very little independent movement or function. On the other hand it can be mild perhaps causing clumsiness and weakness rather than obvious physical disability. No two individuals with cerebral palsy will be exactly the same and so will require different levels of support to manage day-to-day living.

Children with cerebral palsy often have other related conditions including:

- Epilepsy
- Learning difficulties
- Incontinence
- Impaired vision and hearing
- Difficulties speaking and eating
- Delayed growth
- Curvature of the spine

Although cerebral palsy can be associated with mental disability and learning difficulties which can be severe, many people with cerebral palsy are of average or above average intelligence.

To bring a claim for compensation it must be shown that mistakes were made, which in law, amount to clinical negligence. Typically, mistakes during the birth process might involve midwives or doctors failing to take proper account of evidence of a baby's distress whilst still in its mother's womb or in the birth canal.

Types and symptoms of Cerebral Palsy

The symptoms of cerebral palsy will normally become apparent during the first three years of the child's life. They may be slower in achieving important developmental goals such as walking or talking and also have problems with their muscle tone.

There are several different types of cerebral palsy:

- Quadriplegic cerebral palsy

Typically lack of oxygen to the brain will result in cerebral palsy involving all four limbs known as quadriplegic cerebral palsy, with a generalised rigidity of muscular tone or spasticity. Children with spastic quadriplegic cerebral palsy usually also have severe learning difficulties, epilepsy and related problems which are permanent and need extensive care. Children will often have other special needs and a reduced life expectation.

- Spastic cerebral palsy

Spastic cerebral palsy is the commonest form of cerebral palsy and affects the body's ability to relax muscles, causing tightness and difficulties in movement. The condition will often result from a prolonged partial deprivation of oxygen prior to delivery. Often the child will have severe learning disabilities and a reduced life expectancy as well. The child will also probably have had fits (convulsions) as a newborn and the appearance of the injury will be evident on MRI scanning of the brain.

- Dyskinetic or athetoid cerebral palsy

Children who have suffered a short but acute deprivation of oxygen before delivery might have dyskinetic cerebral palsy or athetoid cerebral palsy. Dyskinetic or athetoid cerebral palsy affects the ability to control muscles, leading to involuntary and uncontrolled movements in the affected muscles. Children with this type of cerebral palsy have a disturbed sense of balance and depth perception, characterised by tremors or shaky movements. Often they have a severe physical disability but with a preserved intelligence and comprehension. Fitting might not have taken place or might have been much less pronounced at and after birth. Life expectancy can be near normal. Again damage can be seen on MRI scanning.

- Ataxic cerebral palsy

Children with ataxic cerebral palsy might have more subtle symptoms often associated with problems of balance, depth perception and speech. They may appear clumsy and uncoordinated and may experience shaky hand movements. The child's communications skills and intelligence should be unaffected though

their speech may be erratic.

- Hemiplegia and diplegia

Children with hemiplegia (damage to one side of the brain only) are less likely to have acquired their injury as a result of oxygen starvation although there is a recognised association. Children with diplegia, (where the injury effects the lower limbs more than the upper or visa versa) might have acquired their injury due to distress prior to and after birth.

With both the above diagnoses, a specialist legal investigation is needed for the child as often a misdiagnosis or other evidence can make it more likely than not that the disability is birth (negligence) related.

- Hypoxic ischaemic encephalopathy

The most usual consequence of oxygen starvation before birth is the widespread swelling of the brain called hypoxic ischaemic encephalopathy (HIE). This is a recognised condition with a number of features including seizures, disordered muscular tone, and on a lesser scale, poor feeding and irritability. The condition can cause the cessation of breathing, deepening coma and even death. If there is no evidence of HIE in the newborn period, it might be unlikely that the injury was sustained at birth.

Causes of Cerebral Palsy

The cause of cerebral palsy is damage to the part of the brain that controls the muscles - the cerebrum. The cerebrum also controls other important brain functions including communications skills and memory and ability to learn.

To bring a claim of medical negligence it has to be shown that mistakes were made, which in law, amount to medical negligence. Typically mistakes during the birth process will involve midwives or doctors failing to take proper account of evidence of a baby's distress whilst still in its mother's womb or in the birth canal.

Medical Negligence can result from:

- Failing to monitor the mother or child properly,
- Failing to take account of warning signs such as a falling or unhealthy heartbeat, the presence of

meconium and disproportionate pain.

- Failing to deliver when it was called for either naturally, assisted (by forceps or ventouse for example) or by caesarean section.
- Mistakes can also be made when the child is still being looked after in hospital, for example, in the Special Care Baby Unit or the treatment of infection.

If it is likely that mistakes were made, it then has to be shown that those mistakes probably caused the birth injury. To establish this we look for the following:

Firstly, signs of a baby's distress during the delivery and at birth. These can include indications such as:

- Abnormal or dipping heart beat on the CTG monitor.
- Low APGAR scores at birth.
- Poor blood gas results.
- Poor colour at birth.
- Poor heartbeat.
- A delay in natural breathing.
- Admission to SCBU.
- Convulsions in the first day or days after birth.
- Discharge from hospital will almost certainly be delayed.

Secondly, for a birth injury claim it has to be shown that the child has a pattern of injury that is associated with a lack of oxygen or blood supply whilst still in the womb or birth canal.

Thirdly, we will look for evidence of other organ damage such as damage to the kidneys or heart. These organs are also vulnerable to injury resulting from a deprivation of oxygen.

Why think about claiming?

It is natural to want to avoid conflict or accusation and to celebrate life rather than focus on its negatives. So why bring a claim? The reality is that State provision to meet the special needs that people with cerebral palsy or brain injury have is insufficient in the UK for those needs to be met properly. This is where a cerebral palsy claim can provide a lifeline and genuine financial security for life both for the child and the supporting family or carer. Bringing a compensation claim can help individuals to enjoy life to the fullest extent possible.

Cerebral palsy claims that succeed typically arise as a result of mistakes made during the pregnancy and birth process. Children who are distressed at birth and who were perfectly healthy whilst in the womb can suffer a birth injury and acquire permanent brain injury from the birth process itself. However, cerebral palsy can also be caused as a result of errors when the child is very young such as in a special care baby unit or a failure to treat congenital disorders, infection, jaundice or meningitis.

If it is likely that the brain injury originates from medical negligence then the compensation that the child will be entitled to will be very substantial. Cerebral palsy can be very serious and is a permanent disability. The law requires those responsible to provide sufficient funds to cover the individual's needs and care going forward for the rest of their life. Claims therefore often run into millions of pounds. This is not a windfall. It simply covers the considerable costs associated with catering for the special needs arising from a child with cerebral palsy including care, accommodation, lost earnings and therapy.

Time limits

A claim for someone with cerebral palsy is not time barred until their 21st birthday. If a person is not capable of managing their own affairs from a mental disability from birth, time may never run against them. However, the start of an investigation should not be delayed, as this can be made more difficult over time, notes can be destroyed and memories fade.

Legal aid

The legal expense of bringing a cerebral palsy claim will generally be met by legal aid. Legal aid is available for children in their own right without reference to parental means. The vast majority of investigations are undertaken using legal aid and Boyes Turner has a full legal aid franchise enabling cases to be investigated this way. If your family have legal expenses insurance then that may be used instead.

If legal aid or legal expenses insurance is not available for any reason, we provide NO WIN NO FEE arrangements which ensure that you pay no legal expenses at all. It is a no catches scheme whereby the negligent party pays all of the costs if the case is won and their insurance picks up all of the costs if the case is not won. It really is that simple.

How long does a Cerebral Palsy claim take?

It generally takes us one month from first contact with the family to obtain legal aid for a child. After that it takes roughly three months until we are able to instruct the first expert as we have to obtain the medical records from the GP and treating hospitals and this takes time.

The first expert is typically an obstetrician who is required to comment on whether mistakes were made during the confinement and delivery. Experts are usually very busy and it can take a further six months to obtain the first expert report. A ten-month wait therefore before obvious progress is made is not uncommon.

If the first expert report identifies medical negligence, a report on any MRI or CT scans of the brain already available will be obtained. At the same time reports from two paediatricians (a neonatologist and a paediatric neurologist) to deal with whether the birth injury was caused by the negligence. A report from a midwifery expert if the midwifery care is subject to criticism may also be needed. Additional reports may take up to a further year to obtain.

If all of the reports are supportive, a barrister will be used to prepare the Court documents and a formal letter of Claim to the hospital. At this point there will usually be a conference with the barrister and the experts (with the family attending) to discuss the case.

The hospital will then have three months to respond formally to the letter of claim. If they admit liability then matters can be moved forward very quickly. If liability is denied then Court proceedings have to be started and it can take a further 18 months for those to be concluded.

This means that it can take four or more years for a cerebral palsy claim to be finished.

Where a child is very young, their future may not be clear up until the age of four or older. In this situation our aim is to win the claim for the child, enter judgment against the hospital and obtain an interim payment to help the family. This interim payment can be a substantial sum. Valuing the claim is then postponed until a suitable time.

The claim will provide compensation to cover the child's professional care needs throughout her/his life and therapeutic needs including physiotherapy, speech and language therapy, occupational therapy and assistive technology. It will make provision for special educational needs and accommodation requirements to take into account the needs of the family as a whole and any needed live in carers. It will include such items as equipment and vehicles for transport. It will compensate the child for lost income if the child is not able to work as an adult or is likely to take a less remunerative job. It will also provide case management expertise for life.

Cerebral palsy claims of this nature are regularly valued at between £1 and £5 million. In some situations this may be more, depending on the unique circumstances of each case. Compensation can be taken as a regular monthly or quarterly payment for life (called a structured settlement or periodical payment), a lump sum or more usually a mixture of both.

Cerebral Palsy – the compensation

In the event of a successful cerebral palsy claim the Court will order compensation to cover the child's pain and suffering throughout her/his life. It will also compensate the parents of the child personally for the care given over and above the needs of an able child. This might take the form of lost earnings or else the calculation of the many waking and sleeping hours of care provided at home.

Managing your compensation

Once compensation is awarded from a medical negligence claim then a specialised trust can be set up mainly to protect means tested benefits. However, there are many other reasons including:

- Control future ownership and use
 - By specifying that property and other assets must be kept within the family and/or only used in particular ways. Assets may be given to charitable organisations for stipulated uses
 - Through directing how an asset including cash, shares, a house or a family business is used even after it has been sold.

- Save tax

- Trusts are treated separately for tax purposes and are assessed independently for inheritance tax, capital gains tax and income tax

- Protect capital
- Avoiding the loss of assets if a beneficiary has family or financial problems
- Helping a disabled beneficiary look after property or assets
- Providing guidance to a young or vulnerable beneficiary in looking after their inheritance.

In addition to setting up these specialised compensation trusts support and advice is provided where the award is managed by the Court of Protection. Typically, this would be when the child did not have mental capacity and was a patient of the Court.

Speak to us

If you feel that you have suffered as a result of mistakes made by a health professional then get in touch. Adrian Desmond and Susan Brown both specialise in cerebral palsy claims and have done for many years.

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