

KEEP CALM AND CARRY ON

I HAVE RECEIVED A CLINICAL NEGLIGENCE CLAIM...

WHAT DO I DO?

90%

of potential clinical negligence cases investigated by lawyers are dropped and never proceed.

WHO DO I GO TO FOR SUPPORT?

Employed physiotherapist
(this might be in the NHS or a non-NHS organisation)

The CSP do not provide individual legal support for the litigation process. You will be supported by your employer and covered by their vicarious liability insurance. Therefore, you should speak to your employer about the claim.

Self-employed
(or a sole trader)

You will be covered by the CSPs public liability insurance. Therefore, self-employed physiotherapists should contact the CSP directly for support.

HCPC are not involved in clinical negligence claims and do not provide individual support for this.

PRE-CLAIM PHASE

1 Incident

Claimant suffers an adverse outcome and seeks legal advice.



2 Request for records

If the legal adviser considers there to be grounds for a claim, a request is made.

3 Letter of notification

Claimant's legal team sends a letter of notification to the defendant explaining that a claim is contemplated.



CLAIM PHASE

4 Letter of claim

- For some physiotherapists, the first time they hear about a claim is when they receive a letter informing them of the claim.
- The claimant sends a letter of claim to the defendant (and their legal team) detailing allegations as to the breach of duty and causation.
- The claimant provides the defendant with copies of relevant records and the chronology of events.



5 Letter of response

The defendant provides a letter of response which sets out any admissions or denials as to breach of duty of care and causation.

6 Negotiation

Both parties consider whether the matter can be resolved without going to court.



7 Outcome of claim

Claims may be dropped. For those that proceed, most are settled through negotiation. Very few cases go to court.



Remember 90% of potential clinical negligence cases are dropped and never proceed.

This is because for a claim to proceed, the claimant must show:

1. that their healthcare practitioner owed a **duty of care**. Duty of care means that the healthcare practitioner must provide “reasonable care”.
2. that their healthcare practitioner was **in breach of the duty of care**.
3. and that as a result of this breach, an **injury or loss has been suffered**.

Each of these three elements must be demonstrated in order for the claim to be successful.

