

Making a medical negligence claim for brain tumour treatment: a simple guide

By **Deepti Patel**

Being diagnosed with a brain tumour is overwhelming, and thinking about legal action at the same time can feel like too much to handle. However, if you're concerned about the medical care you received, it may be worth exploring your legal options.

This guide explains, in simple terms:

- the process of making a medical negligence claim,
- how long it can take,
- what can be claimed.

Can I get legal advice about my treatment?

The short answer is: **Yes!**

If you feel something went wrong with your medical care, speaking to a solicitor who specialises in brain tumour cases can help. They will listen to your story, ask questions to understand what happened, and advise you on whether you have a potential claim.

Your first conversation with a specialist solicitor is free and completely confidential. There's no pressure to go ahead with a claim – it's simply an opportunity to understand your options. If you'd prefer, a family member can speak to the solicitor on your behalf, as long as they know the key details and dates of your treatment.

Even if you decide not to pursue a claim, or the solicitor advises there is no claim, talking to a legal expert can give you peace of mind that you've explored the options and that your concerns have been heard.

If the solicitor advises that you have a potential claim for compensation for medical negligence they will arrange funding, usually under a no-win, no-fee agreement. This means you won't have to pay anything up front and there won't be any financial risk to you.

What do I need to prove?

To succeed in a medical negligence claim, your solicitor will need evidence to show:

- The doctors or nurses treating you failed to provide an acceptable standard of care. This is known as “breach of duty.”
- You suffered injury or harm because of that poor care. This is known as “causation”.

If these things are proved, the hospital or healthcare provider will be liable to pay you compensation for the harm and the financial losses and expenses you suffered. Your solicitor will need evidence to prove the extent and value of the harm and the financial losses and expenses you have suffered. This is known as “quantum”.

Is there a time limit?

Yes - there are strict deadlines for making a claim:

- You have three years from the date of the negligence, or from when you first thought something went wrong, to start court proceedings.
- If you were a child when the negligence happened, you have until your 21st birthday to start court proceedings.

If the person who is injured lacks mental capacity there is no time limit for starting court proceedings unless they regain mental capacity, when they have three years from regaining capacity to start court proceedings.

Because cases take time to investigate and because mental capacity can be difficult to assess, it's best to seek advice as soon as you suspect medical negligence, to avoid running out of time. If you run out of time, you will not be able to make a claim. The sooner you get legal advice, the better the evidence and the sooner court proceedings can be started if there is a claim, and the sooner you can get the help and support you need.

What's the process?

Each case is different, but most claims follow these key steps:

1. Gathering and analysing your medical records

Your solicitor will request your medical records and review them with medical experts to assess what happened. Your solicitor will discuss their thoughts about the case with you and let you know if they can help further.

2. Getting independent medical expert opinion

If they can help further, your solicitor will instruct independent medical experts to give their opinions on whether the care fell below an acceptable standard and, if so, whether it caused you harm. Several experts might be needed depending on what happened. Sometimes your solicitor will arrange a meeting (a “conference”) of the experts with a barrister (the lawyer who will present your case at court) to discuss the case before proceeding.

3. Calculating your financial losses and expenses

Your solicitor will assess how the negligent medical treatment has affected you financially, both now and in the future. This could include lost earnings, private medical treatment, home adaptations, or ongoing care needs. Your solicitor will gather the evidence needed to prove these losses.

4. Seeking compensation

Your solicitor will send a formal letter to your healthcare provider (the defendant) setting out what happened, why they are responsible, and the impact on you and your family. Your solicitor will also ask the defendant for any documents needed and ask them to pay for an assessment of immediate needs to identify anything that can be done to improve your and your family’s situation, such as adapting the house, providing equipment and therapy, paying for transport or support.

5. Trial or settlement

If the healthcare provider admits responsibility, you may receive an early compensation payment (an “interim payment”) to help with immediate costs.

If they deny responsibility, your solicitor will start court proceedings. The court will set a timetable of the steps to be taken towards a trial date, although most claims settle before trial.

What can be claimed?

If your claim is successful, you will recover compensation for your injuries due to the poor medical care and the effect those injuries have on your day-to-day life. However, the bulk of the compensation is made up of past and future financial losses and expenses due to those avoidable injuries. Each person's circumstances and needs are unique but by way of example compensation can be claimed for things such as:

- Private medical treatment, therapy and rehabilitation
- Lost income
- Home adaptations or specialist equipment
- Care and support needs.

In this way, although compensation cannot turn back the clock, it can make life easier for you and your family and give you peace of mind for the future.

How long does a claim take?

Medical negligence claims can take several years to resolve because they are complex, require detailed investigation, and medical opinions from a range of independent experts. Your solicitor will support you through the process and keep you updated as the case develops. Some people might not want to be involved in a long legal process and would prefer to get on with other aspects of their life after a brain tumour diagnosis. You might feel that simply no amount of money can help you move on with your life, and that is of course a decision for you.

While there is no guarantee of success, a specialist solicitor will give you honest advice about your chances as your case progresses.

Types of brain tumour negligence claims

Every case is different, but common claims include:

■ Delayed or misdiagnosed brain tumours

You may have had symptoms that you feel were dismissed or misdiagnosed, leading to a delay in treatment. Your solicitor will consider whether your symptoms were investigated properly and promptly and, if there was any delay, whether this has led to additional tumour growth or reduced options for treatment.

An earlier diagnosis does not necessarily mean that a brain tumour can be treated more successfully. For example, as high grade brain tumours progress rapidly, earlier detection may not mean better treatment options or outcomes. Claims involving lower grade tumours, which grow more slowly, are more likely to be successful.

■ Injury caused by brain tumour treatment

All treatments for brain tumours have risks, but doctors should explain these to you clearly so you can make an informed decision. You will be asked to sign a form confirming you understand and accept the risks of the relevant treatment before consenting to it. If your doctors don't fully explain the risks, you may have a claim for compensation.

Surgery to remove a brain tumour carries the risk of injuring the delicate surrounding nerves and structures. Complications, including stroke, brain swelling or a leak of cerebra-spinal fluid, may be unavoidable. Sometimes, however, mistakes during surgery or other treatments cause avoidable harm.

Should I make a claim?

While the process of making a claim can take time, the legal investigation can help explain what happened and if the claim is successful, compensation can provide essential financial support and peace of mind for you and your family.

A specialist brain tumour solicitor can help you weigh up the pros and cons so you can decide what's best for you. Getting legal advice early can make all the difference.

At Bolt Burdon Kemp our specialist solicitors have succeeded in recovering compensation in many of these complex cases including:

- A claim involving a vestibular schwannoma/acoustic neuroma, which was missed causing symptoms of hearing loss and balance issues.
- A claim involving meningiomas, which were misdiagnosed for a cancerous condition leading to unnecessary radiotherapy.
- A claim involving a pituitary tumour, which was missed causing damage to the pituitary gland, eyesight issues and hydrocephalus.
- A claim involving a trigeminal schwannoma, which was missed by medical professionals and grew to a larger size, meaning that conservative options for treatment were not available. A stroke was suffered during surgical resection.

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