

Professional Negligence FAQs

Below are questions we are frequently asked by clients when making a professional negligence claim.

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What is Professional Negligence?

A Professional Negligence claim is a claim brought against a professional person if they have caused you to suffer some form of financial loss. This can happen for a number of reasons. They may make an error, or offer inadequate or misleading advice; and if they do, this can have serious financial consequences.

Professional Negligence claims have increased in number in recent years, due to an increased awareness of legal rights and reliance upon professional expertise in complex matters. But it is important to seek advice from specialist solicitors with experience in this area, who can quickly identify if a professional has acted negligently and whether a claim has any merit.

What professionals can I make a claim against?

If you have suffered a loss as a result of professional negligence, you will understandably feel frustrated and may be thinking of bringing a claim. Professional persons must follow a strict code of conduct and most take their obligations and compliance with this code very seriously. There are however many different types of professional, regulated by their own professional bodies and institutions, and with differing levels of accountability and liability.

The following examples are some of the professionals against whom you may be able to bring a claim:

- Solicitors
- Barristers
- Accountants
- Surveyors
- Architects
- Financial advisors

- Insurance brokers

Do I have a claim?

In order for a professional negligence claim to be successful, a claimant must be able to show that the professional was entrusted with a duty of care, and that a breach of that duty caused the claimant to suffer a financial loss.

Whether a claimant has a claim or not is determined by a number of factors. A duty of care owed by a professional must first be established. This is usually in the form of a written contract or retainer, but can take a more implicit form, with a professional deemed to have assumed a duty of care by virtue of the position of expertise that they hold and the advice that they give.

For professional negligence to have occurred it is necessary to demonstrate that a breach of a duty of care resulted in a loss. It is not sufficient for the basis of a claim that the professional made a mistake if no loss was incurred. Neither will it constitute a claim if the professional can demonstrate that a difference of opinion exists within the industry and that they themselves acted in a manner in keeping with a reasonable proportion of industry thinking.

Determining a breach of duty and establishing a loss is fundamental to a successful professional negligence claim. Our specialist Professional Negligence lawyers can help you make that determination.

How much can I claim?

Establishing a loss can be the most difficult part of building a claim. For a breach of duty on the part of a professional to constitute professional negligence it must be demonstrated that the claimant has suffered a loss, and that the loss was caused by the negligence.

Determining causation is often the most complex part of a claim and has significant impact on the amount of damages that can be claimed. In many cases the negligent actions of the professional may clearly be shown to have resulted in a loss. It is possible however for a professional to act negligently without causing a loss, or for it to be proven that a loss would have occurred regardless of any action on their part. There may be more than one professional involved in the claim, or a defendant professional may argue that there has been contributory negligence on behalf of the claimant.

How long do I have to make a claim?

If you are considering a professional negligence claim, time is of the essence and it is important that proceedings be issued as soon as possible. Professional negligence cases are subject to strict time limits, and if these are not adhered to it could be argued that the claimant is out of time.

In most professional negligence cases, the limitation period is 6 years from the date of the negligence. In cases where negligence only becomes apparent at a later date, this period can be extended to 3 years from the date of knowledge of the facts which gave rise to a claim, if this date is subsequent to the usual 6-year period. 15 years is the longstop date within which all claims must be brought.

There are exceptions to these rules, and the courts are able to exercise discretion as to whether a case should be allowed to continue after the expiration of a limitation period. These instances are rare however, and it is prudent to seek advice as swiftly as possible to avoid damaging the chance of your claim being successful.

Can a claim be issued immediately?

Unless the applicable limitation period of a case is about to expire, proceedings should not be issued immediately. Once a claim has been examined and it is decided that it has merit, a professional negligence pre-action protocol should be followed. This is a procedure designed to facilitate and promote an early exchange of information with the aim of dealing with matters swiftly and efficiently, reducing costs and possibly allowing the dispute to be settled without the need to go to court.

There are a number of steps to the pre-action protocol:

- *Preliminary notice*, whereby the claimant notifies the professional of the claim in writing, outlining the specific grievance and financial value of the claim. The professional should acknowledge within 21 days.
- *Letter of Claim* detailing, with supporting documentation, the particulars of the claim; the parties involved; the facts of the case; the allegations; the cause of the alleged loss; and the method used to calculate the loss.
- *Letter of Acknowledgement*, to be issued within 21 days.
- *Letter of response*: within 3 months of acknowledgement, the professional should respond to allegations, making clear what, if any, elements of the claim are admitted or denied. At this stage a without prejudice letter may offer a settlement proposal. If, however, the allegations are denied in their entirety the claimant may instigate proceedings.

Will I need to attend court?

Not necessarily. The pre-action protocol that parties are required by the court to follow are designed to encourage the early resolution of these negligence cases and avoid having to go to court to find a resolution. If the pre-action protocol does not lead to a settlement of the dispute, Alternative Dispute Resolution can be considered. Through negotiation and mediation this stage may again avoid the need for litigation.

If, following pre-action protocol and alternative dispute resolution the dispute remains unresolved, the claimant must decide whether to issue proceedings. Bringing a case to trial can be a complex and drawn-out affair, and it is imperative that the claimant choose solicitors who are experts in professional negligence and enjoy good

relationships with counsel who will prepare the particulars of a claim in detail and ultimately argue the case.

What if the professional is insolvent?

Many professional bodies, such as the Law Society and the Royal Institute of Chartered Surveyors, require their members to have professional indemnity insurance to protect against legal claims. In addition some professionals, such as solicitors, are required to hold “run-off cover”, insurance that covers any claims brought within 6 years of a firm closing.

Obligatory for solicitors, run-off cover is not compulsory for many other professions. Although some professional bodies, such as the RICS, recommend that their members hold run-off cover, it is not mandatory for all professions.

Even if the professional holds run-off cover, this will only apply for 6 years after a business ceases operations. Expert advice should be sought as soon as practicably possible to avoid a claim being unsuccessful due to time limitations.

What other factors need to be considered?

There are other important factors to consider when bringing a professional negligence claim.

Proportionality is key to a claim, and it should be understood at the start of proceedings that the claim will in all probability be contested and legal costs will therefore increase. A potential claimant should think carefully about the likely costs of pursuing a claim against the likely amount of damages claimed. An expert professional negligence solicitor can advise in this regard, and many will be able to offer a range of funding options, including conditional fee arrangements, also known as “no win, no fee”.

It is also necessary, for a claim to be successful, that the claimant mitigate their loss by minimising existing losses and not taking action which would lead to further loss. The principle of a professional negligence claim is that a claimant should be restored to the position in which they would have been had the professional not acted negligently; and a claimant will not be able to recover losses that could have been avoided by taking reasonable steps.

A defendant may argue that there has been contributory negligence on the part of the claimant, and if this is found to be the case any damages awarded will be reduced in proportion with the claimant’s perceived share of the responsibility.

Seek expert advice from a solicitor to ensure that these factors are fully taken into account, and that your claim is not compromised in any way.