Guide to stating a Professional Negligence Claim

This is our guide to start a Professional Negligence claim in England & Wales.

We are here to help you. Book your Free Consultation with our expert Professional Negligence Lawyers today.

SCHEDULE A FREE CONSULTATION

www.go-legal.co.uk 020 8058 0330 info@go-legal.co.uk

How to make a

Professional Negligence Claim

1 Get in touch with us for a Free Consultation

We are here to help you every step of the way!

Go Legal is a leading City of London law firm dedicated to providing exceptional legal representation and strategic counsel to businesses and individuals. We specialise exclusively in commercial litigation and dispute resolution, and are an adviser of choice in England & Wales for professional negligence claims.

We are dedicated to your professional negligence claim and obtaining the compensation you deserve. With our extensive experience, deep understanding of legal issues and our client's business needs, we strive to achieve successful outcomes for our clients.

We pride ourselves on our client-centric approach, tailoring our strategies and solutions to meet the unique commercial needs and goals of each client.

Our network of lawyers is recognised by the Legal 500 and Chambers Guide amongst the best in England & Wales every year. Our award winning-lawyers have regularly been asked to write authoritative publications for the Financial Times, Law Society and LexisNexis and have been quoted in the Law Society Gazette, The Student Lawyer, New Law Journal, Litigation Futures, and the Financial Times.

We work nationally across the UK – with an extensive UK and international client base. Our specialist litigation team is Partner-led to work for clients to provide clear guidance, strategy and advice on your matter at the very outset.

We regularly represent our clients at mediations often leading to early settlements. Several of our lawyers are also trained mediators and are also registered members of the Chartered Institute of Arbitrators and the International Mediation Institute.

Our award-winning specialist professional negligence team is committed to providing you with careful, straightforward, honest and strategic advice. We will determine the merits and prospects of your legal case and provide you with a clear strategy at the outset to obtain optimal outcomes and at minimum cost.

Unlock the potential for success with our experienced professional negligence lawyers by your side. Whether you are an individual, a small business, or a multinational corporation, we are here to provide unwavering support and exceptional legal services to get you the compensation you deserve.

2 The pre-action process

Unless the relevant limitation period is about to expire, you are required to comply with a legal procedure known as the 'Professional Negligence Pre-Action Protocol'.

The protocol encourages early exchange of information with the aim of dealing with matters swiftly and cost effectively, and is designed to encourage parties to settle a dispute early without the need for expensive court proceedings.

This process involves sending a 'Letter of Claim' to the professional which should set out the factual and legal basis for your professional claim, allegations against the professional, losses claimed and include any documents relied upon to support your claim.

A. What type of professionals does the professional negligence pre-action protocol apply?

It applies to Negligence claims against:

- Legal Professionals
- Financial Advisers
- Accountants
- Auditors and certain other professionals.

However, it does not apply to claims against Construction Professionals where the Pre-Action Protocol for Construction and Engineering Dispute should be followed.

In relation to negligence claims against healthcare professionals, the pre-action protocol for the Resolution of Clinical Disputes should be followed.

B. Limitation periods for Professional Negligence Claims

When considering pursuing a professional negligence claim, one of the most critical aspects you must be aware of is the limitation period. This refers to the specific timeframe within which you are permitted to commence legal proceedings. If you fail to issue a claim within the relevant limitation period, you could lose your right to make a claim, regardless of its merits.

1. **Standard Limitation Period:** The primary limitation period for bringing a professional negligence claim is 6 years from the date of the act or omission you believe to be negligent. This is outlined in the Limitation Act 1980. In simple terms, this means that from the moment a professional makes an error or fails to act, you typically have six years to start a claim. You may in the context of limitation have a different limitation period for different breaches, therefore it is important to take advice as early as possible.

2 **Exceptions & Extensions:** There are instances where the limitation period may be extended:

- **Date of knowledge:** In some circumstances, the negligence may not become apparent until sometime after the event. Here if proved, the limitation period is extended by 3 years and runs from the date you first became aware, or reasonably should have been aware, of the negligence.
- **Minors:** If the person affected by the negligence was under 18 when it occurred, the six-year period would not start until their 18th birthday.
- **Mental Capacity:** For individuals who lacked mental capacity at the time of the negligence, the limitation period may not start until they regain capacity.
- **Concealment:** If the professional deliberately concealed facts relating to the negligence, the limitation period might be extended.

Given the complexities surrounding limitation periods and the potential for disputes regarding the exact start date, it is crucial to seek legal advice as early as possible. Acting promptly will not only ensure that you do not miss the limitation deadline but also allows for thorough preparation and evidence gathering to strengthen your claim.

C. What are the procedural steps under the professional negligence pre-action protocol ("PAP")?

STEP 1 - Preliminary Notice Letter

Once one of our expert lawyers has completed the legal assessment of your Professional Negligence claim, we will notify the Professional in writing as soon we consider there is a reasonable chance of a claim for Negligence against the Professional by sending a 'preliminary notice' which must:

- identify you as the claimant and any other parties involved
- contain a brief outline of the prospective claim and complaint
- provide an estimate of the compensation you are seeking to recover
- request that the professional inform their professional indemnity insurer (and a failure by a professional to notify their insurer may invalidate their insurance policy).

If there are any documents which you have not retained, we would also typically request some pre-action disclosure documents from the Professional to be provided so that we can further assess the merits of your Professional Negligence claim.

The Professional must acknowledge receipt of the preliminary notice letter within 21 days.

STEP 2 - Letter of Claim

Once we have completed our assessment of your Professional Negligence claim and the Professional has acknowledged the Preliminary Notice letter, we must now prepare the Letter of Claim (also known as the Letter before Claim or Letter before Action).

This letter is a detailed letter which formally amounts to a Notice of Intention to Commence Legal Proceedings.

The Professional Negligence Pre-action Protocol requires that the Letter of Claim should include:

- Identity of all the parties involved in the dispute
- Clear summary of the facts
- Request any documents
- The allegations against the professional.
- Explain how the negligence has caused the loss claimed.
- Set out the financial loss suffered and compensation sought.
- Enclose any supporting documents.
- Confirmation whether an expert has been appointed.
- A request that a copy of the Letter of Claim be forwarded to the professional's insurers.
- An indication of whether the claimant wishes to refer the dispute to adjudication. If they do, they should propose three adjudicators or seek a nomination from the nominating body. If they do not wish to refer the dispute to adjudication, they should give reasons.

STEP 3 - Letter of Acknowledgment

The Professional (or any solicitor acting appointed by the insurer) is required to acknowledge the 'Letter of Claim' within 21 days of receiving it.

STEP 4 - Investigation of Professional Negligence Claim

The Professional may thereafter have up to 3 months to investigate your Professional Negligence Claim and provide a 'Letter of Response' in which the Professional can either:

- **i** admit the claim;
- **ii** make proposals for settlement or alternative dispute resolution; or
- **iii** dispute the claim.

STEP 5 - Response to the Letter of Claim

Within 3 months of the Letter of Acknowledgment, a Letter of Response and/or a Letter of Settlement in response to the claim.

The Letter of Response must:

- state which parts of the claim are admitted or denied.
- Request any further information
- provide the professional's version of events
- respond the damages claimed
- provide copies of any key documents in response to the allegations

STEP 6 - Alternative Dispute Resolution ("ADR")

The Pre-action Protocol for Professional Negligence creates an obligation on the parties to consider whether ADR is suitable.

ADR should be considered and explored by the parties at every stage of the claim (and there may be significant costs sanctions for any party that is deemed to not engage in the ADR process).

There are several forms of ADR, which the parties to any Professional Negligence Claim may consider for example:

- Mediation
- Arbitration
- Early Neutral Evaluation
- Adjudication
- Ombudsman schemes.

We regularly represent our clients at Mediations often leading to early settlement of their claims for our clients.

A number of our lawyers are also trained mediators and are also registered members of the Chartered Institute of Arbitrators (CIArb) and the International Mediation Institute.

We will endeavour to get the very best result and optimum compensation for you.

STEP 7 - Issuing a Claim Form at Court

If settlement is not possible after the above Pre-action steps have been explored, then the next step is usually to issue Court proceedings with a formal claim form under CPR Part 7 with Particulars of Claim.

go legal

If you think you have suffered loss or damage as a result of the errors or mistakes of a Professional, please contact us and we will confidentially discuss whether you have a claim, the value of your claim and how best to proceed.

www.go-legal.co.uk   020 8058 0330   info@go-legal.co.uk

SCHEDULE A FREE CONSULTATION

We are here to help you.
Free Consultation.
Start your Claim today!