



Dental  
Mistakes

**5**

# Things That Will Improve Your Chances Of A Successful Dental Negligence Claim

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# 1

## Know the time limits

It is imperative to bring your claim in time.

The usual time limit in which to bring a claim for dental negligence is three years. This three-year period will run from the date of your injury or, if later, three years from your date of knowledge. Your date of knowledge is the date by when you knew or ought to have known that you had suffered injury due to potential negligent dental treatment. This is known as the limitation period.

There are some exceptions to this rule for example:

- (a) If the case involves a minor, the three-year time limit will start running when the injured person turns 18 and they will have until their 21<sup>st</sup> birthday to bring a claim;
- (b) If the injured party is deceased, and that person died within three years of the treatment, the three-year limitation period will run from the date of death (or three years from the personal representative's knowledge if later);
- (c) Individuals who lack mental capacity have different rules. If the individual lacked capacity at the time of negligent treatment, the limitation period will not start to run until they regain capacity. In some situations, a claimant will never regain capacity and the limitation period will be ongoing in such circumstances.

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### **What is the limitation period for my negligent treatment?**

Identifying the limitation period can be straightforward in some circumstances. For example, if your case involved extraction of the wrong tooth, the limitation period is likely to run from the date of the extraction.

However, identifying the limitation period in other cases can be more difficult. For example, in a case involving the failure to adequately identify and treat periodontal gum disease, or where the complaint relates to ongoing treatment, it can be difficult to identify when that person either knew, or should have known, about the potential negligent treatment.

It is imperative that cases are brought within the limitation period. If they are not, then this can give rise to a technical time limit defence meaning a Defendant can escape liability for negligence simply because the case was not brought in time. Whilst courts have a discretionary power to allow a late claim to proceed, the burden of proving this power should be exercised can be extremely difficult to overcome.

Ultimately, if a case is not brought within the time limit, the chance of recovering compensation for your negligent treatment may well be lost. This can be extremely costly, not only in relation to the impact of negligent treatment but also the substantial future treatment costs which may be required.

Due to the complexities of limitation, and the potentially significant consequences of not bringing a claim in time, we strongly recommend specialist legal advice is sought at the earliest opportunity.



## 2

## Compile as much evidence as possible

To succeed in a claim for dental negligence and be fairly compensated, it is essential to compile as much documentary evidence as possible. These documents can help both in terms of proving your case but also in communicating exactly how the negligent treatment impacted you.

This can include taking steps such as obtaining your dental records, including any x-rays, treatment plans, and receipts, as well as any relevant GP and hospital records. These records are likely to be crucial in assessing whether your treatment was satisfactory or whether it fell below an acceptable standard.

Your dental records should also include the details of the dental staff responsible for your negligent treatment and will assist in determining which practitioners are likely to be defendants to a claim.

As experts in pursuing dental negligence cases, we will always obtain all relevant records to enable a thorough assessment of the case and to give you the best chance of pursuing a successful case.





### 3

## Document your case

It is also useful to compile your own timeline of events. For example, it can be helpful to keep a diary of your symptoms detailing how the negligent treatment has impacted on your day-to-day life, such as any pain or difficulties eating and sleeping.

Taking and keeping photographs of visible injuries can also be a very good way of illustrating just how the negligence has affected you.

It is also important to keep a record of any financial losses you have incurred, such as loss of earnings as a result of time off work caused by the negligence, money spent on medication such as pain relief, and any other losses or expenses which you consider have been incurred as a result.

It can be helpful to obtain statements from witnesses who were either present during your treatment or who can provide supporting evidence about how the negligence has impacted you.

As specialist solicitors, we ensure that as much documentary evidence is obtained in support of your case as possible, including interviewing witnesses to obtain supporting evidence.



## 4

# Get legal representation

It is so important that claims are brought in time, properly framed, and presented.

Claims against dentists are usually defended by experienced specialist defendant law firms with substantial experience in defending cases. In our experience, they will often try to defend cases, put forward unpersuasive arguments, or, not uncommonly, try to avoid providing any decisions on liability at all.

In order to prove your case, it is necessary to establish that your treatment fell below the standard given by a responsible body of dentists and that avoidable harm followed as a result. This means that expert evidence from an independent dental expert will be required.

If, on consideration of your records, we consider there are valid grounds for a claim we will obtain a report from an expert dentist who will assess all of the available evidence and provide an opinion as to whether your treatment fell below the requisite standard.

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This will enable us to prepare a detailed and thorough letter of claim to submit to the Defendant and to thereafter pursue the claim robustly and with skill in order to obtain a successful outcome.

Our team of specialist lawyers has extensive experience in all aspects of dental negligence including:

- Delayed or incorrect diagnosis
- Incorrect extractions
- Periodontal disease
- Poor fillings
- Poor standard of treatment
- Missed diagnosis
- Dental infection
- Nerve damage
- Failing to obtain full consent for treatment



5

## Know what your case is worth

Dental negligence not only causes pain and suffering but can also result in financial losses. Ultimately the personal cost to you from a physical, financial, and emotional perspective could be substantial.

In assessing the potential value of your case, it is important to bear in mind that it is not simply the pain caused by the treatment itself, but also the additional effects, including psychological, the treatment has had on you. Our teeth are important and when things go wrong it can have a devastating impact. It is important to fully explore all of these issues to ensure that an accurate valuation can be placed on that aspect of the case.

However, the financial costs can also be substantial. We all know that dental treatment can be expensive but in dental negligence cases, such treatment costs may have been entirely avoidable. It is imperative that all losses are fully identified and claimed.



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These losses can include past treatment costs but can also include significant future treatment cost. For example, if the treatment has, or is likely to, result in the loss of one or more teeth, the cost of obtaining implant replacements over your lifetime can run into tens of thousands of pounds.

Additional financial losses may be incurred as a result of needing to take time off work both for the negligent treatment as well as for future treatment to remedy the causes of the negligence.

Other costs, such as prescription costs, painkillers, and the cost of any future private treatment also need to be considered.

As specialist solicitors, we will ensure that all relevant losses and costs are included and claimed to the fullest extent possible.

## NEXT STEPS

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Please do not hesitate to contact David Lee at Wixted & Co. Solicitors for a free consultation to see if we could act for you on our “no win, no fee” basis.

5 minutes of your time spent now could prove invaluable and make a huge difference.

**ACT FAST, DO NOT DELAY. PROTECT YOUR FINANCIAL SECURITY FOR TOMORROW BY ACTING TODAY.**

The materials appearing within this guide do not constitute legal advice and are provided for general information purposes only. No warranty, whether express or implied, is given in relation to such materials, and we do not accept any liability for error or omission. Specialist legal advice should be taken in relation to specific circumstances.





## ABOUT THE AUTHOR

David Lee is the Head of the Dental Negligence Department and is a solicitor with over 15 years post qualification experience who specialises in litigation. He has pursued cases for clients in the County Court, High Court and Court of Appeal. He has recovered substantial damages for clients who have suffered injury and loss as a result of dental and clinical negligence. During his time with the firm he has recovered millions of pounds in damages for clients who have been victims of negligence.

For a free initial discussion, please email [dlee@wixtedandco.co.uk](mailto:dlee@wixtedandco.co.uk) or call **0808 531 5394** and ask to speak to **David Lee** in relation to a new dental negligence claim.

