

“ Plain speaking legal advice ”

**Professional Negligence
A Quick Guide!**

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This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

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Broadly speaking professional negligence occurs where a professional such as a solicitor, surveyor, doctor or accountant, fails to perform his responsibilities to a required standard. It is a very complicated area of law. This guide is designed to simply outline the basic principles. In almost all cases legal advice should be sought before bringing or defending a claim including allegations of professional negligence.

Very often a professional advisor will also enter into a contract or retainer with his client. A failure to perform to the required standard could also therefore represent a breach of contract. There are some important differences between a claim for a breach of contract and for negligence particularly relating to when a claim can be brought and the remedy that can be sought. This is something that also needs to be considered when discussing any claim with a legal advisor

The Basic Requirements to establish Professional Negligence

- The professional must be shown to owe a duty not to cause the harm/loss suffered i.e. a duty of care; and
- The professional must be shown to have breached that duty i.e. breached the required standard of care; and
- The breach must be shown to have caused harm or loss i.e. causation

All three of these requirements need to be present. If one is missing then a successful claim for Professional Negligence will not be possible.

Duty of Care owed

In many cases it will be obvious that the professional owed a duty of care where they are for example acting as the adviser under a contract or a retainer to a client as in the case of a Surveyor/Client relationship. In other cases establishing a professional's duty of care will not be so easy. The courts will, in deciding whether a duty of care exists, take account of:

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- The precise relationship between the person giving the advice and the recipient
- The precise circumstances in which the advice or statement or other information came into existence.

Breach of Duty – standard of care

In a simple negligence case the standard is that of a reasonable man. Therefore in a claim for negligent driving of a motor car it would need to be shown that the driving fell below the standard of a reasonable driver. The test for professional negligence is higher. It needs to be established that the professional failed to conform to the standard accepted as proper by responsible members of his profession. In the context therefore of a surveyor the test is that of a reasonably competent surveyor having regards to the standards normally adopted in his profession.

Causation

A professional may have acted negligently (i.e. owed a duty of care that he has not met) but if his actions or advice did not cause loss, there will be no claim. Such a situation is fairly common.

In applying this test and reaching a decision as to whether loss has been suffered the following question is frequently asked –

“But for the breach of duty of care would the loss have been suffered?”

Or to put it another way – “If he had done what he should have done and carried it out properly, would the outcome have been different?”

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If the answer to the question is the loss would have happened in any event, then the loss will not have been caused by the breach of the duty of care and there will be no claim. In a court case brought against a doctor it was claimed that he breached the standard of care he should have provided to a patient who subsequently died. After applying the “but for” test it was decided that there was no claim, as the patient was so poorly that he would have died in any event regardless of or ‘but for’ the poor standard of care provided by the doctor.

There is also a need to consider what are called intervening acts i.e. where there might have been more than one cause of the loss it needs to be shown which of the causes materially contributed to the loss claimed. The loss that is claimed must also be a type of loss that would have been reasonably foreseeable and the court will take into account and may reduce the amount of any claim where for example the claimant is shown to have contributed to his own loss. The simplest example of this, in the context of standard negligence is where for example a passenger in a car claiming damages for injuries suffered was not wearing a seatbelt at the time of an accident. Whilst the driver of the car could be found to be negligent in failing to drive to the standard expected of a reasonable man – the amount the passenger would be awarded would be reduced to reflect that fact that if he had worn a seat belt his injuries would not have been so severe –he was therefore contributory negligent.

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A final warning....

Professional Negligence is, as can be seen, an area of the law that is very complicated and before making a claim legal advice should be sought. For those facing a claim whilst it is generally the case that professional liability insurance is available; the professional's reputation and therefore livelihood is being called into question and therefore proper legal assistance to ensure the best possible defence is usually in almost all cases essential.

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