

# Professional negligence

**All professionals owe their clients a duty of care, which is normally defined as 'providing a service to the standards of a reasonably competent member of that profession'. They are not liable for errors of judgment unless such an error is one that a reasonably well-informed, competent professional would not have made. The duty relates to both acts and omissions.**

However, if you instruct a professional who specifically practices in some complex or specialist area and holds himself out as being experienced in that field, then the standard of service you can expect is naturally going to be somewhat higher than would otherwise be the case.

We are experienced in dealing with all aspects of professional negligence claims.

## Who are 'professionals'?

Those who fall under the heading of 'professions' include accountants, architects, engineers, lawyers, surveyors, etc. A separate area of negligence has grown up around professionals practising in various fields of medicine. This legal specialty is known as 'clinical negligence', and is distinct and separate from 'professional negligence'.

## The contract

The professions' responsibilities to their clients can be established in one of two ways:

- by the contract documents
- through the common law of tort, which deals with relationships not regulated by a formal contract.

It is often the case that an action for breach of contract for 'failing to properly advise' will often run alongside an action in tort for failing to comply with the common law duty of care.

## About claims

- It is not uncommon for a complaint of professional negligence to be made when action taken on the basis of advice supplied fails to produce the desired result. With the benefit of hindsight, the first instinct is often to blame the adviser. The test the courts apply here is whether any reasonably competent practitioner would have given similar advice.

## Contact

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- Examples of professional negligence claims might involve: a surveyor who neglects to report on an important structural defect, as a result of which the purchaser incurs a substantial repair bill; a solicitor who fails to advise and/or issue court proceedings within a limitation period, as a result of which his client's claim is statute-barred and cannot be proceeded with; an accountant who fails to file returns in a timely fashion, as a result of which his client is fined by the Revenue.

These are all mistakes which on the face of them should not have occurred and quite properly may give rise to a claim for professional negligence with the aim that the client is financially compensated and so does not suffer as a result of poor service.

- Professional negligence claims are often defended at the outset because the professional in question instinctively finds it hard to accept that his advice was bad. The tendency of the professional indemnity insurers is to defend everything but the most blatant and obvious error on the part of their insured.
- It is wise to take expert legal advice as soon as there is an inkling of professional negligence giving rise to actual or potential financial loss. Steps can be taken to minimise losses (important, because the court expects everything reasonable to be done to keep a claim as low as possible) and to raise these issues with the professional in question.

## Limitation

- Limitation is an important consideration - normally a six-year period for a professional negligence claim to be brought.
- In contract claims, the cause of action accrues on the date of the breach of contract and limitation runs from this date. After that period, the claim is said to be 'statute-barred' and can proceed no further. There is no need for damage or loss to be suffered before a claim can be made in a contract case.
- In tort claims, an action runs from the date the damage is suffered. This is because proving loss is an essential component in this type of claim. The claimant's right to sue for negligence only accrues when the alleged negligent act or omission causes loss. It can be some years after an event that losses become apparent and negligence is suspected. Steps must be taken without delay to preserve necessary evidence and to make the claim.

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