What to do if you receive a negligence claim

Greta Barnes, senior claims handler at the Dental Defence Union (DDU) has some expert advice for dental professionals who receive a negligence claim in the aftermath of the pandemic.

For more than a year, dental services have been severely disrupted by the coronavirus outbreak. While most patients have been understanding and dental professionals have done their best in difficult circumstances, there is still likely to be an influx of claims arising from alleged delays in diagnosis, treatment and referrals.

It would be natural to feel upset or aggrieved on receiving a solicitor's letter in the months or years ahead but these six tips should help you to manage the situation.

1. Tell your dental defence organisation immediately

If you receive a solicitor's letter or believe that an adverse incident may lead to a claim it is important to contact your dental defence organisation whose role is to support you and represent you throughout.

Do not reply directly to a claimant's solicitor or they may assume you are managing your own defence and you could find yourself fielding unwanted calls and letters. Even worse, you might inadvertently say something which makes the claim more difficult to defend further down the line.

The civil litigation process has strict timetables so don't delay. For example, your dental defence organisation has one calendar month to respond to a letter requesting clinical records and four months to respond in full to a letter of claim. When you call the DDU with regards to a new claim, you will be sent a claims pack setting out the information we require you to send in.

2. Respect patient confidentiality

Sometimes the claimant or their solicitor will also seek to generate publicity for their cause in the media. Don't be tempted to comment

publicly on allegations, either on social media or to a journalist, as there is a real risk of breaching patient confidentiality and being censured by the General Dental Council (GDC), as well as helping attract further unwanted attention.

If you are contacted by a journalist, the best approach is to explain that your duty of patient confidentiality prevents you from commenting (even if the claimant has spoken out). You can also seek advice from your dental defence organisation - the DDU has a dedicated press office which is on hand to offer advice in this situation.

3. Leave it to the experts

It makes sense to leave the day-to-day management of the claim to your dental defence organisation although you can ask for a progress report whenever you want and you should respond as quickly as possible to any requests for information.

Your dental defence organisation will liaise with the claimant's solicitor and comply with the timetable of the pre-action protocol or, if proceedings are served, of the Court. If a case proceeds (and many don't), with service of a formal Letter of Claim or proceedings, they will likely seek advice from an independent dental expert.

The DDU does not settle claims on purely economic grounds because this would set an unhelpful precedent which would not be in the long-term interests of any of our members. However, there are occasions when a claim cannot be successfully defended, perhaps because the expert report is critical of the dental professional's management or the clinical notes are incomplete. In these situations, the DDU will seek the dental professional's agreement to negotiate an early settlement to avoid causing unnecessary anxiety to all concerned.

4. Be patient

If court proceedings are commenced, your dental defence organisation will provide you with specialised legal representation. It's not unusual for claims to be discontinued once in proceedings, particularly after expert reports are exchanged. In the extremely unlikely event that your case was to end up at trial, you would be prepared and supported throughout.

5. Seek support

While you need to respect patient confidentiality, it can help to let close family, friends and dental team colleagues know what you're going through, so they can offer help and emotional support. Remember, you can also talk to your claim handler about your concerns as they will be able to provide support, advice and reassurance, based on experience of managing hundreds of similar cases.

If you are struggling with your mental health, do seek professional help from your GP. You could also think about contacting your professional association, or the Dentists' Health Support Trust (<https://www.dentistshhealthsupporttrust.org/>).

6. Try to keep things in perspective

The claimant's allegations can seem unfair, inaccurate or unreasonable and it's quite normal to feel anger, disappointment and even disillusionment. While it's easier said than done, try to focus on the many patients who value your help and expertise and are grateful for the service you provide.

To learn more about how to respond to a claim please visit <https://www.theddu.com/>.

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