



myerson

Myerson **Dispute Resolution**

Our guide to Professional Negligence

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Welcome

We understand that if you have put your faith in a professional adviser (solicitor, accountant, architect etc) and something has gone wrong, you will want to ensure that the problem is dealt with in the best possible way, and you will want to receive clear, independent, and commercially sensible advice. We are able to see your side of the problem and advise on the best way to resolve it.

Why Myerson?

At Myerson, we recognise that a professional negligence claim can be stressful. It often comes after years of dealing with your trusted professional adviser in connection with a legal matter or other project. Our specialist team of lawyers are experts in professional negligence and will investigate what has gone wrong and advise on the best way to deal with the problem.

The Professional Negligence Litigation Team is ranked in the prestigious international directory, **The Legal 500**, and the firm is commended by The Times '**Best Law Firms 2019**'. Members of the team are also members of the Professional Negligence Lawyers Association.

Our specialist professional negligence lawyers can also draw upon the knowledge of other lawyers in the firm. This enables us to advise on a wide range of professional negligence matters such as those arising from corporate and commercial deals, residential conveyancing, commercial property transactions, construction projects, family proceedings, probate matters and litigation claims.

We also have a wealth of expertise in advising on professional claims against other types of professionals such as accountants and surveyors and we have a wide network of connections with experts in those fields who can assist to provide their expert opinion on your claim if needed.



Professional Negligence Claims

To bring a claim for professional negligence, there are three fundamental requirements:

- A legal relationship between you and the professional as a result of which the professional owes you a duty of care;
- A breach of that duty of care by the professional; and
- A loss which has been caused by the breach which is not too remote.

The duty of care

The duty of care The legal relationship between you and the professional will often, but not always, arise out of a contract. There will either be an express or implied term in the contract which places an obligation on the professional to act with a duty of care.

The professional has a duty to act with the care and skill to be expected from a reasonably competent professional in that field. The standard required is not one of perfection. We will examine what the professional has done or ought to have done and assess whether the professional has breached their duty of care to you.

Where the claim involves the negligence of a professional such as an accountant or surveyor, we may need to seek an opinion from an expert in that industry to understand whether the professional has breached their duty of care.



Breach

The professional will be in breach of the duty of care where he or she has failed to meet the standard of skill and care which is expected. Sometimes it is very clear that the professional has not met the standard of care required. For example, in conducting litigation, solicitors are required to ensure that if a claim is going to be issued it must be issued within the specified time period (called limitation) for that claim. Failure to issue a claim within the limitation period is likely to be a breach of the duty of care. In some cases, the breach is not so clear, and in those cases, we are able to use our vast experience to assess and advise whether what the professional has done or ought to have done is a breach of their duty of care to you.

Causation and loss

You must be able to show that the loss you have suffered has been caused by the professional's negligence. Not only must there be a link between the professional's negligence and the loss, but the loss suffered must not be too remote. The test is not the same in all circumstances, but generally it can be said that the claimant can only recover losses arising naturally from the breach, or losses which are of a type of damage which was reasonably foreseeable. We can advise you as to whether the losses you are claiming, even where the professional has been negligent, are likely to be considered too remote.

How does the claim proceed?

For claims in professional negligence the claimant should have regard to the PreAction Protocol for Professional Negligence. This is a specialist Court guide which sets out the procedure that should be followed, as well as the information the parties must exchange. It also sets a timetable which the parties must adhere to. Under the Protocol, a Letter of Claim has to be sent to the professional who has to acknowledge receipt within 21 days, and then provide a Letter of Response within three months. You may also need to send a Preliminary Notice of Claim depending on the circumstances of your claim. Claims against professionals are often dealt with by their professional indemnity insurers.



Limitation

There are crucial rules relating to when court proceedings must be commenced to avoid a claim being statute barred by the Limitation Act 1980. Failure to issue proceedings within the limitation period will generally be fatal to the claim. Calculating the limitation period is a crucial part of dealing with a professional negligence claim.

How much does it cost?

Like all pieces of litigation legal work, the cost depends upon various factors. One of those is the complexity of the case. Claims may be more complicated if there are several professionals involved as defendants, if the breach of duty is not straightforward, or if there are difficult legal arguments relating to the recoverability of losses. We will discuss costs with you prior to undertaking any work on your behalf and keep you updated as to costs as the matter progresses. In certain cases, we will undertake work under a Conditional Fee Arrangement (no win no fee).

In the majority of cases, a negotiated settlement is agreed. Sometimes this is following mediation which saves substantial costs of litigation and can enable an agreement to be reached more quickly and with greater certainty.



You're in safe hands!

If you would like further information about how we can help you with your **Professional Negligence Claim**, or if you have any questions, please don't hesitate to contact a member of our **Dispute Resolution Team** today.

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