

# Suing For Mistakes

**If you have suffered a loss as a result of a professional or expert who fell below their duty of care to you in their services, you may have a claim, writes James Seymour, Solicitor.**

Professional negligence is where a professional person who is engaged by a client fails to exercise the skill and knowledge reasonably to be expected of an ordinary professional in that field of expertise. A claim for professional negligence usually arises where that failure on behalf of the professional results in the client suffering a loss. Such a claim is also known as a professional negligence suit. These pertain to mistakes made by professionals such as engineers, accountants, quantity surveyors, estate agents, doctors, dentists or any other expert.

The time-limit for issuing proceedings in a professional negligence case is six years from the date on which the negligent act occurred. Unlike other claims for compensation arising out of negligence, a claim for professional negligence is not submitted to the Injuries Board. Most claims for professional negligence are processed either through the Circuit Court or the High Court, depending on the level of damages anticipated in each case.

If you think that you have a possible professional negligence claim, it is important that you obtain a copy of your file from the relevant professional/expert as soon as possible. You will need a copy of the file in order to brief the appropriate independent expert to review your case and give you an opinion as to whether the relevant professional against whom you are now alleging negligence, was in fact, negligent.

The High Court has made it very clear that an independent expert report should be obtained before issuing proceedings for professional negligence. While this is an expense at the beginning of the case, it does have the advantage of confirming whether you have a good case or not. It is better to sustain the cost of an independent expert

report and find out that you have no case at an early stage rather than to find out that you have no case when you're on the steps of court having incurred substantial legal costs.

Because of the complexity of a professional negligence claim, it is strongly advisable that before you issue any court proceedings, you engage the services of an experienced expert witness, ideally one who specialises in the same field of expertise as that of the professional against whom a claim of negligence is now being made. Because the relevant field of expertise in Ireland can be quite small, it is usually appropriate to engage a professional from outside the area where the allegedly negligent professional resides/practices.

In a professional negligence claim, you have to show that the services provided fell below the reasonable standard of service. You also have to show that as a direct result of the negligence of the professional, you have suffered a real economic loss.

The person making the claim has a number of legal hurdles to overcome in order to succeed in his or her case. These include that a duty was owed, a duty was breached, that breach caused a loss and that there was a financial loss. Without damages (financial loss), there is no basis for a claim, regardless of whether the professional was negligent.

If you are successful in your claim, damages may include compensatory and punitive damages. In a professional negligence case, the court will be strictly concerned with pure economic or financial loss. Punitive damages (also known as exemplary damages) are only awarded in the event of wanton and reckless conduct.



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