5 Things Solicitors Should Know When Handling Skin Cancer Clinical Negligence Claims

Drawing on more than 25 years of medico-legal experience, Consultant Clinical Oncologist Dr Stephen Falk explores the causation issues that can make skin cancer clinical negligence claims more difficult than they first appear - particularly where there has been a clear delay, but the effect of that delay on treatment or prognosis is uncertain.

Dr Falk has prepared medico-legal reports for both claimant and defendant solicitors, including opinions on causation, condition and prognosis, and has attended trial on multiple occasions. His specialist clinical interests include skin cancer, radiotherapy and chemotherapy, alongside a range of other tumour sites.

This guide draws on the practical insights from his INNEG webinar, Skin Cancer Clinical Negligence Claims: Causation, Delay & Prognostic Uncertainty, examining five issues solicitors should consider when assessing whether a delay has caused a recoverable loss, how the “but for” scenario should be tested, and when more specialist oncology evidence may be needed.

This eBook has been produced by INNEG and is based on key medico-legal insights shared during our webinar, Skin Cancer Clinical Negligence Claims: Causation, Delay & Prognostic Uncertainty, presented by Dr Stephen Falk, Consultant Clinical Oncologist.

Introduction

Skin cancer claims often begin with an apparent delay in referral, diagnosis or follow-up. But identifying a delay is only the start.

For solicitors, the more difficult task is establishing what difference that delay actually made, what evidence is needed to prove it, and whether the claim remains viable once causation and prognosis are tested.

Drawing on the medico-legal insights of Dr Stephen Falk, Consultant Clinical Oncologist and expert witness, here are five practical issues to consider when investigating these claims.

About Dr Stephen Falk

Dr Stephen Falk has worked as **a medico-legal expert since 2004,** providing opinions on causation, condition and prognosis for claimant and defendant solicitors. His work includes NHS complaint reviews and joint instructions, and he has attended trial on six occasions, including involvement in major group litigation.

Alongside his medico-legal practice, Dr Falk has **more than 30 years' experience in clinical oncology**, with specialist interests including skin cancer, radiotherapy and chemotherapy, as well as upper gastrointestinal, hepato-biliary, colorectal, lung and other cancers. His combined clinical and medico-legal experience is particularly relevant when assessing whether diagnostic delay has materially altered treatment, disease progression, prognosis or outcome in skin cancer claims.

CONTACT DR FALK

Do not assess the case on the delay alone

A long delay can look compelling, but it does not necessarily mean the claim will succeed.

Dr Falk discussed cases where breach was clear, including a failure to provide planned follow-up, but causation still failed because earlier review would probably not have prevented the progression or treatment that ultimately occurred.

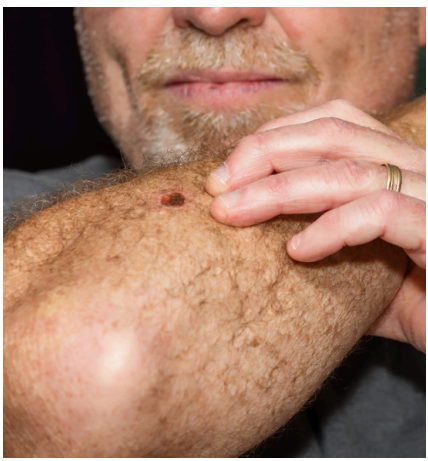
For solicitors, the first causation question should therefore be:

What would probably have happened if the claimant had been diagnosed or reviewed when they should have been?

Before investing heavily in the claim, establish whether earlier intervention would probably have resulted in:

- less extensive surgery;
- a different treatment pathway;
- reduced metastatic risk;
- improved prognosis; or
- avoidance of a particular injury or treatment burden.

If the answer is “probably not”, the existence of a delay may have limited value.



Build the chronology around the points that could change causation

The chronology should do more than record appointments.

Focus on the points where the claim could materially change:

- when the lesion was first reported;
- whether it changed in size or appearance;
- when symptoms such as bleeding, ulceration or itching appeared;
- when referral should arguably have occurred;
- when biopsy and diagnosis actually took place; and
- when treatment became more extensive or the disease progressed.

This gives the oncology expert something useful to work with.

Dr Falk's examples show why these matter: the relevant question is often not simply how many months passed, but **whether the disease was already sufficiently advanced at the earlier date that the same outcome would probably have followed anyway.**

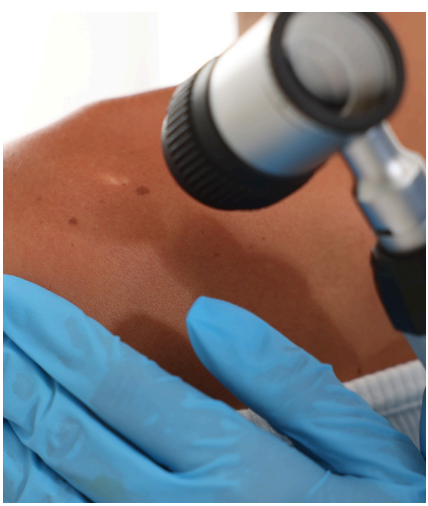
Ask the expert to define the “but for” treatment pathway

Generic causation questions produce generic answers.

Instead of asking only whether the delay caused harm, ask the expert to compare the actual outcome with the likely earlier pathway.

For example:

If diagnosis had occurred three, six or twelve months earlier, what treatment would probably have been required?



That can help establish whether the delay caused:

- a wider excision;
- reconstruction;
- radiotherapy;
- systemic treatment;
- amputation;
- increased functional loss; or
- additional pain and recovery time.

This can be important even where the claimant’s overall prognosis is unchanged.

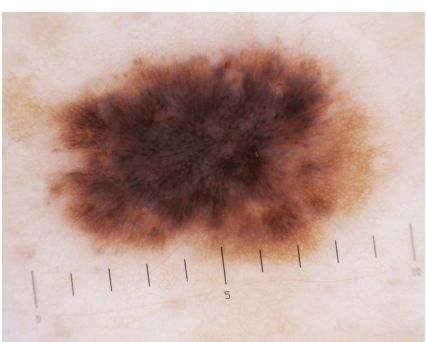
Dr Falk highlighted cases where the key issue was whether earlier diagnosis would genuinely have avoided the treatment ultimately required.

Be careful with melanoma claims based primarily on reduced life expectancy

Melanoma claims require particularly current causation evidence.

Dr Falk explained that modern immunotherapy has substantially changed outcomes for metastatic melanoma, with long-term survival now far better than historic figures would suggest.

That means a claim framed around a historic assumption of shortened life expectancy may become weaker as the claimant responds successfully to treatment.



Solicitors should therefore obtain up-to-date evidence on:

- treatment response;
- current disease status;
- duration of remission;
- prognosis;
- treatment toxicity; and
- ongoing physical or psychiatric consequences.

Where survival causation becomes difficult, the stronger claim may lie in the additional treatment burden or injury caused by the delay, rather than loss of life expectancy itself.

Dr Falk noted that melanoma claims may increasingly focus on pain, treatment toxicity and psychiatric injury where the patient has responded well to modern therapy.

Match the expert to the actual issue in dispute

"Oncology expert" is too broad a category.

Dr Falk explained that oncology practice has become increasingly site-specific and that, in general, solicitors are on stronger ground where the instructed oncologist has actually treated the cancer type involved.

Before instruction, ask:

- Does the expert currently or recently treat this type of cancer?
- Is the dispute really oncology, dermatology, pathology or surgery?
- Is the issue breach, causation, prognosis or treatment consequences?
- Will more than one discipline be required?

A delayed skin cancer claim may need different experts for different stages of the case.

For example, a dermatologist may be required to address whether the lesion should have been referred or biopsied, while an oncologist may be better placed to determine **whether that delay actually changed the claimant's outcome.**

The Core Question for Solicitors

Keep returning to one question:

What can we prove would probably have been different but for the alleged delay?

That question should shape the chronology you build, the records you obtain, the expert you instruct and the way causation is pleaded.

A delay may look significant on paper. The strength of the claim depends on whether expert evidence can connect that delay to a **materially different treatment, injury or prognosis.**

Stronger Cases Start with the Right Medical Expert

INNEG's Oncology Expert Witness Panel includes **1,144 experts,** giving solicitors access to specialists across the disciplines commonly required in complex cancer and delayed diagnosis claims.

Our panel includes experts in:

- Breast Surgery - **224 experts**
- Colorectal Surgery - **134 experts**
- Gastroenterology - **147 experts**
- General Surgery - **503 experts**
- Haematology - **124 experts**
- Oncology - **218 experts**
- Pathology - **60 experts**
- Radiology - **322 experts**
- Urology - **236 experts**
- Gynaecological Oncology - **124 experts**

Where a case requires a multidisciplinary approach, we can help identify the right combination of experts to address breach of duty, diagnostic delay, pathology, imaging, causation, treatment options, disease progression, condition and prognosis.

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