

Medical Accidents

Your rights if you have been injured during treatment



*Community
Legal Service*



If you have had medical treatment which went wrong or didn't work properly, you may be able to get compensation for your injuries. This leaflet explains what you can do if you've suffered from a medical accident.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 18 for sources of information and advice.

What is a medical accident?

If something goes wrong when you are having medical treatment, this is sometimes called a 'medical accident' or 'adverse event'. If your treatment has not worked or there have been complications, it does not always mean that there has been a mistake, or that someone is to blame. In some cases, you have to accept errors or complications as unavoidable risks of the treatment and the doctor or other healthcare professional would not be considered to blame. For example, if you have major heart surgery, there are risks because of the surgery. However, there can be complications with minor procedures too.

'Clinical negligence' is the legal term used to describe a medical accident where a patient has been harmed, not because of an unavoidable complication, but because a doctor or other healthcare professional has not given the proper standard of care. It doesn't mean that this person was incompetent. It can just mean that in a particular case, they made a mistake which they shouldn't have. Clinical negligence includes things like:

- making a mistake during surgery;
- giving you the wrong drug; or
- making the wrong diagnosis or delaying a diagnosis unnecessarily.

Clinical negligence can also include not doing things that should be done, such as:

- not giving you treatment you needed;
- not getting your consent (agreement) to treatment; or
- not warning you about the risks of a particular type of treatment.

If you or a relative have been the victim of clinical negligence, you may be able to claim compensation.

What should I do if I have been a victim of a medical accident?

If you have been injured during treatment, you must first make sure that you are getting the right treatment to try and correct the injury. You may need to get a second opinion or ask your doctor to refer you to another hospital or clinic.

You will probably be feeling distressed and confused by what has happened, and will need advice and support. This could be from friends or family or from specialist support groups. You could also talk to your doctor about what has happened to see if they can help, if you think they will be understanding.

If you or your partner cannot work because of the accident, you should get advice about claiming benefits and how to deal with any debts that have built up. Your local Citizens Advice Bureau is a good place to start. There are also two Community Legal Service Direct leaflets that could help:

- 'Dealing with Debt'; and
- 'Welfare Benefits'.

What action can I take?

After you have taken steps to take care of your health, you should think about what you want to do next. You should think first about what you want to happen. You might want:

- an explanation and an apology;
- to make sure that the same mistake is not made again (which might include the person responsible being disciplined or retrained, for example); or
- compensation.

You might first think of going to a solicitor. But before you do this, you should think about the other options for working out what happened, and what you want done about it.

It is important to understand that taking legal action is only about getting compensation. Other things, like an apology, might be more important to you. And, once you start a legal claim, you may not be able to take another course of action. Also, you may need to make some enquiries about what happened to you first, before you know whether you are likely to have a case for a legal claim.

How do I find out more about what happened to me?

You should first get a detailed explanation from your doctor or from the healthcare professional who was involved in your treatment. The doctors' professional code of conduct says a doctor should give you an explanation of what happened during your treatment and, if necessary, an apology. But this doesn't always happen, and you might not get all the information you want. If so, there are several other steps you can take.

The NHS complaints procedure

Unless your treatment was private, you can make a complaint using the NHS complaints procedure. If you had your treatment through an NHS Foundation Trust, the Trust may have its own complaints procedure, though this is likely to be similar to the NHS procedure.

You should be able to get details of how to complain from your GP's practice, the clinic or the hospital. If you can, you should put your complaint in writing, and include any questions you want answered.

You should make your complaint within six months of your injury. However, a healthcare provider should normally still look at a complaint made after this – particularly if there is a good reason why you could not complain before.

Often complaints take many months to resolve. If you are making a complaint but are also considering legal action, it is very important that you do not wait too long before investigating the possibility of a legal claim. This is because there are strict time limits. See 'How long do I have to claim compensation?' on page 9.

Get your medical records

Ask for copies of your medical records from your doctor or from the hospital or clinic that treated you. You have a legal right to these under the Data Protection Act 1998 (or in some cases, the Access to Health Records Act 1990). You may have to pay up to £50 to get copies of your medical records, including copies of any X-rays and scans you may have had done.

Contact a professional organisation

You may want to complain about an individual doctor or other healthcare professional, for example, because you think they acted unprofessionally or are a danger to other patients. Most healthcare professionals are members of a professional organisation, so you should think about complaining to one of these. There are different organisations for different professions. For example, the General Medical Council (GMC) for doctors, or the Nursing and Midwifery Council (NMC) for nurses, midwives and health visitors. See 'Further help' on page 18 for details.

If you are complaining because a relative has died during or after treatment, contact the coroner. See 'What should I do if a relative has died as a result of a medical accident?' on page 15.

Bear in mind that when you make a complaint, you might not get an explanation that is as full or as accurate as you would like. To get the best out of a complaints procedure, it is a good idea to get specialist advice.

You can get advice from:

- The Independent Complaints Advocacy Service (ICAS). This has now taken over the complaints role of Community Health Councils in England. In Wales, you can still get advice and help with complaints from the Community Health Councils.
- The Patient Advice and Liaison Service (PALS). This is based in all NHS trusts, and can help you resolve everyday concerns and problems with NHS care that you do not want to make a formal complaint about.
- Action against Medical Accidents (AvMA). This is a charity that can give you support and medical information to help you make an effective complaint. It can also give you expert legal help if you want to claim compensation.
- Other specialist health organisations. If there is a charity or support group for people with your medical condition, it may be able to offer advice about whether the treatment you received was appropriate.

- Medical libraries and medical websites. If you are confident about dealing with medical terms, medical libraries and websites can give you information to help you prepare your complaint.

Keeping a record

If you think you may have suffered a medical accident, it is a good idea to keep a record or diary of everything that happens to you during and after your treatment. This will help if you decide to make a complaint. It will also help your solicitor when investigating your case if you decide to make a legal claim.

If you are thinking about taking legal action, you should also keep a record of any extra money you have to spend because of your injury, for example, taxi fares, lost earnings and care costs. Photographs of injuries can sometimes be useful too, especially for legal action. If you are not sure about whether photographs are needed, or if it would be distressing, ask a clinical negligence solicitor for advice.

When can I claim compensation?

If you have been injured physically or psychologically by a healthcare professional's negligence, you may be able to claim compensation. The injury needs to be serious enough to make it worthwhile paying the costs of making a claim. It is probably not worth taking legal action if your injury:

- is fairly minor and you recover within a few days or weeks; and
- hasn't caused you to lose a lot of money, such as earnings from time off work.

If you are not sure about whether to try to claim compensation, get advice from a clinical negligence solicitor – many solicitors offer free initial advice. You can also get free advice from Action against Medical Accidents.

It is important to understand that a clinical negligence action is only about claiming compensation.

The courts cannot:

- discipline a healthcare professional by, for example, stopping a GP from practising;
- force a hospital to change how it works; or
- make a doctor apologise.

If compensation is not your main aim, then you should seriously consider other actions. You could, for example, complain to the General Medical Council if you think that your doctor acted unprofessionally or made a serious mistake and should be disciplined.

What if my problem was not caused by a doctor?

You can claim for clinical negligence against any healthcare professional who hasn't given you the right care or treatment and this has injured you.

This includes, for example:

- health visitors;
- nurses;
- midwives;
- physiotherapists;
- osteopaths;
- private practitioners;
- mental health care teams;
- laboratory services;
- dentists;
- medical or dental technicians;
- opticians; and
- the ambulance service.

How do I claim compensation?

There is no system in the UK for automatically paying compensation to people who have suffered a medical accident. Sometimes, a hospital might admit that they have made a mistake and offer you compensation, but this is usually for relatively minor injuries or losses. In most cases, you will need to make a legal claim for 'clinical negligence'. This could change in the future.

How do I decide whether to take legal action?

If your solicitor says you have grounds for a legal claim, you still need to think about whether you should take legal action. It is not a decision you should take lightly. Making a legal claim can be very stressful. You will have to go over what has happened to you many times, and this can be very upsetting.

Taking legal action can sometimes affect your ongoing treatment. Doctors and other health professionals may act differently towards you if they know you are suing.

You need to think about whether you can afford to pay for legal action and the risk of losing money if you lose your case or only prove part of your claim. When you start legal action, there is no guarantee that you will win your case. If you win, there is no guarantee that you will get the amount of compensation you want.

However, as well as getting compensation, the legal investigation can sometimes help to get an explanation of what happened to you if you haven't already done so. Many victims of a medical accident feel they have no choice but to take legal action because they:

- need money to pay for extra care or equipment they need; or
- have already lost a lot of money – lost earnings, for example.

Can I bring a legal claim without using a solicitor?

It is almost impossible to bring a clinical negligence claim without using a solicitor. Clinical negligence claims are usually very complicated, mainly because of the complex medical evidence you will need to present your case. And if you do bring your own case and lose, you face the risk of having to pay the other side's costs.

How do I find the right solicitor?

You need to use a solicitor who specialises in such cases, and who understands the medical and legal issues. You should use a clinical negligence solicitor who has been accredited by the Legal Services Commission. These solicitors will belong to the clinical negligence panel of:

- The Law Society; or
- Action against Medical Accidents (AvMA).

Only solicitors who have met the Legal Services Commission's quality standards can take on publicly funded cases. See 'Further help' on page 18 for information on how to find these solicitors, and for more information about the Legal Services Commission.

What other help can the solicitor give me?

Specialist clinical negligence solicitors can give advice on related issues. These can include:

- if the hospital or doctor wants to stop treatment;
- the Human Rights Act and your rights as a patient;

- the products involved in your treatment, for example, if you have been injured by a faulty drug or by medical equipment;
- helping you make a formal complaint to a professional regulatory organisation such as the General Medical Council; and
- your local health authority not giving you the treatment you want.

How long do I have to claim compensation?

You must bring a claim for clinical negligence within three years of the date of your medical accident or 'adverse event'. The three-year time limit starts from either:

- the date when you had your medical accident or the treatment that caused your injury; or
- the date when you could first reasonably have realised that you had suffered an injury wrongfully. This is called your 'date of knowledge'.

It is always safer to assume that the three-year time limit runs from the date of the treatment that caused your injury, unless a solicitor advises you otherwise.

When the three-year time limit doesn't apply

For children, the three-year time limit does not start until their 18th birthday. This means, for example, that a child who was injured when they were born would have until they were 21 to start legal action. But they don't have to wait until then. Before they are 18, a parent or other person close to them can make a claim for them. This is called acting as their 'litigation friend'.

Also, if the case involves a person who cannot manage their own affairs because of a mental disability, the three-year time limit doesn't apply until (and unless) they get over their mental disability.

The courts can, in extreme circumstances, allow you to bring your claim after the three-year time limit. You must not rely on this happening, but if there was a very good reason why you weren't able to bring your claim within three years, you should still talk to a solicitor about the possibility of starting a claim.

You should try to get a solicitor working on your case as soon as you can and long before the end of the three-year period because:

- the solicitor will need time to investigate and prepare your case before they can start the court proceedings; and
- the earlier your case is investigated, the more likely it is that documents needed to prove your case will still be available, and that people will be able to remember what happened.

How will the solicitor assess my case?

When you first contact a solicitor, they will make a first assessment to decide whether they want to take on your case, based on how strong your case is. You can help the solicitor by putting together as much information as possible before you contact them. The solicitor will base their decision on:

- what you can tell them about what happened;
- your medical records, if you have them;
- the medical and legal issues;
- how much your claim could be worth;

- any extra information you have, such as complaints letters or other papers to support your case;
- whether your claim is within the legal time limit; and
- how your legal costs will be paid.

If you speak to several solicitors but they can't or won't help you, you can contact Action against Medical Accidents for advice. See 'Further help' on page 18 for details.

Before a solicitor takes on your case, they will need to make sure that:

- your case has a good legal basis, and therefore has a reasonable chance of success; and
- the amount of compensation you could claim is enough to justify the legal costs.

What if I can't afford to pay for a solicitor?

Investigating a claim for clinical negligence can cost many thousands of pounds. If you can't afford to pay for this yourself, there are several ways of getting help with the costs.

Public funding

If you are on a low income, you may be able to get help with the legal costs through the Community Legal Service (CLS). You'll have to show that you have a reasonable chance of winning your case and that the possible value of your claim is enough to justify the costs. If the compensation you would receive is likely to be less than £10,000, you are most likely to get help if the issues are straightforward and can be resolved quickly. See 'Further help' on page 18 for more about the Community Legal Service.

Trade union help

If you are a member of a trade union or similar type of organisation, it may be able to help you with legal costs.

Legal-expenses insurance

You should check your insurance policies, especially your household insurance policy, to see if they include legal-expenses cover for personal injury claims. These policies can provide cover for legal costs up to a set limit. Your insurance company may want you to use one of their solicitors, but you should try to make sure that the solicitor is a member of one of the specialist clinical negligence panels.

'No-win, no-fee' agreements

These agreements, officially called 'conditional-fee agreements', mean that you do not have to pay your solicitor's fees if you don't win your case. However, because clinical negligence claims are often very complicated, most solicitors won't usually enter into a conditional-fee agreement until there is strong evidence that you will win your case.

This means that you may have to pay several thousand pounds to collect evidence before a solicitor will be in a position to:

- tell you whether your claim has a good chance of success; and
- offer to continue working on your case under a conditional-fee agreement.

It is important to realise that a conditional-fee agreement does not protect you from having to pay the other side's legal costs if you lose your case. So, unless you already have insurance, you will almost certainly have to take out insurance to protect you against the risk of having to pay the other side's costs if you lose. This is called 'after-the-event' insurance and it can be expensive.

For more about conditional-fee agreements and legal-expenses insurance, see the Community Legal Service Direct leaflet 'No-win, No-fee Actions'.

What do I have to prove to claim compensation?

To make a legal claim for compensation, you have to prove two things. These are that:

- the care you received was below the standard to be expected of a reasonably competent healthcare professional practising in that area of medicine ('negligence'); and
- you have suffered a physical or psychological injury as a direct result of the negligent act or acts ('causation').

You cannot claim compensation just because someone has done something wrong. You have to prove that this has caused you an injury. For example, a doctor may be found to be negligent if he didn't properly examine a sick child who was later diagnosed as suffering from meningitis. If the parents decide to take legal action because their child suffers long-term complications, their claim would succeed only if they could prove that an earlier diagnosis would have prevented the child's injuries. The fact that the doctor didn't examine the child properly is not enough on its own.

How will the solicitor investigate my claim?

The main evidence you need for a clinical negligence claim will come from independent medical experts. These are doctors or other healthcare experts who can give an expert opinion on your case. They will base their opinion on:

- your medical records;
- your statement about what has happened; and
- any other documents supporting your case.

You may have to be examined by:

- your expert or experts; and
- experts working for the hospital or doctor you are claiming against.

If your solicitor can't find any medical experts who will support your claim, your claim will not succeed.

What can I claim compensation for?

You can claim compensation ('damages') for any injuries or losses that you can prove were the direct result of the healthcare provider's negligence. This could include compensation for:

- pain and suffering, including, for example, ongoing treatment and further operations;

- if you can't carry out daily activities or hobbies (called 'loss of amenity');
- loss of earnings;
- costs of nursing care, including care that your family provides, special equipment, medical care or help that you need to carry out daily activities;
- costs of adapting your home; or
- psychological injury.

If the case is about someone who died because of clinical negligence, you can claim the following:

- If your husband, wife or a child under 18 died, you can claim bereavement damages of £10,000. If the person died before April 2002, you can claim only £7,500;
- If you were financially dependent on the person who died, you can claim loss of dependency; or
- a claim on behalf of the person's estate (the assets they leave when they die).

When you first see the solicitor, they will probably be able to give you only a rough idea of how much compensation you might get. They will have to take into account certain social security benefits you get because of your injury, such as Income Support. This is because this could affect how much compensation you will receive.

Will I have to appear in court?

There is a good chance that your case won't go to trial, where you would have to appear in court.

Until a few years ago, clinical negligence claims could take years to deal with. However, many cases are now settled more quickly, often within one to two years and at less cost. This is because of rules introduced in 1999, which cover the way clinical negligence cases are run.

More and more cases are now settled before legal proceedings are issued, called the 'pre-action' stage. Under the new rules, you and the organisation you are claiming against (the defendant) are encouraged to share information about your complaint to try and settle the matter quickly.

Your solicitor will need to start formal legal proceedings if:

- the defendant doesn't accept that they should pay you compensation; or
- you are close to the three-year time limit.

Once this happens, your case will run on a timetable set down by the court. But your case is still unlikely to end in a trial, where you would have to give evidence. Most cases are settled before the date set down for a trial.

To help people reach an early settlement, the courts also want to encourage both sides to look at other ways of settling disputes, including mediation. Mediation is where an independent person comes in to help both parties agree on how to settle the matter. For more ways of settling disputes without going to court, see the Community Legal Service Direct leaflet, 'Alternatives to Court'.

What can I do if my treatment was private?

If your treatment was private, you need to follow the same steps as you would for NHS care, except that you won't be able to use the NHS complaints procedure. However, private hospitals and private clinics must by law have their own complaints procedure. If you are unhappy with the way your complaint was dealt with or have concerns about the standard of care, you should contact.

- the Healthcare Commission (in England); or
- the Care Standards Inspectorate for Wales. See 'Further help' on page 18 for details.

If you are thinking about legal action, you may have claims against both your private doctor and the hospital or clinic where you were treated. Also, since you have a contract with your private doctor or private hospital, or both, you may also be able to sue for breach of contract, as well as for negligence. The legal time limit for breach of contract is six years, but for most clinical negligence cases, you should assume that the three-year time limit will apply. See 'How long do I have to claim compensation?' on page 9. You will need to discuss this with a solicitor if you think it applies to you.

What should I do if a relative has died as a result of a medical accident?

If a relative has died, you can take the same steps you would take if you were injured during medical treatment, but you should also arrange to contact the local coroner.

Coroners are responsible for investigating any death where someone has not died from natural causes (except for stillbirths). You should tell the coroner about your concerns as soon as you can, because they will normally ask for a post-mortem examination. The coroner will carry out a first inquiry to decide whether an inquest should be held. This is a public hearing to find out the cause of someone's death.

If you have a solicitor, they can contact the coroner for you, but you can do it yourself. Even if you plan to use a solicitor to help you with your case, you do not have to wait until you find a suitable one before contacting the coroner. The local coroner should be listed in the phone book.

If you can, you should get advice from a clinical negligence solicitor or Action against Medical Accidents at an early stage. The solicitor can contact the coroner and explain why there should be an inquest. The solicitor can also arrange for a second post-mortem if it is needed. If an inquest is held, your solicitor can arrange for a legal representative to ask questions for you.

If you cannot afford a solicitor, you may be able to get Community Legal Service funding to pay for any legal help you might need for the inquest. See 'Further help' on page 18 for more information.

What if my injury was caused by faulty medical equipment?

If your injury was caused by faulty medical equipment, such as an artificial hip joint, you may be able to claim under the Consumer Protection Act 1987. This also applies to medical products, for example if you were injured or made ill from a blood product.

If this is the case, you would make your claim against the company that manufactured, imported or supplied the product, not the hospital or doctor who treated you. You do not have to prove negligence in this type of claim. However, you will still need a specialist solicitor to bring a claim. Action against Medical Accidents or the Law Society can help you find one of these solicitors.

What if I want to make sure that the same mistake is not made again?

Whether or not you want to claim compensation, there are steps you can take if you want to make sure that the same mistake is not made again. You may be mainly concerned about:

- a doctor or other healthcare professional involved in your treatment; or
- the clinic or other organisation where you were treated.

See 'Contact a professional organisation' on page 5 if you want to complain about a doctor or other healthcare professional.

If you are concerned about a clinic or an organisation, you can complain to one of the bodies responsible for improving the quality of care.

- If the organisation is in England, contact the Healthcare Commission.
- If the organisation is in Wales and is an NHS organisation, contact the Healthcare Inspectorate for Wales.
- If the organisation is in Wales and is a private or voluntary one, contact the Care Standards Inspectorate.

Another body, the National Patient Safety Agency, collects information on medical accidents through a confidential reporting system so that future accidents can be prevented. However, it does not investigate individual complaints.

See 'Further help' on page 18 for details of these organisations.

Further help

Community Legal Service Direct

A free, easy-to-use service to help you solve your legal problems.

Call: 0845 345 4 345
to speak to a qualified legal adviser about Welfare Benefits, Debt or Education or find local advice services for other problems.

Log on at: www.clsdirect.org.uk
to search for a quality local legal adviser or solicitor or find links to other sources of online information and help.

Action against Medical Accidents (AvMA)

phone: 0845 123 23 52
www.avma.org.uk

Independent Complaints Advocacy Service (England)

Provides independent advice and help with making a complaint about an NHS service. You should be able to get details from your local healthcare provider or PALS office (see right).

Community Health Councils (Wales)

Provides advice and help with making a complaint about an NHS service in Wales. You can get details of your local CHC from the Board of Community Health Councils.
phone: 0845 644 7814
www.wales.nhs.uk

General Medical Council (GMC)

For complaints about individual doctors.
phone: 020 7580 7642
www.gmc-uk.org

Healthcare Commission (Commission for Health Audit and Inspection) (England)

phone: 0845 601 3012
www.healthcarecommission.org.uk

Care Standards Inspectorate for Wales

Your local office is listed in the phone book under 'Care Standards Inspectorate for Wales'.

www.wales.gov.uk/subisocialpolicycarestandards

Healthcare Inspectorate for Wales

www.hiw.wales.gov.uk

National Patient Safety Agency (NPSA)

phone: 0800 015 2536
www.npsa.nhs.uk

NHS Direct

For information on medical conditions, local and national self-help and support groups, your rights as a patient and how to make a complaint.

phone: 0845 46 47
www.nhsdirect.nhs.uk

Nursing and Midwifery Council (NMC)

For serious complaints about nurses, midwives and health visitors.

phone: 020 7637 7181
www.nmc-uk.org

Patient Advocacy and Liaison Service (PALS)

Contact your local NHS trust or NHS Direct on 0845 46 47 for details.

The Health Service Ombudsman

Contact them if you are not happy with the way your NHS complaint was investigated.

phone: 0845 015 4033 (England)
phone: 0845 601 0987 (Wales)

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the CLS Direct website at www.clsdirect.org.uk

*Community
Legal Service*



The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

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COMMISSION

The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCleafletline@stivesdirect.com or Fax 01732 860 270



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