

Your rights if you have been injured as a result of treatment

If you have had medical treatment which went wrong or caused you injury, you are entitled to full explanations and 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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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 negligence is involved. In some cases, you have to accept errors or complications as unavoidable risks of the treatment. For example, if you have major heart surgery, you can expect that there will be 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 a complication that could not have been avoided, but because a doctor or other healthcare professional has not given the proper standard of care. It doesn't always mean that this person was incompetent. It can just mean that in a particular case, they made a mistake that they shouldn't have.

Clinical negligence includes things such as:

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

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. See section '**When can I claim compensation**'

What should I do if I have experienced 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 in need of advice, information 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 feel comfortable about this and think that they will be understanding. AvMA can also put you in touch with relevant support groups or you can join our contacts register and mutual support network. See section '**Further Help**'

If you or your partner are unable to work as a result of the accident, you should get advice about benefits that you may be entitled to and how to deal with any debts that have built up. Your local Citizens Advice Bureau is a good place to start.

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); and/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 inquiries about what happened to you first before you know whether you would have a case for a legal claim.

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

You should first ask your doctor (or the healthcare professional who was involved in your treatment) for a detailed explanation. Doctors are bound by their professional code of conduct to give you an explanation of what happened during your treatment and, if appropriate, an apology. But this doesn't always happen, and you might not get all the information you want. If that is the case, there are several other steps you can take.

Informal Help

If it is difficult to deal with the people who treated you, you could ask for the help of a Patient Advice & Liaison Officer (PALS) or Customer Services Manager if there is one. See '**Further Help**'

Complaints Procedure

Unless your treatment was private, you can make a complaint using the NHS Complaints Procedure. Details of how to do this should be available from your GP practice, clinic or hospital. If you can, you should put your complaint in writing, and include any specific questions that you want answers to. For further information on the NHS Complaints Procedure, see our specialist leaflet '**NHS Complaints Procedure**'. For complaints about private treatment, see section '**What can I do if my treatment was private?**'

With the NHS, there is a time limit of six months for making a complaint from the time you knew you had cause to complain (or one year in total), but 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.

Sometimes complaints can take many months to resolve. If you are making a complaint but are also considering legal action, it is important that you do not allow your legal claim to go outside the three year legal time limit whilst your complaint is being investigated. See section '**How long do I have to claim compensation?**'

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 be given these under the Data Protection Act 1998 (or in some cases, the Access to Health Records Act 1990) but you may be charged a £10 access fee and photocopying costs. For more information on obtaining medical records, see our specialist leaflet '**Access to Medical Records**'.

Contact a professional organisation

Your complaint may centre on an individual doctor or other healthcare professional, for example, because you think they acted grossly unprofessionally or are a danger to other patients. If so, you should think about complaining to their professional regulatory organisation if they are a member of one. These organisations will only investigate if there is a question about the individual's fitness to practise. 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 section '**Further help**' for details. For further information see our specialist leaflet '**Health Professionals' Fitness to Practise**'.

If you are dealing with a case where a relative has died during or after treatment, contact the Coroner, see section '**What should I do if a relative has died as a result of a medical accident?**'

Bear in mind that making a complaint might give you an explanation, which may not be as full or as accurate as you would like. In order to get the best out of a complaints procedure, it is a good idea to get specialist advice.

You can get advice from the following.

- Local advice bodies can help with NHS complaints and may be able to help draft letters or accompany you to meetings. Independent Complaints Advocacy Service (ICAS) in England. In Wales, Community Health Councils provide advice and assistance with complaints. In Scotland, you can contact your Health Council and in Northern Ireland your Health & Social Service Council.
- Action against Medical Accidents (AvMA): a charity which can direct you to other sources of specialist practical or emotional support as well as providing medical information and legal help in making an effective complaint, or seeking compensation.
- For contact details, see '**Further Help**'.

Keeping a record

If you think that you may have been the victim of 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 be helpful 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. But don't take photographs of an injury or condition if it would be distressing to you, or the person with the injury if you are helping them.

When can I claim compensation?

If you have been injured, either physically or psychologically, because of a healthcare provider'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**
- **you don't lose a lot of money (e.g. earnings) because of it.**

You should get advice from Action against Medical Accidents, if you are not sure about whether you should think about seeking compensation. If necessary, we can refer you to a specialist clinical negligence solicitor.

It is important to understand that a clinical negligence action is only about claiming compensation. The courts cannot:

- **discipline a healthcare professional (for example, stop 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 can still consider other actions (for example, a complaint to the General Medical Council if you think that your doctor acted unprofessionally or made a serious mistake for which they should be disciplined). If you have serious concerns about the quality of care being provided by an NHS organisation, you may also want to report your concerns to the Healthcare Commission - the body responsible for improving the quality of care within the NHS. For contact details, see section '**Further Help**'.

What if my problem was not caused by a doctor?

Clinical negligence does not just cover treatment provided by a doctor. You can claim for clinical negligence against any healthcare professional who hasn't given you the right care or treatment, which 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 been the victim of a medical accident. Sometimes, a healthcare provider might admit that they have made a mistake, and offer you money but this is usually for relatively minor injuries or losses without involving the legal system. This is often called an “ex-gratia” payment. But in most cases, you will need to make a legal claim for 'clinical negligence' (also called 'medical negligence').

Ex gratia payments

Ex gratia payments have several benefits, the main one being that you don't have the cost and stress of taking legal action. However, there is no guarantee that you will be offered an ex gratia payment (even if you ask for it) or that what you get would be as much as you could get through the courts.

If you are offered an ex gratia payment, speak to AvMA or a clinical negligence solicitor before accepting it. If you accept it, it usually means that you cannot take legal action later on.

How do I decide whether I should take legal action?

Note: the legal system in Scotland is slightly different to the rest of the UK, however, many of the following principles still apply. Refer to our specialist leaflet on Scotland or contact us for advice.

If your solicitor advises you that 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 is stressful. You will have to go over what has happened to you many times, and this can be traumatic and upsetting.

Taking legal action can have an effect on 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. When you start legal action, there are no guarantees that you will win your case, or, if you do win, that you will get the amount of compensation that you want.

However, as well as getting compensation, the legal investigation can sometimes help to get an explanation for what happened to you if you haven't otherwise been able to. Many people who have been the victims of a medical accident have no choice but to take legal action:

- so they can pay for care or equipment they need; or
- where they have already lost a lot of money (through lost earnings, for example).

Can I bring a legal claim without using a solicitor?

It is extremely difficult to bring a clinical negligence claim yourself, without using a solicitor. Clinical negligence claims are almost always very complicated, mainly because of the complicated medical evidence that you will need to present your case. And if you do try to bring your own case and you lose, you face the risk of having to pay the other side's costs. In extreme cases, the courts may give you advice, for example, where you don't have your own specialist legal assistance, because:

- you don't have enough money; and
- you need to keep your claim alive until you can find more money or a new solicitor to act for you.

How do I find the right solicitor?

Because clinical-negligence claims are very complicated, you need to use a solicitor who specialises in such cases, and who understands the medical and legal issues involved.

Solicitors who have been approved to be on the Action against Medical Accidents (AvMA) Referral Panel are assessed and monitored by AvMA. We can put you in touch with an appropriate solicitor, or you can research them yourself. For contact details see '**Further Help**'.

What other help can the solicitor give?

Specialist clinical-negligence solicitors can also 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;
- product liability (for example, if you have been injured by a faulty drug or medical device);
- helping you make a formal complaint to a professional regulatory organisation (for example, the General Medical Council); and
- Problems where your local health authority or Primary Care Trust won't provide you with the particular treatment you want.

How long do I have to claim compensation?

You must bring a claim for clinical negligence within three years (called the 'limitation period'). The limitation period starts either from:

- when you had your treatment; or
- when you first realised that you had suffered an injury (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 time limit doesn't apply

In the case of children, the three-year limit does not start until their 18th birthday. This means that a child who was injured when they were born would have until they were 21 to take 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 on their behalf (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 limit doesn't apply until (and unless) they get over their disability.

The courts can, in extreme circumstances, allow your claim after the three-year limit. You can't rely on this happening, but if there was a good reason that 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 long before the end of the three year limitation period (within two years of the accident, if you can) 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.

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 be worth the legal costs, time and stress.

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

Investigating a claim for clinical negligence is expensive, and can cost many thousands of pounds. If you can't afford to pay for this yourself, there are a number of 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). Usually someone in receipt of state benefits will qualify, but 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 involved. If the compensation you would receive is likely to be less than £10,000, you may not get help unless there is a clear admission of guilt. .

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 house-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 need you to go to a solicitor on their list but you should try and make sure that the solicitor is a member of one of the specialist clinical-negligence panels. – ideally the AvMA Panel.

'No-win, no-fee' or 'conditional fee' agreements (CFAs)

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 very complicated, solicitors won't usually enter into a conditional-fee agreement until there is some 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 enter into a conditional-fee agreement. You may also have to take out insurance (called 'after-the-event' insurance) to protect you against the possibility of having to pay the other side's costs if you lose. This insurance alone can be expensive.

What do I have to prove to claim compensation?

To make a legal claim for compensation, you have to be able 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 specific 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, a claim would only succeed if it can be proved 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 which 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 hobbies or daily activities (called 'loss of amenity');
- loss of earnings;
- costs of nursing care including care provided by members of the family, 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:

- 'bereavement damages' of £10,000 (£7,500 for deaths before April 2002) if your husband or wife, or your child if they were under 18, died;
- loss of dependency if you were financially dependent on the person who died; or
- a claim on behalf of a deceased patient's estate.

When you first see the solicitor, they will probably only be able to give you 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) because this could affect how much compensation you will get.

Will I have to appear in court?

There is a good chance that your case won't reach the point of going to trial, where you would have to appear in court.

Until a few years ago, clinical negligence claims could take years to deal with, but new rules were introduced in 1999 covering the way cases like clinical negligence cases are run which has meant that cases are now concluded ('settled') more quickly, often within one to two years, and at less cost.

More and more cases are now settled at the 'pre-action' stage (before legal proceedings are issued). 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 up in a trial, and with you having to give evidence. Most cases are settled before the date set down for a trial.

To try and help people to reach an early settlement, the courts also want to encourage both sides to look at other ways of settling disputes, including mediation. For advice on ways of settling disputes without going to court, ask a solicitor or contact AvMA.

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, all private hospitals and private clinics are required to operate their own complaints procedure including information on how to take your complaint further. For further information see our specialist leaflet '**Private Healthcare**'.

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. You will need to discuss this with a solicitor if you think you are in this position.

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

As well as taking the steps you would take if you were injured during medical treatment, you should contact the local coroner.

Coroners are responsible for investigating any death where someone has not died from natural causes (though they do not investigate 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 or a public hearing should be held.

If you can, you should get advice from Action against Medical Accidents or a clinical negligence solicitor at an early stage. The solicitor can contact the coroner and put forward reasons as to why an inquest should be held. They 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 on your behalf.

If you cannot afford a solicitor, you may be able to get Community Legal Service funding to pay for legal help about the inquest. See section '**Further help**' for more information.

What if my injury was caused by faulty medical equipment?

If your injury was caused by a faulty medical device (for example, 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, your claim would be against the manufacturer of the product (or the importer or supplier), not the hospital or doctor who treated you. There are clinical negligence solicitors who specialise in this type of claim. Action against Medical Accidents will be able to help you find a solicitor, if you are in this situation.

Further help

Action against Medical Accidents (AvMA)

AvMA is the only charity specifically supporting people injured by medical accidents. [AvMA](http://www.avma.org.uk) employs a team of medically and legally trained caseworkers and support staff to help patients with their complaints about medical treatment including advice on potential legal action. AvMA maintains a panel of specialist clinical negligence solicitors and provides advice, information and training for lawyers as well as campaigning on behalf of medical accident victims and promoting better patient safety.

You can speak directly to an advice worker on our client advice line 0845 123 2352 at the cost of a local rate call (Mon-Fri 10am-5pm). At other times, you can request an information pack; visit our website www.avma.org.uk; contact us by e-mail admin@avma.org.uk; or write to AvMA, 44 High Street, Croydon CR0 1YB.

Patient Advice and Liaison Service (PALS) (England)

Based in and employed by NHS Trusts, PALS can provide assistance with day to day issues and concerns about NHS services. The aim is to solve problems on the spot wherever possible or to direct patients to the appropriate person or organisation to assist them. Ask your NHS Trust or Primary Care Trust for details of its PALS service.

Independent Complaints Advocacy Service (England)

A new service providing independent advice and help on making a complaint about an NHS service. Details of your local ICAS service should be available from your local healthcare provider or PALS office or from NHS Direct (see below). AvMA's helpline advisers will also be able to advise you of your local service.

Community Health Councils (Wales)

These are the community's watchdogs for health services in Wales. They can offer free confidential advice and help on making a complaint about an NHS service. Details of your nearest CHC can be obtained from the Association of Welsh Community Health Councils (AWCHC). Phone: 029 2023 5558.

Health & Social Service Councils (Northern Ireland): These perform a similar function as CHCs. Tel: 0800 917 0222

Health Councils (Scotland): Health Councils perform similar functions to CHCs. Contact Councils on Tel: 0141 225 6981

Healthcare Commission

The Healthcare Commission is also responsible for independent review of NHS complaints not resolved locally in England, and for investigating serious systems failures in England and Wales. It can also deal with complaints about private healthcare. Tel: 0845 601 3012

General Medical Council (GMC)

The regulatory organisation for doctors, that deals with complaints about individual doctor's fitness to practice/professional misconduct.

phone: 020 0845 357 3456.

www.gmc-uk.org

General Dental Council

The regulatory organisation for dentists. **Tel: 020 7887 3800. www.gdc-uk.org**

Nursing and Midwifery Council (NMC) The professional organisation for nurses, midwives and health visitors deals with serious complaints about members.

Tel: 020 7637 7181

www.nmc-uk.org

Health Professions Council

This body regulates 12 different health professions and can investigate complaints about serious professional misconduct by them.

Tel: 020 7582 0866.

www.hpc-uk.org

The Health Service Ombudsman

If you are not happy with the way your NHS complaint was investigated, you should contact the Health Service Ombudsman on the following telephone numbers:

0845 015 4033 (England)

01656 641150 (Public Service Ombudsman for Wales)

0800 34 34 24 (N.Ireland Ombudsman)

0800 377 7330 (Scottish Public Services Ombudsman)

NHS Direct

NHS Direct have a 24hr telephone and advice service on medical matters: also information on local services, support groups and ICAS providers.

Tel: 0845 46 47 Website: www.nhsdirect.nhs.uk