

Advice for parents acting for babies & children

This self-help guide contains useful information for parents or guardians who are acting on behalf of babies or children who have been affected by avoidable harm in healthcare.

If you have any further questions, please visit our website where you will find more advice and a range of specialised self-help guides, or call our helpline.

Contents

A child.	2
Consent	2
Legal aid.	2
Complaints procedure.	2
Assistance from AvMA	2
Making a claim	3
Inquests	3

This leaflet is kindly sponsored by:



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If you need legal advice about making a clinical negligence claim, you can find a wide selection of solicitors accredited for AvMA's specialist clinical negligence panel at www.avma.org.uk/find-a-solicitor or call our helpline.




The **charity** for
patient safety and justice


AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.


For advice and information visit
www.avma.org.uk


Or call our helpline
*10am-3.30pm Monday-Friday
(03 calls cost no more than calls to
geographic numbers (01 or 02) and
must be included in inclusive minutes
or there can be a cost per minute)*

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Registered charity in England & Wales
(299123) and Scotland (SCO39683)

A child

The United Nations Convention on the Rights of the Child defines a child as everyone under the age of 18 years old. There are exceptions to this but these are very limited

Consent

However it should be noted that consent given by persons over 16 to surgical, medical and dental treatment is as effective as if he or she were of full age, it is not necessary to obtain any consent from their parent or guardian. The only exception to this might be if the minor can be shown to have lacked mental capacity to make that decision.

Reference to surgical, medical or dental treatment includes any procedure undertaken for the purposes of diagnosis, and generally applies to any procedure including the administration of any anaesthetic which is required.

Legal aid

In April 2013, the availability of legal aid for clinical negligence was largely swept away. Some legal aid has been retained for a small group, namely infants who have suffered physical and/or mental injury as a result of negligence occurring in the womb, during birth or a short time thereafter. To receive legal aid you have to show that you satisfy both a means (legal aid look at your income and outgoings) and merits test (whether there appears to be an arguable case). The means assessment is based on the child's income, so unless your child is the beneficiary of a trust fund or the will of someone who has died they are likely to satisfy the means test. Whether the merits test can be satisfied will depend on the facts of the case.

Owing to difficulties with the low rates paid by the Legal Aid Agency to experts it can sometimes be difficult to run a case with legal aid funding, as a result not all solicitors offer legal aid. You should make sure you ask your solicitor before the visit.

Complaints procedure

Before you visit a solicitor you may want to write to the hospital or health care provider to find out more about the case. Correspondence passing on the complaints procedure can be helpful to solicitors when first assessing the case, some solicitors will help you write the letter of complaint so it is worth asking them first. In some cases AvMA staff will provide assistance. It doesn't cost anything to use the complaints procedure. You can read more about the complaints procedure on our website at www.avma.org.uk/help-advice/complaints.

Assistance from AvMA

Some people find the thought of approaching a solicitor daunting; AvMA can give you advice either by contacting our helpline or by writing in to our advice and information department.

If you prefer to write in to the department please provide us with as much information as possible, generally we find it helpful to have copies of documents such as:

- The medical notes (treating hospital and GP notes),
- Any complaint correspondence, for example your letter of complaint to the hospital and their reply, if any
- Any internal investigation reports (these might be called, Serious Incident Reports (SIR), or root cause analysis reports) that have been sent to you by the hospital.
- We also ask you to provide us with a short statement setting out the reasons why you believe your child may have experienced negligent treatment and the injuries which have been caused because of it. There may be times when you don't know what went wrong but that the outcome is not what you expected; in these situations it is helpful if you can give us as much information as you can.

If you do choose to write in for advice please make sure you complete a new client form at www.avma.org.uk/new-client-form.

Please note that we are unable to accept large documents by email, these should be sent in by post.

Upon receipt of your papers one of our advisors will look at your case and let you have a written opinion on whether they think there is negligence and if the case should be investigated further, they will help to refer you on to one of our panel solicitors if appropriate.

Making a claim

If your child has died or has suffered injury as a result of negligence may you be considering bringing a legal claim, in this case you will need to speak to a solicitor. If you do approach a solicitor then here are a couple of things you should think about:

Choosing the right solicitor

Always choose a solicitor, who is accredited in clinical negligence, this indicates that the solicitor has been able to demonstrate competence and experience in running clinical negligence claims. AvMA was the first organisation to accredit solicitors, we have been doing this for longer than any other agency offering accreditation. Solicitors who have been accredited by us are described as AvMA panel solicitors, they are able to carry this logo:



Time limits

In ordinary personal injury claims which include clinical negligence claims, you have 3 years from the date the cause of action arose or if later, the date the injured person had knowledge of the negligence to issue a claim. The time limits are referred to as the Limitation Period and court proceedings must be issued within this time.

However, the time limits are different in the case of children. The three year time limit begins to run from the date the child reaches 18 years of age, this means the claim must be issued by the time the child reaches 21 years.

If the injury has resulted in mental incapacity then there is no time limit although the courts will examine carefully whether there is capacity. For more information on time limits please see our self-help guide *Am I within the legal time limit for a claim* at www.avma.org.uk/guides.

Try and choose the right solicitor for you at the outset. Clinical negligence claims can take a long time to complete; you are likely to be with your solicitor or at least the firm for a number of years. For further information on choosing a solicitor visit our website to explore firms you may wish to approach directly at www.avma.org.uk/find-a-solicitor.

If you do not feel confident enough about choosing a solicitor or approaching them directly then do contact our helpline development officer, Gill Savage on advice@avma.org.uk. Gill will then telephone you directly to help you through the process. AvMA has worked with other agencies such as SANDS in order to help identify AvMA Panel firms who have particular expertise in helping clients who have experienced a still birth or who have lost a child.

Inquests

If you believe your child has died as a result of negligent hospital care or mismanagement by a health professional then our pro bono inquest service may be able to help you. The service is free of charge although you will be asked to cover any out of pocket expenses; we will endeavour to find a barrister who will represent you at the inquest. Alternatively, if you are simply looking for advice on what to expect at the inquest then please contact us. Visit our website for further information at www.avma.org.uk/help-advice/inquests.

Demand for our pro bono inquest service often outstrips what we can supply. AvMA does recognise how difficult it is for families who have lost a child and we will make every effort to take your case on although we are unable to offer any guarantees, we will in any event provide you with advice even if we are unable to take your case on.

AvMA is unable to offer any counselling to distressed or bereaved parents but are pleased to recommend you to other charities which may be relevant. If you are a parent who has experienced a still birth then you will find it helpful to visit the SANDS website at www.sands.org.uk.

If you are suffering bereavement as a result of losing a child then you may find the Child Bereavement UK charity helpful at <http://childbereavementuk.org>.

Alternatively, if your child has suffered a mental or physical injury you may find it helpful to contact Mencap (www.mencap.org.uk) or Scope (www.scope.org.uk).

Be part of the movement for better
patient safety and justice

Support
AvMA's work
today



You can help make healthcare safer and fairer for all

Our vision is a simple: **People who suffer avoidable medical harm get the support and the outcomes they need.**

This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

Ongoing donation from as little as £5 a month could go a long way:

£5/month could provide vital advice to patients and families via our helpline

£10/month could help train a volunteer helpline advisor

£50/month could help support a family through an inquest hearing

Your help could make a real difference to patient safety in the UK

Please donate today at www.avma.org.uk/donate

avma
action *against* medical accidents

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