

Claims for birth injuries

As the name suggests, these are injuries caused to a mother or baby during or around the time of birth. This guide focuses on injuries to babies, but if you have been injured (for example if you sustained a tear or have had problems with your episiotomy scar), you may be able make a claim in your own right.

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Visit <https://www.medical-solicitors.com/about-us/> to see how we've helped other people.

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.



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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
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If you are concerned that your baby may have sustained a serious brain injury at birth you should read our information leaflets regarding [Maternity and Newborn Safety Investigations \(MNSI\)](#) and NHS [Early Notification Scheme \(ENS\) Investigations](#) where you will find information on the medical working definition of a severe brain injury: www.avma.org.uk/help-advice/brain-injuries.

You may also want to read our self-help leaflets called Legal action: bringing a claim in clinical (medical) negligence www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf and Clinical Negligence – What compensation can I claim? (www.avma.org.uk/wp-content/uploads/Compensation.pdf).

Types of injury that can be caused during birth

There are a range of injuries that can occur. The types of injury include those to the brain or nervous system (neurological injuries), physical injuries (for example caused by use of forceps) and infections passed from the mother to the baby as the baby passes through the birth canal. A detailed discussion of all possible injuries is beyond the scope of this leaflet, so we will consider the main kinds of injuries that give rise to claims in clinical negligence:

- [“Cerebral palsy” on page 2](#)
- [“Shoulder dystocia and Erb’s palsy” on page 4](#)
- [“Group B Streptococcus \(GBS\)” on page 5](#)
- [“Injuries occurring after birth” on page 6](#)

Cerebral palsy

What is cerebral palsy?

Cerebral palsy is the name given to a group of conditions caused by damage to the developing brain. Doctors may not always use the term cerebral palsy unless a definitive diagnosis has been made. They may refer to spasticity, hemiplegia, diplegia or dyskinesia, which are all possible symptoms of cerebral palsy. A brain injury can cause problems with muscles and movement, which can be relatively mild or result in severe disabilities requiring 24-hour care. There may also be learning difficulties. Compensation obtained through a clinical negligence claim can help fund things such as care, physiotherapy, a specially adapted home and equipment such as wheelchairs and communication aids.

Is cerebral palsy always caused by a birth injury?

No. In most cases, the injury occurs between 24 weeks of pregnancy and term, it is thought that fewer than one in ten cases of cerebral palsy are caused during delivery. Most clinical negligence claims for cerebral palsy relate to injuries sustained during or after birth rather than during pregnancy.

Can I make a claim for my child’s cerebral palsy?

Not all cases of cerebral palsy are due to clinical negligence. Most cerebral palsy cases are due to other factors such as infections in the brain (meningitis), low blood sugar and serious head injuries. As you will recognise from our separate leaflet Legal action: bringing a claim in clinical (medical) negligence (www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf), clinical negligence claims are difficult to prove.

Some possible reasons for negligence claims

Lack of oxygen at birth

Legal claims for cerebral palsy caused during delivery usually relate to injuries caused when the baby is deprived of oxygen (hypoxia). The baby's brain is designed to withstand periods without oxygen, but if a baby is continuously deprived of oxygen for too long then damage to the brain can occur. Serious damage cannot be repaired, although some newer techniques such as therapeutic cooling (cooling the baby's brain) after long periods without oxygen have had very encouraging results in preventing further damage. See our leaflets, "Maternity and Newborn Safety Investigations" and "NHS Early Notification Scheme Investigations" for more details on the sort of investigations that should be carried out if your baby's injuries meet the definition of a severe brain injury:

www.avma.org.uk/wp-content/uploads/MNSI-birth-investigations.pdf

www.avma.org.uk/wp-content/uploads/ENS-birth-investigations.pdf

Failure to recognise the signs of distress

Claims for clinical negligence can often be the result of medical staff failing to recognise signs of distress in the baby early enough. This might be for a number of reasons, for example, failing to monitor the baby's heart rate, misinterpreting the signs on the CTG monitor or inappropriately using drugs to encourage contractions. If they fail to recognise the signs of distress early enough, medical staff may not then take any or sufficient steps to deliver urgently (for example by forceps or caesarean section).

Solicitors investigating a potential claim are likely to seek expert evidence from a range of medical specialists including obstetricians, midwives, neonatologists and neuroradiologists in order to investigate issues including:

- when the injury occurred and could or should it have been avoided;
- when delivery should have happened and whether the injury could have been avoided by earlier delivery; and
- whether it was negligent not to have achieved delivery before a certain time.

This type of claim is very complex and difficult to pursue. If you do go to a firm of solicitors, we urge you to use an AvMA-accredited solicitor experienced in this type of case, especially as they may be able to offer you Legal Aid. For more information please the end of this leaflet and the section called "Choosing a specialist, accredited solicitor".

How do I know if I have a claim?

Please refer to our leaflet: Legal Action: bringing a claim in clinical (medical) negligence www.avma.org.uk/wp-content/uploads/Legal-action-England.pdf.

Without advice from medical experts, it is very difficult to determine whether your case is likely to succeed. You will need to instruct a solicitor to help you with this.

If you want help choosing a solicitor or are not ready to contact a solicitor but do want to discuss your case, you may want to contact our confidential Helpline for free advice – see www.avma.org.uk/helpline for more information.

We have set out below some questions you might want to ask yourself. If the answer to one or more of these questions is yes, that might prompt you to seek legal advice and further investigation about whether your child's injury may have been negligently caused during delivery. Please note: you may have experienced more than one of these situations and still not have a claim in negligence. The following questions are possible indicators only:

- Was there a sudden rush to deliver the baby urgently?
- Were you told that the baby's heart rate was too high or too low during labour?
- Did your baby become 'stuck' in the birth canal, so that his or her head was delivered but the rest of the body was not?
- Was your baby unwell immediately after the birth, including low Apgar scores and needing to be resuscitated and/or admitted to Special Care Baby Unit (SCBU)?
- Was your baby born with, or did they develop shortly after birth, abnormal muscle tone or reflexes or seizures in the first hours or days of life?
- Did your baby undergo therapeutic cooling after birth?

It may not be possible to make a diagnosis of cerebral palsy until your baby is a toddler (about 2 years old) or older, as some signs may not be apparent earlier in life and relate to developmental milestones. However, signs of a brain injury such as abnormal muscle tone (stiffness or floppiness) may be visible in babies and injuries to the brain may be seen on scans such as an MRI.

If you have any concerns about your child's health or development, including whether they may have cerebral palsy, you should consult their GP, paediatrician or other suitable healthcare professional.

Shoulder dystocia and Erb's palsy

What is Erb's palsy?

This condition affects the nerves running between the spinal cord and the arm, passing under the collarbone. This group of nerves is known as the brachial plexus. The brachial plexus is responsible for transmitting signals between the brain and the arm and hand, affecting movement and position. There are other types of brachial plexus injury, but Erb's palsy is the most common, so we will focus on this condition in this leaflet.

How is Erb's palsy caused?

Erb's palsy occurs when nerves in the brachial plexus are bruised, stretched or torn during delivery of the baby. The severity of the condition can vary, depending on the number of nerves affected and the extent of the injury. Some injuries may heal on their own relatively quickly, whereas others may take more time or need surgery to repair.

Can I make a claim for my child's Erb's palsy?

Erb's palsy is always caused by a birth injury. However, not all birth injuries are negligently caused. For a legal claim to be successful, your lawyers will have to prove that the treatment was negligent and that negligence caused harm.

How do I know if I have a claim?

As babies are born they sometimes present in, or move into, a position that makes delivery difficult. This can lead to a situation where the baby's head has been delivered but one of its shoulders get stuck behind its mother's pubic bone preventing the rest of the baby's body from being delivered. This situation is referred to as Shoulder Dystocia and it can be a difficult situation for medical staff to deal with.

The fact that a baby presents in a difficult position is not anyone's fault; it is one of the risks of childbirth. However, the way in which the presentation is managed and dealt with by medical staff needs to be considered carefully. A certain amount of gentle pulling/traction may be necessary and certain manoeuvres may be necessary. A common manoeuvre used by medical staff to help manage this presentation is the McRoberts manoeuvre; this involves medics pushing the mother's legs back towards her abdomen in order to release the baby's shoulder.

Brachial plexus injuries can arise where force has been used to move the baby through the birth canal. Sometimes this force may result in the brachial plexus nerve group being stretched and damaged. This damage may be related to the way in which manoeuvres were performed or the instruments used to help deliver the baby more quickly, for example forceps deliveries where the forceps pull on the baby's neck, injuring the brachial plexus.

Shoulder dystocia often occurs because the baby is very large. Diabetic mothers may be particularly susceptible to delivering large babies. In those cases it may be that vaginal delivery should not have been attempted at all and a caesarean section should have been planned.

The following are possible indicators of a claim:

- Are you diabetic and/or was it known that you were carrying a large baby?
- Did you have a difficult birth because your baby became stuck behind your pubic bone?
- Have medical staff told you about, or have you heard them referring to, terms like shoulder dystocia, brachial plexus injury and/or Erb's palsy?
- Have you been told that your baby may have difficulties moving his or her arm because of their difficult birth?
- Have you observed that your baby is unable to move, or has difficulties moving, his or her arms?

If the answer to one or more of the above is yes, you may want to take legal advice. For more information please see the end of this leaflet and the section called "Choosing a specialist, accredited solicitor".

Group B Streptococcus (GBS)

What is GBS?

This is a type of bacteria that about 20% of women carry in their vagina or rectum. Most women carrying the bacteria do not know they have it and do not experience any symptoms or sustain any harm. It is not routine for pregnant women in the UK who are being treated on the NHS to be screened for GBS unless they are presenting with specific symptoms or have a history of GBS in previous pregnancies.

How is GBS infection caused in newborns?

When a woman carrying GBS has a baby, it is possible for it to be transferred to the baby in the birth canal. Most babies who come into contact with the bacteria will not become ill, but in some cases it can cause severe and potentially fatal illnesses, including sepsis, pneumonia and meningitis. It can also lead to the development of cerebral palsy through effects on the brain.

Can I make a claim for my child's GBS?

GBS is a naturally-occurring infection and most carriers will not know that they have it. However, there are ways to identify carriers and reduce the risks to their babies. Claims can be made where steps are not taken to reduce these risks and the child is injured as a result. The following are possible indicators of a claim:

- Was your baby born prematurely, that is, before 37 weeks of pregnancy?
- Have you previously had a baby who developed GBS infection?
- Did you have a high temperature during labour?
- Did more than 18 hours pass between your waters breaking and your baby being born?
- Were you swabbed or urine tested for infection, particularly GBS, during your pregnancy?
- Were you known to be at high risk of GBS but not given antibiotics?
Antibiotics are usually given through a drip during labour in a woman at risk of GBS or showing signs of infection.

As noted above, where any element of substandard care is identified, it is also necessary to establish that the injury would have been avoided with a reasonable standard of care. Solicitors investigating a claim will usually seek advice from experts such as an obstetrician, midwife, paediatrician and/or microbiologist.

Injuries occurring after birth

These are not, strictly speaking, birth injuries, but we will outline below some examples of injuries that can occur shortly after the baby is born.

Hypoglycaemia

This means low blood sugar levels and, if left untreated, can lead to a range of complications including, at its most serious, brain injury and death. Once the umbilical cord is cut, the baby no longer receives a supply of glucose from their mother and must obtain it from feeds and/or medication such as a drip. Hypoglycaemia can also occur when the baby produces more insulin than needed. Insulin causes glucose to be removed from the blood, lowering the amount of glucose available to the organs, including the brain. Babies of mothers with diabetes are particularly susceptible to this complication.

Clinical negligence claims can be made in relation to harm caused by hypoglycaemia. The following are possible indicators of a claim:

- Was there a delay in recognising and treating the hypoglycaemia before injury occurred?
- Did you have problems feeding your baby after he or she was born? If so, were you given information about feeding your baby, preventing hypoglycaemia and recognising when your baby may need medical attention?

Kernicterus

Kernicterus is a brain injury caused by severe jaundice (yellowing of the skin and eyes due to high levels of a substance called bilirubin). Babies commonly develop a degree of mild jaundice during the first two weeks of life, which is normal, not harmful and usually goes away on its own. However, in some cases the bilirubin levels rise to a dangerous level and the baby needs treatment by light therapy and/or a blood transfusion to bring the bilirubin down to a safe level.

Clinical negligence claims could be made in relation to kernicterus. The following are possible indicators of a claim:

- Was there a failure to recognise that your baby was at risk? For example, was your baby premature? Was he or she known to have rhesus incompatibility? Was your baby monitored for signs?
- Were your baby's bilirubin levels checked?
- Was the need for phototherapy and or a blood transfusion ever discussed with you but the treatment not carried out?

If the answer to any of the above questions is yes, then it is possible that there was a failure by the hospital to arrange the necessary tests and/or to interpret the tests correctly. It may also be that the hospital did not implement the necessary treatment in time or at all to prevent injury.

Duty of candour

Healthcare providers are obliged to inform patients/families if something unexpected happens during treatment that could cause moderate or severe harm (a 'notifiable safety incident'). This could include cases where, for example, there has been a delay in delivering a baby in distress, which has the potential to cause significant harm but the baby is not showing any signs of an injury. For more information about the Duty of Candour, please see our separate leaflet at www.avma.org.uk/wp-content/uploads/Duty-of-candour.pdf.

Choosing a clinical negligence specialist solicitor

You may also find our leaflet called Things to consider when choosing a solicitor useful – this can be found at www.avma.org.uk/wp-content/uploads/Choosing-a-solicitor.pdf

Any solicitor can offer legal services for clinical negligence, but clinical negligence is a complicated and specialist area of work, you should always choose an accredited specialist clinical negligence solicitor. There are several clinical negligence schemes around, including AvMA's own AvMA Panel accreditation.

What makes the AvMA Panel Accreditation scheme so special?

AvMA set up the first accreditation scheme over 30 years ago. It is the longest-running scheme of its kind. Solicitors who have attained AvMA Panel accreditation have demonstrated three key competencies, which are:

- A level of expertise in clinical negligence law
- Experience in undertaking clinical negligence litigation on behalf of patients/families (as opposed to healthcare providers)
- An awareness of the importance of client care.

AvMA's Advice: If you are seeking independent legal advice from a solicitor on a clinical negligence matter, make sure they are an AvMA accredited lawyer; you will be able to tell this if the solicitor is displaying the following logo:



A list of AvMA accredited solicitors can be found on the AvMA website: www.avma.org.uk/find-a-solicitor.

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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

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