

Mental Health

There is little doubt that mental health services in the UK are overstretched, lack funding and investment, as a result mistakes can and do occur, sometimes with tragic consequences. Some of those mistakes are caused by the treatment provided or the lack of treatment offered, poor systems and processes may also contribute to those outcomes. However, not all issues arising out of poor mental health provision will be clinical negligence claims.

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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.



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)*

0345 123 2352



Freedman House,
Christopher Wren Yard,
117 High Street,
Croydon CR0 1QG



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

Legal Aid and specialist firms

At AvMA we know that there are many concerns about mental health treatment from wrongful detention, mental health tribunal hearings, to care within the community. We also know how difficult it can be for our beneficiaries to have to tell and retell their story only to find that the organisation they are speaking to is unable to help them. We hope that by offering better signposting to relevant organisations and lawyers that we can help to reduce the number of times you have to repeat details of what happened to you or your loved one.

There are some situations where AvMA is unable to help at all, for a better understanding of the cases we are unable to assist with please read our Terms and Conditions:

<https://www.avma.org.uk/wp-content/uploads/AI-excluded-cases.pdf>

If you know you want legal representation and consider you have a clinical negligence claim, then you may want to visit our Find a Solicitor page on our website: <https://www.avma.org.uk/help-advice/find-a-solicitor/>

Please note, AvMA cannot guarantee that solicitors recommended by us will be able to help you or that they will take your case on.

AvMA has produced this leaflet to improve signposting so you can consider other firms that may be able to support you, these firms may not be clinical negligence firms. We have also included some information on specialist organisations who may be able to support you better than we can.

Legal Aid and specialist firms

We have provided information on firms which hold a legal aid franchise in:

- **Claims against public authorities (CAPA)**
- **Mental health**
- **Community care**

Following is a headed paragraph which tells you a bit more about what sort of work is covered by firms specialising in each of these areas of law and how they may be able to help you.

Some firms may hold a franchise in all three areas of work and will be able to offer legal aid if you are eligible. However, some firms may only hold a franchise in one or more of these specialist areas. You will need to check the firm's website to be sure about their specialist areas.

Eligibility for legal aid

You should also be aware that not everyone who needs or wants legal aid is entitled to it. To be eligible for legal aid the issue you need advice on must be covered by the terms of the legal aid contract. You or the person applying on your behalf will usually have to satisfy a means test which looks at your income, including any benefits you may be in receipt of. If you are on a low income the Legal Aid Agency (LAA) will still assess whether you are able to contribute towards your legal aid fees.

You may not be eligible for legal aid simply because you fall outside of the financial eligibility limits. However, you will not have to satisfy the means test if you are applying for Exceptional Case Funding (ECF) for inquests. Please see below for more information.

If you do need to satisfy the means test and fall outside of the legal aid financial eligibility limits, you should talk to the solicitor about whether they can act for you on a private basis. The solicitor may be able to offer you an arrangement where you pay an hourly rate or a fixed fee for a certain amount of work to be done, if it is appropriate, they might also offer you a Conditional Fee Agreement (CFA). For more information on CFAs please see page 3 of our leaflet on funding options in clinical negligence: <https://www.avma.org.uk/wp-content/uploads/Funding-options.pdf>

If you want representation or someone to act for you, you will also have to show that you have an arguable case or issue.

Specialist Lawyers

It is important to note that the lawyers working for the firms referred to in this leaflet as doing work in CAPA, Mental Health specialist firms, and Community Care are not accredited by AvMA. AvMA is unable to say how experienced lawyers at these firms are or what you can expect from them with regards to client care and service levels generally. However, many of these firms have a legal aid franchise, the Legal Aid Agency demands that firms can demonstrate rigorous processes before they are awarded a franchise, and this should offer some reassurance that you can expect a reasonable standard of service.

Claims Against Public Authorities (CAPA)

Even if you do not have a clinical negligence claim you may still be able to bring a claim against a public authority. Firms dealing with claims against public authorities do tend to be specialist and able to offer legal aid to help cover some of the legal costs.

Deaths in custody/inquest

This will apply in any situation where someone's death occurred in custody such as a police cell, an NHS funded mental health detention unit or prison.

Inquests

Legal aid is not easily available for inquests although Exceptional Case Funding (ECF) may be an option, it is very difficult to get. If the death occurred in custody, or in an NHS mental health detention unit then it is more likely that you will be able to secure legal aid funding subject to satisfying the merits test. Since January 2022, people applying for legal aid for inquests no longer have to satisfy a financial means test.

To satisfy the merits test you will have to demonstrate either, that it is an Article 2 (HRA) inquest or that there is a wider public interest point. The wider public interest element requires that you can show the inquest will raise significant benefits for a class of person, other than the applicant and their family.

False imprisonment/wrongful arrest

This will usually cover the situation where someone has been wrongfully detained by the police.

Assault

This is quite broad but may include for example where a patient has been assaulted and suffered significant injury either by another patient or a member of staff.

However, this situation might also be a personal injury claim so you may want to approach a specialist personal injury lawyer. AvMA does not accredit personal injury lawyers but coincidentally, many of the firms listed under our Find A Solicitor website will also do personal injury work, or there is likely to be a specialist within their firm who does.

If you are able to bring a personal injury claim, then you can expect to enter into a Conditional Fee Agreement (CFA) with the lawyer rather than rely on legal aid funding. Your lawyer will explain this in more detail, see also link to our leaflet on CFAS and funding options referred to above.

Human Rights Act (HRA) claims

Firms holding a CAPA legal aid franchise will be able to advise on the impact of HRA on any case you may have. This includes advice on Article 2, the right to life or one of the other provisions under HRA.

Examples of other types of cases where CAPA firms may be able to advise:

Police Complaints (Local and IPCC); assault by police officers; wrongful arrest and unlawful imprisonment; unlawful detention arising from incorrect section papers; malicious prosecution; failings in provision of care by social service; injury caused whilst in Prison

A list of firms with a legal aid franchise to bring claims against public authorities can be found here:

<https://www.avma.org.uk/wp-content/uploads/CAPA.pdf>

Mental Health specialist legal aid franchised firms

To be eligible for a legal aid franchise in mental health matters lawyers must have an accredited member of staff. As explained above, AvMA does not offer accreditation in this area of law. Firms will have satisfied the Legal Aid Agency (LAA) that they have a level of competence and experience sufficient for them to be awarded a legal aid franchise and you can be reasonably reassured by this.

What sort of things can the solicitor specialising in this area of law help me with?

Solicitors holding a mental health franchise will not be able to help every person who needs it. The following areas of mental health are commonly covered but you will need to check with the firm first as this is not intended to be an exhaustive list.

Wrongful detention under Mental Health Act (MHA)

If you or a loved one believe you/they have been wrongfully detained under the MHA then one of the firms listed at the link below may be able to help you.

Mental Health Tribunal (MHT)

Applications to the MHT may be dealt with by solicitors holding a legal aid franchise in mental health.

Hospital Managers Review

Lawyers with a legal aid mental health franchise may be able to offer advice, assistance and/or attendance at Hospital Managers Review hearings where the period of detention may be renewed.

Care Programme Approach meetings

Advice, assistance, and/or attendance at a Care Programme Approach meeting may be possible.

Section 117 Mental Health Act 1983 (MHA) - aftercare services

Solicitors can give you advice and assistance on your rights under section 117 MHA.

Section 117 is concerned with provision of aftercare services for people who have been detained in hospital under the following sections of MHA: Section 3 detained in hospital; transferred from prison to hospital under Sections 47 or 48; ordered to go to hospital by a court under Sections 37 or 45A.

Section 117 is intended to ensure that any needs you may have which relate to your mental health problems are met. This may cover things like help with housing, work, education. The aim is to reduce the risk of your mental condition getting worse, and you having to go back to hospital.

Complaints arising from medical treatment under MHA

Solicitors can give advice and assistance on complaints arising from medical treatment under MHA.

Section 17 Leave of absences

Advice and assistance can be given on your right to leave of absence whilst being detained under the MHA.

Relatives

Advice and assistance may be given to a nearest relative on their role under MHA

A list of firms which hold a legal aid, mental health specialist franchise can be found here:

<https://www.avma.org.uk/wp-content/uploads/Mental-Health.pdf>

Community Care

Local authorities and the NHS have a duty to help those with care needs. Solicitors holding a legal aid franchise in community care can be expected to help with the following issues although this is not intended to be an exhaustive list:

- **Assessment and care plans:** This include the failure to assess and/or review or where assessments and care plans are disputed
- **Carers rights and needs**
- **Funding for care:** Direct payments and personal budgets; residential care; problems with independent living services
- **Disabled facilities grant:** Adaptations to home etc

Other areas of law that fall under community care include as follows:

- **Charging for services**
- **NHS and other health service provision**
- **Continuing health care**
- **Unsuitable/inappropriate housing**
- **Hospital discharge**
- **Capacity and best interest issues**
- **Deprivation of liberty**

A list of firms with a community care franchise can be found here:

<https://www.avma.org.uk/wp-content/uploads/Community-Care.pdf>

General Information

There are some firms who hold legal aid franchises in all three specialist areas: Claims Against Public Authorities (CAPA), mental health, and community care. A list of firms who hold franchises in all three areas of law can be found here:

<https://www.avma.org.uk/wp-content/uploads/Legal-Aid-Providers.pdf>

Frequently asked questions (FAQ)

To help identify which organisation may be able to assist you we have put together some frequently asked questions. Please read this question-and-answer section as it may help you identify whether you need a clinical negligence lawyer to help you, or another specialist.

Question 1: My loved one was diagnosed with mental health problems and was detained under the Mental Health Act, sadly they took their own life when in detention. Do I have a clinical negligence claim?

Answer: If your loved one has taken their own life whilst being detained under the MHA or has suffered injury because of a failed attempt to take their own life then we encourage you to seek independent legal advice. You may have a clinical negligence claim and/or a claim under the Human Rights Act (HRA).

Please see our Find a Solicitor page:

<https://www.avma.org.uk/help-advice/find-a-solicitor/> and look for one of our AvMA accredited lawyers who has a special interest in mental health related matters.

If you are unable to find a clinical negligence lawyer to take the case on, you may want to try one of the lawyers listed under Claims Against Public Authorities (CAPA) section above.

Question 2: My loved one took their own life while being detained under the Mental Health Act, can you help me with the inquest?

Answer: If your loved one has died whilst in detention you should think about preparing for the inquest into their death, AvMA may be able to help you with this, for more information please see: <https://www.avma.org.uk/help-advice/inquests/>

If you have a lawyer willing to investigate a clinical negligence claim you should speak to them about providing representation at the inquest as well as the civil claim.

Mental Health

If AvMA is unable to help you and if you are unable to find a clinical negligence lawyer to take the case on, you may want to try one of the lawyers listed under Claims Against Public Authorities (CAPA) section above. You may also find that another charity called INQUEST, is able to assist you especially as they have a particular focus on cases where the death occurred in detention managed by a public body, check their website: <https://www.inquest.org.uk/our-services>

Question 3: I have experienced mental health issues for some time but despite visiting my GP regularly and taking medication prescribed by them, I have not been referred to mental health services or a psychiatrist. My condition is deteriorating but my GP will not refer me on. Do I have a clinical negligence claim?

Answer: A clinical negligence lawyer is unlikely to be the best person to advise in these circumstances. AvMA does not have sufficient expertise to deal with this either. We suggest that you approach one of the lawyers listed the mental health claims section and/or community care claims above.

Question 4: I want some legal advice and representation for an attendance at a Mental Health Tribunal, can a clinical negligence lawyer help me with that?

Answer: It is unlikely that a clinical negligence lawyer will be able to help with this but there are other agencies and lawyers who may be able to help. Legal aid lawyers listed under the mental health section above are likely to be of help.

Other organisations which may be able to help include:

MIND: This organisation provides help and support to anyone with mental health difficulties. More information on how they can help can be found below under the heading "Other organisations and information which may help". MIND has a specific web page advising on the mental health tribunal: <https://www.mind.org.uk/information-support/legal-rights/>

MIND also has a website page dedicated to sources of mental health advocacy more generally, including statutory and voluntary mental health groups: <https://www.mind.org.uk/information-support/>

Independent Mental Health Advocacy (IMHA) through Voiceability: <https://www.voiceability.org/about-advocacy/types-of-advocacy>

Independent Advocacy: This organisation only operates in Coventry, Solihull and Warwickshire but it has a helpline which is open five days a week, Monday to Friday. This organisation focuses on community, advocacy, money (looking after the benefits and pensions for those unable to do it themselves) and learning. They have trained and qualified staff specialising in mental health issues. <https://www.independentadvocacy.org/>

Question 5: My loved one has been sectioned but they are saying that because he was not registered with a local GP he will be sent out of the area where he has been living for the last 2 years to where he was last registered with a GP. He doesn't want to be sent out of area. Is this clinical negligence?

Answer: A clinical negligence lawyer is unlikely to help in this sort of case. We suggest you approach lawyers who hold a legal aid franchise in both mental health and community care.

Firms with a legal aid mental health franchise may be able to provide advice and assistance on Section 117 MHA 1983. Section 117 is concerned with provision of aftercare services for people who have been detained in hospital (see above for more information). Lawyers who hold a legal aid franchise in community care can also advise on matters relating to continuing health care.

See above links for list of lawyers holding a mental health franchise and for a list of lawyers holding a community care franchise.

Question 6: I have recently been discharged from Mental Health detention and require ongoing monitoring in the community which is not being provided. Is this clinical negligence?

Answer: A clinical negligence lawyer is unlikely to help in this sort of case. We suggest you approach lawyers who hold a legal aid franchise in mental health which covers advice and assistance under Section 117 MHA 1983.

Section 117 is concerned with provision of aftercare services for people who have been detained in hospital (see above for more information). See above links for list of lawyers holding a mental health franchise.

Question 7: I have been signed off as no longer needing ongoing healthcare, but I think this decision is incorrect and I still need continued input from services which I am no longer able to access. Do I need a clinical negligence lawyer?

Answer: A clinical negligence lawyer is unlikely to help in this sort of case. This appears to be an issue which relates to the need for continuing health care, as such we suggest you approach a lawyer who holds a legal aid franchise in community care in the first instance. See above link for list of lawyers holding a community care franchise.

Question 8: My loved one was taken off the section and immediately discharged himself. They have not been referred to local agencies for help. I am worried they could be a danger to themselves or to others. Can a lawyer help me to get him sectioned again?

Answer: A clinical negligence lawyer is unlikely to help in these circumstances. We suggest you approach lawyers with a legal aid mental health franchise as they should be able to make an application to the mental health tribunal to reinstate the detention if they deem this appropriate action.

Other organisations and information which may help

This is not intended to be a complete list, you may find other local organisations which are able to help you, it is worth googling mental health support or similar key words to find out what is available to you locally.

MIND

This organisation can provide a wide range of mental health advice; we have referred to them above in response to the FAQ 4 on mental health tribunals.

General information about mind can be found on their website:

<https://www.mind.org.uk/information-support/helplines/>

MIND run two advice lines, an information line and a legal line.

Information line: 0300123 3393 open Monday – Friday, 9am -6pm.

Legal line: 0300 466 6463 open Monday -Friday, 9am-6pm provides legal information and general advice on mental health related law. Callers can ask about:

- Being detained under the Mental health act (sectioning)
- Mental capacity
- Community care
- Discrimination and equality

Mind offer an email service available for callers who need more detailed advice:

Legal@mind.org.uk

Mind Side by side online community service can be found here:

<https://www.mind.org.uk/information-support/>

This is a 24 hour a day, 7 day a week service which enables people to talk about their mental health and connect with others who are in a similar situation. It aims to offer a safe place to listen and be heard. It is moderated daily from 8.30am to midnight.

Mental Health

Anxiety UK

<https://www.anxietyuk.org.uk/>

Anxiety UK is a subscription service, details of the cost of membership can be found on their website. Anxiety UK can also offer products to help you cope, for example, support groups and anxiety courses are a few of the benefits of membership.

Survivors of bereavement by suicide

<https://uksobs.org/>

This organisation was set up to offer support to people over the age of 18 years who have experienced bereavement because of suicide. It aims to reduce the loneliness and isolation felt by those left behind. Not only does it offer support, but it encourages retreats and other forms of wellness.

Papyrus

<https://www.papyrus-uk.org/>

Papyrus is a charity dedicated to the prevention of suicide in young people and the promotion of good mental health. It has a dedicated help line and trained advisers. If you are suicidal or concerned that a young person you know may be suicidal this charity can offer help and advice.

Mental Health Foundation

<https://www.mentalhealth.org.uk/about-us/who-we-are>

While its focus is on how society as a whole approaches mental health issues and prevention, it is also a campaigning organisation which looks at the best way to evaluate treatments for mental health conditions.

Rethink

<https://www.rethink.org/>

Rethink offers a network of groups, services and advice lines to try and get you the support you need. They offer free advice and information on a range of mental health related issues.

The NHS has a list of other support groups on its website which can be found here:

<https://www.nhs.uk/mental-health/conditions/clinical-depression/>

Feeling depressed, low, or having suicidal thoughts?

AvMA staff are not trained or able to offer advice on how to cope with feeling depressed, experiencing low mood, or suicidal thoughts. We urge anyone feeling like this to urgently attend their GP for professional support and to contact the Samaritans. Details of how to contact the Samaritans and other helpline organisations such as Re-think who are able to offer support at difficult times can be found in our leaflet:

<https://www.avma.org.uk/help-advice/feeling-depressed/>

Other self-help leaflets

Most of AvMA's self-help leaflets are aimed at providing information on the clinical negligence process. However, we take this opportunity to draw attention to some of our leaflets which may be helpful to you, providing advice on bereavement organisations and counselling:

<https://www.avma.org.uk/wp-content/uploads/Bereavement.pdf>

and counselling:

<https://www.avma.org.uk/wp-content/uploads/Counselling.pdf>

Be part of the movement for
better patient safety and justice

Become a
Friend of AvMA
today



You can help make healthcare safer and fairer for all

AvMA wants to build on the support we enjoy from people all round the country who share our passion for making healthcare safer and fairer for those who do suffer harm.

By signing up to be a Friend of AvMA you will belong to a growing movement for change. Join injured patients and their families, healthcare professionals, lawyers and many more who share our goals.

Becoming a Friend of AvMA costs from as little as £5 a month.

£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

Benefits of membership

- Regular newsletter keeping you up-to-date with our work
- Invitations to special events
- Share your thoughts on our work and policy issues

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

Please sign up today at www.avma.org.uk/friends

avma
action *against* medical accidents

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
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Or call our helpline
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0345 123 2352



Freedman House,
Christopher Wren Yard,
117 High Street,
Croydon CR0 1QG



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