

# Clinical negligence

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This factsheet tells you what clinical negligence is. It explains the difference between a clinical negligence claim and making a complaint. There is also information about how you can get legal funding for claims.



KEY POINTS

- Clinical negligence is when healthcare professionals physically or mentally hurt you because of the standard of health care they gave you.
- Proving clinical negligence is difficult. You should get legal advice if you think you have a claim.
- If you win a clinical negligence claim you will only get financial compensation.
- If you want an apology, or other outcome, you can think about making a formal complaint.
- You have three years to make a clinical negligence claim. This is 3 years from when it happened, or 3 years from when you realised it happened.
- You may be able to get legal funding to make a claim.
- You may be able to make a claim if a family member died because of negligence.

**This factsheet covers:**

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2. [What is the difference between clinical negligence and making a complaint?](#)
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## 1. What is clinical negligence?

Clinical negligence is when healthcare professionals physically or mentally hurt you because of the standard of health care they gave you.

There are two parts of clinical negligence.<sup>1</sup>

1. The care or treatment you got from a health service was not good.
2. You were physically or mentally hurt from the treatment or care.

Negligence can be by:

- an individual healthcare professional, such as a psychiatrist, or
- a healthcare service, such as a mental health team.

Below are some examples of negligence.

- Doctors did not notice symptoms of possible mental illness.
- Your hospital discharged you too early which ended up causing you harm.
- Your mental health did not give you the right treatment and this caused you harm.
- Your doctor gave you the wrong medication which had a bad effect on you.

You can make a clinical negligence claim about both NHS and private treatment. Clinical negligence is also called 'medical negligence'.

You may be able to make a claim if a family member has died because of negligence. You can claim:

- bereavement damages of up to £12,980 if your husband, wife or child (if they were under 18) has died,<sup>2</sup> and
- for 'loss of dependency', if you were financially dependent on the person who has died.<sup>3</sup>

The NHS Litigation Authority (NHSLA) deals with clinical negligence claims. There is more information about the NHSLA in the further reading section of this factsheet.

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## 2. What is the difference between clinical negligence and making a complaint?

When you make a clinical negligence claim you are asking for money to compensate you for harm or injury you experienced. You will not get the following things.

- An apology
- A change in practice

- Any action against a healthcare professional such as suspension or being dismissed from work

If you want anything other than compensation you should consider making a formal complaint.

You can find more information about '**Complaints**' at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy to be sent to you.

You can make a complaint and a clinical negligence claim at the same time.

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### 3. What are the time limits for making a claim?

There is a time limit if you want to make a clinical negligence claim. You must start the process:

- within 3 years of when the negligence happened,<sup>4</sup> or
- within 3 years of the date that you realised that your injury was because of the treatment.<sup>5</sup>

If you cannot make decisions about making a claim this is called lacking mental capacity. If you lack mental capacity you can make a claim up to 3 years after you have capacity.<sup>6,7</sup>

You can find more information about '**Mental capacity and mental illness**' at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy to be sent to you.

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### 4. What if I think I have a clinical negligence claim?

If you think you have been the victim of clinical negligence, you should get legal advice. You can contact the medical accident charity, Actions Against Medical Accidents (AvMA). They can:

- give you details of clinical negligence solicitors,
- give you advice about your situation, and
- talk to you about how much you might have to pay if your claim is not successful.

AvMA's contact details are the useful contacts section at the end of this factsheet.

The Law Society can help you find a clinical negligence solicitor. Their details are in the useful contacts section at the end of this factsheet.

## How do make a claim?

There are rules about making a claim for clinical negligence. A solicitor has to do certain things before starting the claim. These rules are set out in the Civil Procedure Rules. You can find their details in the further reading section at the end of this factsheet.

The Pre-Action Protocol for the Resolution of Clinical Disputes explains these rules. These are summarised below.<sup>8</sup>

- Your solicitor may want look at your medical records. They may ask you to give them a copy of your records or ask for your permission to see them. You can find more information about '**Access to Medical Records**' at [www.rethink.org](http://www.rethink.org). Or contact 0121 522 7007 and ask for a copy to be sent to you.
- If your solicitor thinks you have a good case they have to send a letter of claim to the NHS trust or healthcare provider. They have to send a copy of this letter to the NHS Litigation Authority. This letter will give information about your case. It will have details of your injuries and explain your financial loss because of the negligent treatment or care.
- The healthcare provider will tell your solicitor they got the letter within 14 days. They will write back within 4 months.
- You will not go to court until 4 months after the letter of claim.
- A lot of clinical negligence cases are settled before you go to court. The healthcare provider, or you and your solicitor, can make an offer to settle. An offer to settle is when you are offered money to end the case.
- If no one makes an offer to settle, or the offer is not accepted, then the case may go to court.

You should keep a record of:

- how the treatment affected you,
- any extra money you have had to spend because of it, or loss of earnings if you are unable to work, and
- any pain and suffering you have experienced.

This can help you work out how much compensation to ask for.

Making a clinical negligence claim can be stressful and can take a long time. You may feel strongly about the poor care you experienced. But you should think about if you feel well enough to make a claim. Sometimes it can be useful to have a friend or family member to support you.

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## 5. How can I pay to make a clinical negligence claim?

You will need to pay fees to make a clinical negligence claim. There are different ways you can pay.

Since April 2012 you cannot get legal aid for clinical negligence unless it is about a child that suffered a serious injury during birth.<sup>9</sup> Legal aid means that the government pays for your legal advice if you can't afford to pay it yourself.

### **Legal expenses insurance**

You may be able to pay your solicitor fees through legal expenses insurance. Some other insurance policies, such as motor or household, include legal expenses insurance. You should check with your insurance company to see what types of claim it will cover. If you are a member of a trade union you might have legal expenses insurance.

You might have to see a solicitor that your insurer chooses. If you are not happy with them you can ask if you can use your own.

### **Conditional fee agreements**

These are 'no win, no fee' agreements. A conditional fee agreement is an agreement that your solicitor will not get paid unless you win the case.

If you win your case using a 'no win no fee' agreement, you will have to pay your solicitor's fees with your compensation money. The fee can be up to 25% of your compensation.<sup>10</sup>

If you lose your case then you will not have to pay your solicitor. But you might have to pay the other side's legal costs. You can take out an insurance policy called after the event insurance. This insurance will pay for the other side's legal costs if you lose.

### **Private funding**

If you cannot use any of the above options you will have to pay the fees yourself. Clinical negligence cases can be expensive and solicitors' fees alone can be thousands of pounds. You should talk about this with a solicitor before you decide to pay the costs yourself.

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## **6. How much compensation could I get?**

If you win you can get compensation. The amount you will get depends on different things, including the following.

- How much pain or suffering you felt.
- How much you earn and how much money you lost because of not being able to work.
- How much you might earn in the future. The court works this out based on what you were earning in the past. Usually the higher your earnings, the more you will get.
- Whether you have children or relatives who depend on you to support them financially.

You should ask a solicitor how much compensation you might get. Knowing how much you might get is important if you are paying for your case yourself.

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### **Civil Procedure Rules**

The civil procedure rules make up the code of practice for courts to deal with cases fairly.

**Website:** [www.justice.gov.uk/courts/procedure-rules/civil](http://www.justice.gov.uk/courts/procedure-rules/civil)



### **NHS Litigation Authority**

This is a not-for-profit part of the NHS. They deal with negligence and other claims against the NHS in England.

**Telephone:** 020 7811 2700

**Address:** 2nd Floor, 151 Buckingham Palace Road, London, SW1W 9SZ

**Email:** [CNST.Helpline@nhsla.com](mailto:CNST.Helpline@nhsla.com)

**Website:** [www.nhsla.com](http://www.nhsla.com)

### **Action Against Medical Accidents (AvMA)**

(AvMA) is a UK charity which gives free and confidential advice and support to people affected by medical accidents.

**Telephone:** 0845 123 23 52 (Monday to Friday 10am until 3.30pm)

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

**Website:** [www.avma.org.uk](http://www.avma.org.uk).

### **The Law Society**

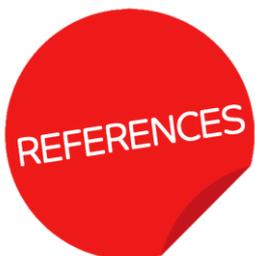
The Law Society represents solicitors in England and Wales.

**Telephone:** 020 7320 5650 (Monday to Friday from 09:00am to 5.30pm)

**Address:** 113 Chancery Lane, London, WC2A 1PL

**Website:** [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

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<sup>1</sup> Bolam v Friern Hospital Management Committee (1957)

<sup>2</sup> Ch 30. s1A (3). *Fatal Accidents Act 1976*

<sup>3</sup> Ch 30. s3. *Fatal Accidents Act 1976*

<sup>4</sup> Ch 58. s11(4a). *Limitations Act 1980*

<sup>5</sup> As note 5 LA 1980 s11(4b).

<sup>6</sup> As note 5 LA 1980 s28.

<sup>7</sup> As note 5 LA 1980 s38(2).

<sup>8</sup> Pre-Action Protocol for the Resolution of Clinical Disputes.

[www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_rcd](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd) [Accessed 13th July 2016]

<sup>9</sup> Schedule 1 S23 Legal Aid, Sentencing and Punishment of Offenders Act 2012

<sup>10</sup> Reg 5. *The Conditional Fee Agreements Order 2013*. SI 2013/689

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This factsheet is available  
in large print.

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## Rethink Mental Illness Advice Service

**Phone 0300 5000 927**

**Monday to Friday, 9:30am to 4pm  
(excluding bank holidays)**

**Email [advice@rethink.org](mailto:advice@rethink.org)**

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### Did this help?

We'd love to know if this information helped you.

**Drop us a line at:** [feedback@rethink.org](mailto:feedback@rethink.org)

**or write to us at Rethink Mental Illness:**

RAIS

PO Box 17106

Birmingham B9 9LL

**or call us on 0300 5000 927.**

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)



**Leading the way to a better  
quality of life for everyone  
affected by severe mental illness.**

For further information  
on Rethink Mental Illness

Phone 0121 522 7007

Email [info@rethink.org](mailto:info@rethink.org)



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**[twitter.com/rethink\\_](https://twitter.com/rethink_)**



**[www.rethink.org](http://www.rethink.org)**

### Need more help?

Go to **[www.rethink.org](http://www.rethink.org)** for information on symptoms, treatments, money and benefits and your rights.

### Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

### Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

### Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to **[www.rethink.org/donate](http://www.rethink.org/donate)** or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.