



**WILSON BROWNE**  
LLP

# **Medical Accidents**



**A guide to your rights**



## The Clinical Negligence/Personal Injury Team



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# What is a medical accident?



This is when something goes wrong during medical treatment. However, just because your treatment did not work or there have been complications, it does not necessarily mean that there has been a mistake or that someone is to blame. Sometimes, errors or complications have to be accepted as unavoidable risks of the treatment.

‘Clinical negligence’ is the legal term used to describe a medical accident where a patient has been harmed due to the doctor or health care professional not giving the proper standard of care. Clinical negligence includes things such as:

- Making the wrong diagnosis;
- Making a mistake during surgery;
- Prescribing the wrong drug.

It can also include not doing things that should have been done, such as:

- Not getting your consent to treatment;
- Not warning you about the risks of treatment;
- Not giving you the treatment you needed.

Remember, clinical negligence does not just cover treatment provided by a doctor, it covers any health professional. The list includes health visitors, nurses, midwives, osteopaths, dentists, medical or dental technicians, physiotherapists, private practitioners, opticians, the ambulance service, mental health care teams and laboratory services.

If your injury was caused by faulty medical equipment then you may be able to claim under the Consumer Protection Act 1987, against the manufacturer, importer or supplier of the product, rather than the doctor or hospital that treated you.

## What should you do?



Firstly, make sure that you are getting the right treatment to correct the injury. You might need to get a second opinion or request that your doctor refers you to another hospital or clinic.

You will also need advice and support, as more than likely, you will be feeling confused and distressed. This could be from friends and family or from a specialist support group or doctor.

Should you or your partner be unable to work due to the accident, you should get advice about benefits you may be able to claim and how you can deal with any debts that have built up. Contact your local Citizens Advice Bureau or Law Centre.

# Action you can take

Firstly, and most importantly, take care of your health, thereafter you should begin to think about what you want to happen next.

You could want:

- an explanation or an apology; or
- to ensure that the same mistake does not happen again; or
- compensation

You should think about these things before going to a solicitor. Taking legal action is mainly about getting compensation although we aim to find out the truth about what happened to you and try to encourage learning from mistakes.

## Finding out more about what happened



Initially, you should ask the healthcare professional involved in your treatment. If you do not feel that you have all the information you want, then you can also try the following options:

# NHS Complaints Procedure

If your treatment was carried out under the NHS, rather than privately, you can make a complaint using this procedure. Details of how to go about making a complaint should be available from your GP practice, clinic or hospital. It is advisable to put your complaint in writing and include any questions that you particularly want answers to. The complaint must usually be made within six months of the date of treatment.

Advice can be obtained from the Patient Advisory Liaison Service (PALS) based at the hospital.

## Medical records

You can request copies of your medical records from your doctor or from the hospital/clinic that treated you. You have a legal right to these under the Data Protection Act 1998, for a maximum fee of, currently, £50.00 for each supplier.

## Professional organisations

If your complaint centres on an individual doctor or health care professional, you should think about complaining to their professional organisation (if they are a member of one). There are different organisations for different professions, for example, the UK Central Council for nurses, health visitors and midwives and the General Medical Council for doctors. In order to get the best out of a complaints procedure, you may want to get specialist advice from:



- Your local Independent Complaints Advocacy Service (ICAS), who provide help and support in making a complaint;
- Action against Medical Accidents (AvMA), a charity which can give you medical information, support and expert legal help in making an effective complaint;
- Other specialist health organisations, for example, a charity or support group for people with your medical condition;
- Information resources, such as medical libraries or websites

## Keeping a record

If you think that you have been the victim of a medical accident, then keep a record of everything that happens to you during and after your treatment. If you intend to take legal action, it is useful to keep a record of any extra money you have to spend due to your injury, for example, lost earnings and taxi fares. Photographs of injuries may also be helpful.

## When can I claim compensation?

You may be able to claim compensation if you have been injured, physically or psychologically, due to the negligence of a health professional. However, the injury needs to be serious enough to make it worthwhile paying the cost of pursuing a claim.

Therefore, it is unlikely to be worth taking legal action if your injury is minor leading to recovery within a few days or weeks and if you do not lose a lot of money because of it.



It is very important to appreciate that such an action is mainly about claiming compensation. Particularly, the courts are unable to discipline health professionals, force hospitals to change their working practices or obtain an apology from a doctor.

Mediation (an alternative way of resolving a dispute) may be an appropriate way of dealing with your claim. If you want more information please ask us. We will in any event explore this method with you in due course.

## How to claim

There is no system in the UK for automatically paying compensation to people who have been the victim of a medical accident. Occasionally, whoever was responsible for your medical treatment might admit that they made a mistake and offer you an 'ex gratia' payment. This is usually in the case of minor injuries or losses and is made out of goodwill, rather than because it was ordered by the court. However, in the majority of cases, you will need to make a legal claim.



# Thinking about whether to take legal action?



If a specialist solicitor advises you that you have grounds for a legal claim, you still need to think carefully about whether to proceed. Making a legal claim is stressful, as you have to go over what happened to you many times and this can be traumatic and upsetting. It is also a lengthy process.

## Can I bring a claim without using a solicitor?



It is almost impossible to bring this type of claim without the help of a solicitor, as they are usually very complicated and involve complex medical evidence. Remember, if you lose, you are likely to have to pay the costs of the other side.



## The right solicitor

You need to use a solicitor who specialises in clinical negligence cases and understands the medical and legal issues involved, as they are often complex. Clinical negligence solicitors who have been accredited by the Legal Services Commission will belong to the clinical negligence panel of either The Law Society or AvMA. Only solicitors who have met the quality standards of the Legal Service Commission like Wilson Browne can take on Legally Aided cases.

## Time limits to bringing a claim

You have a three year period during which you can bring a claim for compensation, which is called the 'limitation period'. It starts either from when you had your treatment or when you first realised that you had suffered an injury, which is called your 'date of knowledge'. The earlier your claim is started, the better. There are some cases in which this time limit does not apply:

- With children, the three years does not start until their 18th birthday;
- With people under a mental disability, the time limit does not apply until (and unless) they recover from their disability;
- In extreme circumstances, the court may decide to allow a claim after the three year limit has expired.

## Affording a Solicitor



Investigating a clinical negligence claim is expensive and can cost thousands of pounds. If you are unable to afford to pay for this yourself, there are a number of ways to get help with the cost:

- **Legal Aid**

You may be able to get help with the legal cost through the Legal Services Commission if you are on a low income and do not have an equity in your house in excess of £100,000. It will be necessary to show that you have a reasonable chance of winning the case and that the probable value of your claim justifies the cost involved. If you are likely to receive less than £10,000 compensation, you may not get help unless there is a clear admission of guilt. Usually you will need to have made a complaint about your treatment and received a detailed response before you can obtain Legal Aid.

- **Trade Union help**

- **Legal Expenses Insurance**

You should check your insurance policies to see if they include legal expenses cover for personal injury claims.

- **No Win, No Fee' agreements**

These are conditional fee agreements and they mean that you do not have to pay the cost of your solicitor if you lose your case. However, due to how complicated these claims are, Wilson Browne will not usually enter into these agreements until there is strong evidence that you will win your case and this can cost up to several thousand pounds to gather.

## What must I prove to claim compensation



You have to prove two things:

1. That the health professional acted in a way that no responsible or reasonable practitioner would have done ('negligence'); and
2. That you have suffered a physical or psychological injury as a direct result of the negligent act(s) or omissions (causation).

It is not possible to claim compensation just because someone did something wrong, you have to prove that this caused you an injury.

## Investigating your claim

The solicitor you contact will make a preliminary assessment about your case to decide if they wish to take it on. This “screening process” is based upon what you tell your solicitor, your medical records, if you already have them, the medical and legal issues, how much your claim could be worth, any extra information you may have, such as complaint letters, whether your claim is within the correct legal time limit and how your legal costs will be paid. The solicitor needs to be sure that firstly, your case has a reasonable chance of success and secondly, that the value of your claim is sufficiently large to make it worth the amount it would cost to pursue the claim.



The main evidence you need will come from independent medical experts. An expert opinion is given on your case by doctors or other health care experts (from out of the area) by looking at your medical records, statement and other documents supporting your case. You may have to be examined by your expert and experts working for the hospital/doctor you are claiming against. If your solicitor is unable to find a medical expert to support your claim, it will not succeed.

## What your compensation includes



You can claim compensation (damages) for any injuries/losses, which you can prove were the direct result of the healthcare providers' negligence. This can include:

- pain and suffering;
- if you are unable to carry out hobbies or daily activities (loss of amenity);
- loss of earnings;
- costs of adapting your home;

- psychological injury;
- costs of nursing and medical care, special equipment or help that you need to carry out daily activities.

If the case is in relation to someone who died due to clinical negligence, you may be able to claim:

- 'bereavement damages', currently fixed by Parliament at £11,800.
- loss of dependency, if you were supported by the deceased.
- a claim on behalf of the Estate of the deceased.

## Appearing in Court



This is unlikely, as few cases reach the point of going to trial. Until fairly recently, clinical negligence claims took years to deal with, but there are new rules covering the way such cases run which are intended to settle cases more quickly, at less cost and in a more flexible way.

# Private treatment

You need to follow the same steps as for NHS care, but you will not be able to use the NHS Complaints Procedure. That said, private hospitals and clinics should now have their own complaints procedure.

You may have claims against both your private doctor and the hospital/clinic where you were treated.

## Death of a relative

If a relative has died as a result of a medical accident, as well as taking the steps described above, you should contact the local coroner, as coroners are responsible for investigating a death through unnatural causes. You should tell the coroner of your concerns as soon as possible, as they may then ask for a post mortem examination. The coroner will carry out a first enquiry to decide whether an inquest or public hearing ought to be held.

If possible, you should get advice from Wilson Browne at an early stage and ideally before an Inquest.

We may contact the coroner to put forward reasons for an inquest to be held and also arrange for a second post mortem if necessary. If an inquest is to be held, we can get necessary documentation and arrange for your representation.



# Useful Contact Organisations

**The Law Society** - The Law Society, Ipsley Court, Redditch, Worcestershire, B98 OTD. Information line: 0870 606 6575

**APIL (Association of Personal Injury Lawyers)** - 11 Castle Quay, Nottingham, NG7 1FW. Telephone: 0115 958 0585

**AvMA (Action against Medical Accidents)** - 44 High Street, Croydon, Surrey CR0 1YB. Telephone: 020 8686 8333

**The General Medical Council** - 178 Great Portland Street, London, W1W 5JE. Telephone: 020 7637 7181

**Kettering Citizens Advice Bureau** - Market Street, Kettering, Northants. Telephone: 0870 1264077

**NHS Direct (for information on medical conditions, local and national support groups and your rights)** - Great Gutter Lane East, York Way, Willaby, Hull, HU10 6HD. Telephone: 0845 4647

**East Midlands Independent Complaints & Advocacy Service (ICAS)** - Victory House, 400 Pavilion Drive, Northampton Business Park, Northampton, NN4 7PA Telephone: 0300 456 8347.  
Website: [www.careersfederation.co.uk/cas.html](http://www.careersfederation.co.uk/cas.html)

**Leicester Law Centre** - 20 Millstone Lane, Leicester, LE1 5JN. Telephone: 0116 242 1160. e-mail: [info@leicesterlawcentre.co.uk](mailto:info@leicesterlawcentre.co.uk)

**Northampton Citizens Advice Bureau** - 72A St. Giles Street, Northampton, NN1 1JW. Telephone: 0870 1264077

**UKCC (The professional organisation for nurses, midwives and health visitors)** - 23 Portland Place, London, W1B 1PZ. Telephone: 020 7637 7181

# Our team

## **Christopher Smith – Partner & Head of Litigation**

Christopher is based at our Leicester office. He is a member of the Law Society Clinical Negligence and AvMA (Action against Medical Accidents) Specialist Solicitor Panels for clinical negligence. He has specialised in clinical negligence work for many years and has built up an excellent reputation in the East Midlands region, particularly in Leicester.



## **James Wright – Partner & Head of the Clinical Negligence Team based at Kettering**

James has undertaken clinical negligence work for the last 20 years and has developed a strong reputation in the local area. He is a member of the AvMA Specialist Clinical Negligence Panel and a well regarded individual for the outstanding service that he provides to clients.



## **Louise Tyler – Partner**

Louise is based at the Kettering Office. She is a member of the Law Society Clinical Negligence Panel and has undertaken clinical negligence work for the last 17 years. She specialises in representing children and has dealt with some high value claims. She has also represented many families at inquest hearings.



## **Rachel Rogers – Associate Solicitor**

Rachel is a skilled member of the Clinical Negligence Team based at Kettering. She specialises in both personal injury and clinical negligence work. She is a member of the Personal Injury Panel and is building up a sound reputation for the excellent work that she does. She is also a member of the Association of Personal Injury Lawyers.



## **Gaynor King – Legal Executive**

Gaynor is also an experienced member of the Clinical Negligence Team based at Kettering. Gaynor specialises in both clinical negligence as well as personal injury work. In addition, Gaynor is a member of the Association of Personal Injury Lawyers. She has had experience in successfully dealing with group clinical negligence actions.



## **Carrie Murphy - Paralegal**

Carrie has recently joined the team at Kettering and is specialising in personal injury and clinical negligence work. She is also a member of the Association of Personal Injury Lawyers.





**WILSON BROWNE**

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