

Medical accidents

What to do if you have been injured

*What if a relative died because
of treatment they had?*

Can I get compensation?

*What if I can't afford
a solicitor?*



0845 345 4 345

www.communitylegaladvice.org.uk

See page 10 for useful phone
numbers and website addresses

A free and confidential advice
service paid for by Legal Aid

community
legal advice

The Community Legal Service

This guide has been produced by the Community Legal Service (CLS), an organisation that has been set up by the government to help you find the right legal information and solve your problems.

The CLS:

- provides leaflets with advice on a range of problems, and
- can help you find people and organisations that can help you with your legal problems.

To find out more about how the CLS can help, call us or visit our website.

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*Community
Legal Service*



What can I do if I've been injured because of medical treatment?

If something goes wrong when you are having medical treatment, it may be called a 'medical accident'.

If this has happened to you, you may be feeling distressed and confused, and may want advice and support. This could be from friends, family or specialist support groups. You could also talk to your GP to see if they can explain things or help in other ways.

'Clinical negligence' is a legal term to describe a medical accident where someone has been harmed because a doctor or other healthcare professional has not provided the proper standard of care. Clinical negligence includes things such as:

- making a mistake during surgery
- giving you the wrong drug
- making the wrong diagnosis, or
- not providing treatment you need.

If this has happened to you, you may want to make sure the same thing doesn't happen to someone else. If it was very serious, you may want to claim compensation.

This leaflet looks at some commonly asked questions about medical accidents. If you're not sure whether you can or should take any action, you can get free, confidential advice – see 'Where can I get further advice?' on page 10.

How can I make sure the same mistake doesn't happen to someone else?

Your first step should be to complain to the doctor, clinic or hospital that you believe was responsible, and ask for an explanation. Depending on how they respond, you can choose to take things further.

For example, for NHS treatment, you can use the NHS complaints procedure to make a formal complaint about what happened to you. The clinic, hospital or GP's practice should have details of where to get independent help and advice on doing this.

Also, you can contact the body responsible for improving and monitoring the quality of care.

- If the hospital or clinic is in England, contact the **Healthcare Commission** (phone **0845 601 3012**, or visit www.healthcarecommission.org.uk).
- If the hospital or clinic is in Wales, contact the **Healthcare Inspectorate for Wales** (phone **029 2092 8850**, or visit www.hiw.org.uk).

Can I claim compensation?

If you have been injured physically or psychologically because a doctor (or some other healthcare professional) didn't give you the right standard of care, you may be able to claim compensation. But your injury needs to be serious enough to make paying the costs of a claim worthwhile. It's probably not worth taking legal action if your injury:

- is fairly minor and you recover within a few days or weeks, and
- has caused you little or no financial loss – for example, if you've still been paid despite having time off work.

If you're not sure whether to try to claim compensation, get advice from a clinical negligence solicitor (many solicitors won't charge you for a first meeting).

You can get free, independent advice from **Action against Medical Accidents (AvMA)** – phone **0845 123 23 52** or visit www.avma.org.uk. AvMA's website also has a forum where people who've been dealing with medical accidents can share their experiences.

You can also find details of lawyers in your area who specialise in clinical negligence through **Community Legal Advice** (phone **0845 345 4 345** or visit communitylegaladvice.org.uk).

Do I have to use a solicitor?

Yes, almost certainly. Medical accident claims are usually complicated, mainly because of the complex medical evidence you will need to present. And if you do bring your own case and lose, you may have to pay the other side's costs.

In a few cases, you may be able to receive compensation without using a solicitor. If you complain to the NHS Trust that treated you, and ask for compensation, it may offer you compensation if:

- you have good evidence that it was responsible for your injury, and
- you're asking for a small amount of money.

But in this situation, you should still get advice from a clinical negligence solicitor or AvMA to check that the amount you are offered is reasonable.

What if I can't afford a solicitor?

Don't let the cost of a solicitor put you off taking action. You have several possible options:

- You may qualify for **legal aid**, if you're on a low income and your case meets other conditions for receiving legal aid. See 'Can I get legal aid?' on page 12, or contact **Community Legal Advice** to see if this could be for you.
- If you are a member of a **trade union** or similar type of organisation, it may be able to help you with legal costs.

- Check your insurance policies, especially your household contents policy, to see if they include **legal-expenses insurance cover** for personal injury claims.
- You could use a **'no-win, no-fee'** agreement. See below for more about this.

Is a 'no-win, no-fee' agreement the right way to go?

It could be, but it's not completely free of risk. If you use a 'no-win, no-fee' agreement (officially called a 'conditional fee agreement'), the solicitor who acts for you will get paid only if you win.

If you win your case, the losing party (for example, an NHS Trust) will probably have to pay your solicitor's fees, on top of any compensation you win. But in some cases, you may have to pay some of your costs out of the compensation you are awarded.

If you lose your case, you won't have to pay your solicitor's fees but you will have to pay the other side's legal costs. However, there are ways to protect yourself from these costs, usually through a special insurance policy.

For more about conditional-fee agreements, see the **Community Legal Advice leaflet 'No-win, No-fee Actions'**. Download it from www.communitylegaladvice.org.uk.

Can I claim compensation even if the treatment was a long time ago?

This depends. There are strict time limits for starting a legal claim for compensation, normally within three years of the date of your medical accident. This three-year time limit may start from when you could first reasonably have realised you had suffered an injury. But don't count on it – if you think you may have suffered a medical accident, get expert help quickly to make sure your claim won't fall outside the time limit.

Different time limits apply to children, and to people who have a mental disability and can't manage their own affairs.

How much compensation will I get?

It's difficult to estimate how much you may get, because it depends on many things. Obviously, it depends on how badly injured you have been. And it depends on exactly what compensation (also called 'damages') you claim for. This could include:

- pain and suffering, which can be physical, psychological or both, including, for example, ongoing treatment and further operations
- if you can't carry out daily activities or hobbies (called 'loss of amenity')
- loss of earnings

- the costs of nursing care, including care that your family provides, special equipment, medical care, or help that you need to carry out daily activities
- the costs of adapting your home.

When you first see the solicitor, they will probably be able to give you only a rough idea of how much compensation you may get. They will have to take into account any social security benefits you get because of your injury, such as Income Support. This is because your benefits could affect your compensation.

How long will it take to receive compensation?

This depends on how complicated your case is. These days, many cases are settled before formal legal proceedings start, and without any court hearings. Instead, you and your solicitor may negotiate directly with the organisation you think is responsible for your injuries.

However, both sides will still need to discuss evidence and exactly how much compensation you are entitled to. So you should expect your case to take at least a year – and in complex cases, three or four years – to be settled.

A relative of mine died because of their medical treatment. What can I do?

Dealing with the death of someone is always distressing. If you think they died because of medical negligence, you need to report your concerns to a coroner as soon as possible. Coroners investigate any death that is not due to natural causes or where the cause of death is unknown.

The coroner will arrange a post-mortem. In some cases, they will hold an inquest – a public hearing to find out why and how someone died. Coroners have the power to make recommendations to organisations responsible for medical treatment to prevent other people dying in similar circumstances.

Get advice from AvMA or a clinical negligence solicitor with experience of inquests as soon as possible. The solicitor can contact the coroner and explain why there should be an inquest. They can then represent you at the inquest.

If you are on a low income, you may be able to get legal aid to pay for advice from a solicitor – see 'Can I get legal aid?' on page 12. Legal aid will not usually pay for a solicitor to attend the inquest, but if you can't afford the solicitor's fees for this, they may reduce their fee to a level you can afford.

Also, you can claim compensation for someone who has died in much the same way as you would claim if you were injured during treatment. You can claim on their behalf for their pain and suffering and for financial losses. You can also claim:

- 'bereavement damages' if the person who died was your husband, wife, civil partner or a child under 18, and
- 'loss of dependency', which means the loss of financial support if you depended on the person who died for money to live on.

If I take legal action, will my treatment be affected?

Possibly. If you are having ongoing treatment, the people treating you may act differently towards you if they know that you are taking legal action. This shouldn't stop you, but you should discuss it with AvMA or a solicitor.

Where can I get further advice?

Action against Medical Accidents (AvMA)

AvMA is a charity that can give you support and medical information to help you make an effective complaint. It can also provide legal advice and refer you to a specialist solicitor if you want to claim compensation.

Phone **0845 123 23 52** or visit www.avma.org.uk.

Community Legal Advice

If you have a low income, including if you receive benefits, and qualify for legal aid, you can call us for independent advice about debt, education, benefits and tax credits, employment and housing problems.

If you don't qualify for legal aid, or if you have another type of problem, we can put you in touch with other organisations, helplines or local advice centres and services that can help. We can direct you to other legal information resources.

How to contact us

You can speak to our advisers in several ways:

- Call us on **0845 345 4 345** from 9am to 6:30pm Monday to Friday. Calls cost no more than 4p per minute from a BT landline. Calls from mobiles are usually more. Worried about the cost? Ask an adviser to call you back.

- Request a callback through our website, www.communitylegaladvice.org.uk.
- Text 'legalaid' and your name to **80010** and we'll call you back within 24 hours.

Help on the internet

If you have internet, our website www.communitylegaladvice.org.uk has lots of help, including:

- our online directory of advisers, organised by areas of law
- more information about legal aid and who can get it
- online factsheets and leaflets that you can download, on lots of topics, and
- links to specialist organisations, charities and support groups in your area.

The Law Society

The Law Society, the professional organisation for solicitors in England and Wales, can also give you the names of solicitors in your area who specialise in medical negligence cases.

Phone **020 7242 1222** or visit www.lawsociety.org.uk.

Can I get legal aid?

If you need help with the costs of legal advice, you can apply for legal aid. Whether you will get it will depend on:

- the type of legal problem you have
- your disposable (spare) income and how much disposable capital (money, property, belongings) you have, and
- whether there is a reasonable chance of winning your case and whether it is worth the time and money needed to win.

There is an online calculator on our website, at www.communitylegaladvice.org.uk/en/legalaid/calculator where you can see whether you could be financially eligible for legal aid.

What if I think I am eligible?

If you think you could be eligible for legal aid, you should speak to a legal adviser who can deal with legal aid cases. You can search our directory to find an adviser in your area, at the 'Find a legal adviser' section of our website www.communitylegaladvice.org.uk, or call our helpline 0845 345 4 345.

Help for other problems

This leaflet is one of a series of free leaflets produced by Community Legal Advice giving easy-to-read advice on a range of problem areas. The leaflets in this series are:

- C1 Dealing with rent problems**
- C2 Domestic abuse**
- C3 Fair treatment at work: your rights if you are disabled**
- C4 Your rights at work**
- C5 Dealing with debt**
- C6 Losing your home**
- C7 Claiming benefits**
- C8 Problems with school**
- C9 Mental health laws**
- C10 Community care**
- C11 Divorce and separation**
- C12 Living together**
- C13 Medical accidents**
- C14 Dealing with the police**
- C15 Care proceedings**
- C16 Claiming asylum (available August 09)**
- C17 Removal and deportation (available August 09)**
- C18 Dealing with a will (available August 09)**

You can order any of these leaflets free by:

- phoning **0845 3000 343**
- fax **0845 5438 258**, or
- emailing orderleaflets@communitylegaladvice.org.uk.

All of these leaflets are also available in Welsh, Braille and Audio.



The Legal Services Commission manages the Community Legal Service and Community Legal Service Fund (legal aid). To find out more about us, visit www.legalservices.gov.uk

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