

Clinical negligence

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. This factsheet is for adults affected by mental illness in England and their loved ones and carers. It's also for anyone else interested in the subject.

Key Points.

- Clinical negligence is when healthcare professionals cause physical or mental harm to you because of the poor standard of care they give you.
- Proving clinical negligence can be 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:

1. [What is clinical negligence?](#)
2. [What is the difference between clinical negligence and making a complaint?](#)
3. [Are there time limits for making a claim?](#)
4. [How do I make a clinical negligence claim?](#)
5. [How can I pay to make a clinical negligence claim?](#)
6. [How much compensation could I get?](#)

1. What is clinical negligence?

Clinical negligence is when healthcare professionals harm you because of a poor standard or lack of care or treatment.

The harm you have experienced could be physical or mental.

Clinical negligence is also known as medical negligence.

To have a chance of succeeding in a clinical negligence claim, you must show that:¹

1. the healthcare professional or provider owed you a duty of care,
2. the care was not of an acceptable standard, and
3. as a direct result of this you suffered harm.

You can experience negligence from different medical professionals or teams. These can include:

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

Below are some examples of negligence which could cause you harm.

- Doctors didn't notice symptoms of possible mental illness when they should have.
- There's an unreasonable delay in treatment.
- Your hospital or mental health team discharged you too early.
- Your mental health team didn't give you the right treatment.
- Professionals didn't take reasonable steps to prevent someone dying by suicide.

You can make a clinical negligence claim about both NHS and private treatment.

What should I keep a record of?

If you think you have experienced clinical negligence, it's best to keep a record of:

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

This will help your legal adviser if you decide to make a claim. See [section 4](#) of this factsheet for more information on how to make a claim.

Can I make a claim if a loved one has died because of negligence?

You may be able to make the following claims if a loved one has died because of negligence:

- bereavement damages of up to £15,120 if your husband, wife, co-habiting partner, or unmarried child under 18 has died,² and
- for 'loss of dependency' if you were financially dependent on the person who has died.³

Who deals with clinical negligence claims for the NHS?

NHS Resolution are a part of the Department of Health and Social Care. They deal with resolving disputes and clinical negligence claims for the NHS. You can find their contact details in the [Useful contacts](#) section of this factsheet.

What is alternative dispute resolution?⁴

If you make a clinical negligence claim the NHS might try to resolve the issue without going to court.

This process is known as alternative dispute resolution.

The NHS has a mediation service. The NHS say it has been designed to support patients, families, and NHS staff in working together. This is to work towards the resolution of incidents, complaints, legal claims, and costs disputes. This can help to avoid the unnecessary expense, time, and stress of going to court.

The service will provide access to an independent and accredited mediator. The mediator is selected from a panel drawn from a wide range of backgrounds.

The NHS say 77% of claims were resolved in 2021/22 without court proceedings.⁵

Following mediation, you might not be happy with the NHS's suggested way forward. If this is the case, you can think about carrying on with your clinical negligence claim through the courts. You can ask your legal adviser for advice about this.

You can read more about alternative dispute resolution on NHS resolution's website here: <https://resolution.nhs.uk/services/claims-management/alternative-dispute-resolution>

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

When you make a complaint to the NHS you won't get usually get compensation.

But you might get things like:

- an apology,
- the treatment or care you want,
- a change in policy, procedure, or practice, or
- action against a healthcare professional, such as suspension or being dismissed from work.

If you want to claim compensation you have to make a clinical negligence claim.

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

You can find more information about '**Complaining about the NHS and Social services**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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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,⁶ or
- within 3 years of the date that you realised that your injury was because of the negligence.⁷

If you die within 3 years of when the negligence happened, then a clinical negligence claim can still be made. The claim must be made within 3 years:⁸

- from the date of your death, or
- of your personal representative realising that your injury was because of the clinical negligence.

You might have lacked mental capacity when the clinical negligence happened. If you regain the mental capacity to make a decision you have 3 years to make a claim.⁹

If you lack mental capacity a representative of yours might be able to make a claim.

You can find more information about '**Mental capacity and mental illness**' at www.rethink.org. Or contact our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

4. How do I make a negligence claim?

If you think you have been the victim of clinical negligence, you should get legal advice.

Who are Action Against Medical Accidents (AvMA)?

To begin with, you can contact the medical accident charity, Action Against Medical Accidents (AvMA).

They can give you free, expert advice. They are a UK charity which gives free and confidential advice and support to people affected by clinical negligence.

Their helpline advisers are specially trained volunteers who are medical and legal professionals. They will listen to your story sympathetically and offer practical advice about what options are open to you. They can:

- explain some of the jargon and systems,
- help you decide what to do next, and
- put you in touch with other sources of support if needed.

AvMA's contact details can be found in the [Useful contacts](#) section at the end of this factsheet.

AvMA have information on making a claim on their website:

www.avma.org.uk/help-advice/guides/#making-a-claim

How can I find a clinical negligence solicitor?

You can search on the Law Society website to find a clinical negligence solicitor: <https://solicitors.lawsociety.org.uk>. Also, their details are in the [Useful contacts](#) section at the end of this factsheet.

The Law Society have an accreditation scheme for clinical negligence solicitors. This can help you to find a good clinical negligence solicitor. You can find out more about the scheme here:

www.lawsociety.org.uk/public/for-public-visitors/using-a-solicitor/law-society-accreditations

Against Medical Accidents also have a list of accredited clinical negligence solicitors on their website: www.avma.org.uk/help-advice/find-a-solicitor

You can find more information about 'Legal advice - How to get help from a solicitor' at www.rethink.org. Or contact our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

Are there rules about making a claim for clinical negligence?

There are rules about making a claim for clinical negligence. A solicitor must do certain things before starting the claim. Your solicitor can advise you on the rules and should follow the correct procedures for you.

These rules are set out in the Civil Procedure Rules, which you can find here: www.justice.gov.uk/courts/procedure-rules/civil/protocol/protocol_rcd#annex%20b

As part of the claims process your legal adviser will need you to consent to accessing your health records.

You can find more information about ‘**Access to health records**’ at www.rethink.org. Or contact our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

How long can it take to settle a clinical negligence claim?

Clinical negligence claims can be complex. So, it can take a long time to settle a claim and the process can be stressful.

Settlement of claims can take from 18 months for a simpler one to years for a more complex one.¹⁰ It might take less time if you agree a settlement with the NHS through alternative dispute resolution. See [What is alternative dispute resolution?](#) above.

So, you can consider the potential downsides of making a claim against the potential benefits. To decide whether you should make a claim you can speak to:

- Action Against Medical Accidents. See [Who are Action Against Medical Accidents \(AvMA\)?](#) above,
- A legal adviser. See [How can I find a clinical negligence solicitor?](#) above, or
- A trusted person, like a loved one.

Sometimes the NHS will:¹¹

- accept liability early on,
- pay you interim damages before your claim is fully settled.

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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.

You can read more information about understanding legal costs for clinical negligence claims in a guide by Action Against Medical Accidents here: www.avma.org.uk/wp-content/uploads/Understanding-legal-costs.pdf

You can't get legal aid for clinical negligence. Unless it is about a child that suffered brain injuries. They must have been caused in pregnancy, childbirth or up to 8 weeks' postnatal and have resulted in severe disability.¹²

Legal aid means that the government pays for your legal advice if you can't afford to pay it yourself.

You can check if you can get legal aid here: www.gov.uk/check-legal-aid

What is legal expenses insurance?

Legal expenses insurance is when an insurance policy you have pays your solicitor's fees.

Some insurance policies, such as motor or household, include legal expenses insurance.

Your policy might cover legal expenses insurance. You can 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 can check with your union representative.

You might have to see a solicitor that your insurer chooses. If you aren't happy with the solicitor, you can ask the insurer if you can use your own.

What are conditional fee or 'no win, no fee' agreements?

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

If you win your case, you will have to pay your solicitor's fees with your compensation money. The fee can be no more than 25% of your compensation.¹³

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.

What is private funding?

This is when you pay the fees yourself. Clinical negligence cases can cost a lot of money. You can talk to your solicitor about fees before you decide to start a claim.

You can find more information about '**Legal advice - How to get help from a solicitor**' at www.rethink.org. Or contact our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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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 can ask a solicitor how much compensation you might get. A solicitor can give more information on how the above will be calculated.

You can read more information about what compensation you can claim in a guide by Action Against Medical Accidents here: www.avma.org.uk/wp-content/uploads/Compensation.pdf

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Useful Contacts

NHS Resolution

NHS Resolution is part of the Department of Health and Social Care. They provide expertise to the NHS on resolving concerns and disputes fairly.

Phone: 020 7811 2700

Address: 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU

Email: nhsr.generalenquiries@nhs.net

Website: www.resolution.nhs.uk

Action Against Medical Accidents (AvMA)

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

Phone: 0845 123 23 52

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

Website: www.avma.org.uk.

The Law Society

The Law Society represents solicitors in England and Wales.

Telephone: 020 7242 1222

Address: 113 Chancery Lane, London, WC2A 1PL

Website: www.lawsociety.org.uk

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References

¹ Action Against Medical Accidents. *Medical negligence – what compensation can I claim? The legal test for medical negligence*. Page 2. <https://www.avma.org.uk/wp-content/uploads/Compensation.pdf>

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- ⁴ NHS Resolution. *Alternative dispute resolution*.
<https://resolution.nhs.uk/services/claims-management/alternative-dispute-resolution>
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- ⁵ NHS resolution. *NHS Resolution continues to drive down litigation – Annual report and accounts published for 2021/22* <https://resolution.nhs.uk/2022/07/20/nhs-resolution-continues-to-drive-down-litigation-annual-report-and-accounts-published-for-2021-22>
(accessed 2 March 2023)
- ⁶ s11(4a), Limitations Act 1980 ch58.
- ⁷ s11(4b), Limitations Act 1980 ch58.
- ⁸ s11(5), Limitations Act 1980 ch58.
- ⁹ S28(6), Limitations Act 1980 ch58.
- ¹⁰ Coles Miller Solicitors LLP. *How long does a medical negligence claim take?*
<https://www.coles-miller.co.uk/news/blog/how-long-does-a-medical-negligence-claim-take-mnb.html> (accessed 3 March 2023)
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<https://www.coles-miller.co.uk/news/blog/how-long-does-a-medical-negligence-claim-take-mnb.html> (accessed 3 March 2023)
- ¹² Schedule 1, para 23. Legal Aid, Sentencing and Punishment of Offenders Act 2012 c10.
- ¹³ Reg 5. *The Conditional Fee Agreements Order 2013*. SI 2013/689 London: TSO; 2013.

This factsheet is available in large print.

Rethink Mental Illness Advice Service

Phone 0808 801 0525
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org



Patient Information Forum

Did this help?

We'd love to know if this Information helped you

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

RAIS
PO Box 18252
Solihull
B91 9BA

or call us on 0808 801 0525

We're open 9:30am to 4pm
Monday to Friday (excluding bank holidays)

Need more help?

Go to 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: 0808 801 0525 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 rethink.org/donate or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



Equality, rights, fair treatment, and the maximum quality of life for all those severely affected by mental illness.

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