



Clinical negligence

This guide explains what clinical negligence is, how to make a complaint about clinical negligence and where to find more information and support.

Please note:

- This guide covers clinical negligence from the point of view of a person with a mental health problem.
- This guide applies to England and Wales.
- This guide contains general legal information, not legal advice. We recommend you get advice from a specialist legal adviser or solicitor who will help you with your specific situation and needs. See [Useful contacts](#) for more information.
- The legal information in this guide does not apply to children unless specifically stated.

If you require this information in Word document format for compatibility with screen readers, please email: publications@mind.org.uk

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Quick facts

- Generally, doctors and health professionals will take good care of you when you're being treated. However, sometimes things can go wrong. If they are negligent when giving you medical treatment, this is called 'clinical negligence', and you may have the right to get compensation for it.
- To [prove negligence](#), you need to show that a healthcare professional failed in their duty to take care of you, and you experienced a damage or loss as a result of that failure. Damage or loss can include both physical and psychiatric injury, as well as financial loss.
- If you've experienced clinical negligence, you could [make a complaint](#) about it by speaking to someone informally, or by making a formal complaint. It's usually much easier to solve something informally or through a formal complaint than by making a legal challenge.
- If speaking to someone informally or making a formal complaint hasn't worked or isn't appropriate, you may want to [make a legal challenge](#). This means you'll need to go to court. You'll need to start the legal claim within three years from the date of the incident or from when you knew the injury was negligent
- It's always important to [get legal advice](#) about your situation before going to court. You might be able to get some [help paying for your legal fees](#), for example through a conditional fee agreement, or through your trade union.
- If your claim is successful, the court can award you money as compensation, known as [damages](#). Damages can include compensation for cost of pain and suffering, and loss of earnings.
- If you've experienced medical negligence, it's understandable that you might feel stressed, and that you need some support. See our page on [getting support when making a complaint](#) for ideas on where you can find help. You can also see our pages on [wellbeing](#) and [managing stress](#) for tips on how to stay well.

Terms you need to know

Term	Meaning
Advocate	<p>An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.</p> <p>See our pages on advocacy for more information.</p>
Capacity	<p>'Capacity' means the ability to understand information and make decisions about your life. Sometimes it can also mean the ability to communicate decisions about your life.</p> <p>If you do not understand the information and are unable to make a decision about your care, for example, you are said to 'lack capacity'.</p>

	See our pages on the Mental Capacity Act for more information.
Civil Procedure Rules (CPR)	These are the rules which set out how a case is to be conducted in the civil courts (as opposed to criminal courts) in England and Wales. The aim of these rules is to make the court procedures fairer and easier to understand.
Conditional fee arrangement (CFA)	<p>This is an arrangement that law firms sometimes make to pay for your legal case. It means that you only pay for your lawyer's work if you win your case and you receive compensation.</p> <p>If your claim is successful, you'll pay for your lawyer's costs, as well as an extra percentage of the compensation, called a 'premium'.</p> <p>If your claim is unsuccessful, you won't have to pay for your lawyer's legal work.</p>
Damages	This is money awarded by a court to be paid as compensation for your loss or injury.
Duty of care	This is the legal obligation of a person or organisation to act with the attention and caution that a reasonable person would while you're in their care or using their services.
Legal aid	<p>Legal aid can help meet the costs of legal advice, family mediation and representation in a court or tribunal. It is given to people who cannot otherwise afford legal representation.</p> <p>You'll usually need to show that:</p> <ul style="list-style-type: none"> • your case is eligible for legal aid • the problem is serious • you can't afford to pay for legal costs.
Letter before claim	<p>A letter before claim (sometimes known as a 'letter before action') is a letter putting a person on notice that court proceedings may be brought against them.</p> <p>Courts believe that bringing legal action should be a last resort and encourage people to resolve their disputes at an early stage by communicating with each other and trying to find a solution informally.</p>
Mental Health Act 1983	<p>This is a law that applies to England and Wales which allows people to be detained in hospital (sectioned) if they have a mental illness and need treatment. You can only be kept in hospital if certain conditions are met.</p> <p>See our pages on the Mental Health Act for more information.</p>

<p>Negligence</p>	<p>Negligence, in law, is an act or failure to act (omission), that doesn't meet the level of appropriate care expected, which results in injury or loss.</p> <p>If a doctor or health professional is negligent when giving you medical treatment, this is called 'clinical negligence'.</p>
<p>NHS Resolution</p>	<p>NHS Resolution is the part of the NHS which has been set up to deal with negligence claims. They defend claims brought against the NHS and share learning from claims to improve patient and staff safety in the future.</p>
<p>Redress</p>	<p>Under the Welsh complaints system Putting Things Right, an NHS body will investigate your claim and consider if you have the right to redress.</p> <p>Redress can be:</p> <ul style="list-style-type: none"> • an explanation • a written apology • a report on the action which has or will be taken to prevent similar incidents arising in future • an offer of financial compensation and/or remedial treatment.
<p>Section</p>	<p>Being 'sectioned' means that you are kept in hospital under the Mental Health Act. There are different types of sections, each with different rules to keep you in hospital. The length of time that you can be kept in hospital depends on which section you are detained under.</p> <p>See our pages on sectioning for more information.</p>

About clinical negligence

What is clinical negligence?

If you've been injured because of negligent medical treatment, this is called clinical negligence, and you may be able to get compensation for it.

Examples of clinical negligence include:

- If you're diagnosed incorrectly, or there's a delay in diagnosing you.
- If you're put on medication for an inappropriately long amount of time.
- If a doctor fails to consider physical causes for your psychiatric symptoms.
- If a doctor fails to prevent someone from dying by suicide, even though there was a known risk of this happening.

[If you're a carer or family member](#), you might also be able to make a legal claim on behalf of someone who has experienced clinical negligence.

How can I prove clinical negligence?

To prove negligence, you need to show that:

1. The healthcare professional owed a duty to take care of you and not cause injury.
2. The healthcare professional failed in their duty to take care. In other words, there was a breach of that duty.
3. Their failure to take care has caused harm to you.
4. Their failure to take care was the main reason to cause you harm; and
5. Damage or other losses have resulted from that harm. Damage includes physical injury, psychiatric injury like [post-traumatic stress disorder \(PTSD\)](#) as well as financial loss, for example future earnings.

Example

Josh was transferred from his child and adolescent mental health services (CAMHS) psychiatrist to an adult psychiatrist in the community. He told his new psychiatrist that he was suicidal and it was agreed that he would be given a treatment plan. However, the psychiatrist sent Josh a letter saying he was being discharged from the service without a treatment plan.

Because of this, Josh tried to take his own life. He was then detained under the [Mental Health Act](#) and had to delay his plans to study.

In this case, it was found that the psychiatrist's failure to take care of Josh was clinical negligence.

What if I'm detained under the Mental Health Act?

If you're detained under the Mental Health Act (or '[sectioned](#)'), it can be more difficult to prove clinical negligence because the law allows you to be given treatment without consent. See our page on [consenting to treatment](#) for more information.

See our pages on [sectioning](#) for more information about being detained under the Mental Health Act.

Making a complaint

How do I make a complaint about clinical negligence?

If you feel that you've received negligent medical treatment, there are steps that you can take to resolve the issue. The steps that you can take will depend on your circumstances and what you want to achieve.

Broadly, there are three steps you can take to address your problem. These are:

1. Speak to someone informally. This can be a much easier and less stressful way to get your problem solved, and it is often the quickest too.
2. Make a formal complaint. You could do this by speaking to someone or writing a letter. If you're in Wales and your complaint is about the service you received under the NHS, you can make a formal complaint under the [separate Welsh complaints system](#).
3. Make a legal challenge. There are specific things you should think about if you want to [make a legal challenge](#) about clinical negligence.

It's usually best to try these in this order, since it's much easier to solve something informally or through a formal complaint than by making a legal challenge. However, it's not always necessary to make a complaint before making a legal challenge.

For more information about making a complaint generally, see our pages on [complain](#)
[ing about health and social care](#).

How do I make a complaint about the NHS in Wales?

You can sometimes claim compensation under the Welsh complaints system [Putting Things Right](#), rather than making a complaint using the court process. When a complaint has been raised about a service provided by the NHS, they must consider whether you have experienced harm as a result of your treatment. If you have, they should think about offering you compensation, known as 'redress'.

Redress could include:

- an explanation
- a written apology
- a report on the action which has or will be taken to prevent similar incidents arising in future
- an offer of financial compensation and/or remedial treatment.

Where can I get support?

Making a complaint about clinical negligence can be stressful, and you might feel you need some support. For example, someone like an [advocate](#) could help you express your views, and make sure that your voice is heard.

Our page on [getting support when making a complaint](#) has more information about this.

Legal challenge

How can I make a legal challenge?

If you want to make a legal challenge about negligent treatment, you will need to go to court. It's a good idea to [get legal advice](#) before going to court.

You can ask for your medical records to see what evidence there is to support your claim. See our pages on [my personal information](#) to find out how you can do this.

Letter of claim

Before going to court, you must send a [letter of claim](#) setting out your legal case. There are very specific rules this has to follow, called the [Civil Procedure Rules \(CPR\)](#). It can be easy to get it wrong, so it's important to [get legal advice](#) for this step.

In England, if your legal challenge is about the service you received under the NHS, [NHS Resolution](#) may respond on behalf of the hospital or healthcare professional.

Time limit

You'll need to start the legal claim within **three years** from the date of the incident or from when you knew the injury was negligent.

- For children, the three years starts when they turn 18.
- For someone who lacks [capacity](#) to make decisions, the time limit starts when they regain capacity.

If your claim relates to the [Human Rights Act](#), for example, [preventable suicide](#), the time limit is reduced to **one year**.

It's a good idea to start your claim as soon as you can, because:

- this will give you more time to investigate and prepare your case
- there's a better chance that documents you need will still exist
- people who are involved in your case will be able to remember more accurately what actually happened.

I'm a family member or carer. Can I make a legal challenge on behalf of someone?

If you're a family member or carer of someone who has experienced clinical negligence, you can bring a claim on their behalf if:

- they're under 18
- they don't have the [capacity](#) to complain at that time
- they have died because of the negligent treatment.

Example

(Please note: this example talks about someone taking their own life.)

Les was a patient detained under the [Mental Health Act](#) and on one-to-one observations because she was suicidal and self-harming.

When she improved, she was given escorted leave, but she ran away and attempted suicide. The care team believed that she was a high risk of taking her own life but she was not put back onto one-to-one observations, and sadly she took her own life.

Her partner brought a claim of clinical negligence against the hospital as her death could have been prevented.

If you or someone you know is feeling suicidal, see our pages on suicidal feelings. Or call Samaritans on freephone 116 123 – they're open 24 hours and are there to listen.

How can I get legal advice?

It's always important to get legal advice about your situation before going to court.

You can get in touch with a solicitor by using the [Law Society's find a solicitor tool](#), or by calling them on 020 7320 5650. You can get a list of solicitors based in your area that specialise in clinical negligence. You can also see our [useful contacts](#) page for more information on where to find legal help.

Taking legal action can be complicated and stressful, and it's understandable that you might want some support to help you through the process. Our page on [getting support when making a complaint](#) has more information about who can help.

Can I get help paying for legal fees?

Here are some ways you might be able to get help paying for your legal fees:

Legal aid

Generally, [legal aid](#) isn't available for clinical negligence. Legal aid is only available in cases where a child has a neurological injury resulting in them being severely disabled

during pregnancy, child birth or the postnatal period (8 weeks) and they are financially eligible.

In rare circumstances, you might be able to get legal aid even though your case falls outside of the usual scope – this is called 'exceptional case funding'. You will need to speak to a legal aid lawyer to find out whether this applies to you.

Conditional fee arrangement

Solicitors may agree to a [conditional fee agreement \(CFA\)](#) or a 'no win no fee' agreement. This means that you won't have to pay your solicitor's fees if you don't win your case. However, a solicitor is unlikely to take on the case if they think it will lose. You can speak to a solicitor to see if they will take your case.

Check your insurance policy

It's also a good idea to check any insurance policies you have like a home contents or car insurance. Sometimes these policies also cover general legal expenses, which can be used to pay a solicitor.

Trade union

If you're a member of a union at your workplace, then the union may have solicitors who can give you legal advice about your case.

What happens if my claim is successful?

If you go to court and are successful, the court can award you money as compensation, which are called [damages](#).

Damages can include:

- compensation for pain and suffering
- costs of ongoing treatment and further operations
- compensation for if you can't carry out hobbies or daily activities (called 'loss of amenity')
- loss of earnings
- costs of extra care or equipment you need
- costs of adapting your home; or
- compensation for psychiatric or psychological injury.

However, even if you're successful, a court can't:

- force a hospital to change its working practices
- improve standards
- make a doctor or hospital apologise.

If you want the doctor or hospital to apologise, you can do this by making an informal or formal complaint. You can find more information on our page about [complaining about health and social care](#).

What happens after my dispute ends?

One way or another, your dispute will eventually come to a conclusion. For some people, this can bring a lot of relief. For other people, this can be a difficult time, regardless of the outcome.

For example, you might:

- feel disappointed, frustrated and angry if the outcome wasn't everything you hoped for

- be satisfied and relieved with the outcome, but still feel overwhelmed by what you've been through
- have spent a lot of time and energy on your dispute – perhaps months or even years
- need to rebuild relationships with your care team
- have already moved on from that care team and want nothing more to do with them
- not really feel that things really have been resolved at all, but still feel that it's the right choice for you to end the dispute at this stage.

However you feel when your dispute ends, it's important to make time to look after yourself and think about what helps you stay well. Our pages on [wellbeing](#) and [managing stress](#) have some tips.

Useful contacts

Mind's services

- **Helplines** – all our helplines provide information and support by phone and email. Our Blue Light Infoline is just for emergency service staff, volunteers and their families.
 - Mind's Infoline – 0300 123 3393, info@mind
 - Mind's Legal Line – 0300 466 6463, legal@mind
 - Blue Light Infoline – 0300 303 5999, bluelightinfo@mind
- **Local Minds** – there are over 140 local Minds across England and Wales which provide services such as [talking treatments](#), [peer support](#), and [advocacy](#). [Find your local Mind here](#), and contact them directly to see how they can help.
- **Elefriends** is a supportive online community for anyone experiencing a mental health problem. See our [Elefriends page](#) for details.

Who else could help?

Action against Medical Accidents (AvMA)

Freedman House
Christopher Wren Yard
117 High Street
Croydon
CR0 1QG
Helpline 0845 123 2352 (Monday to Friday, 10.00 am to 3.30pm)
avma.org.uk

AvMA is a UK charity that provides free, independent advice and support to people affected by medical accidents. They have a helpline and can put you in contact with specialist solicitors if appropriate.

Law Centres Network

lawcentres.org.uk

Law Centres offer legal advice, casework and representation to individuals and groups. To find your local Law Centre, you can look at their interactive Google map or see the Law Centres list.

For legal advice enquiries, visit the 'I am looking for advice' page on their website.

LawWorks

lawworks.org.uk

LawWorks is a legal charity that lists on its website the Free Legal Advice Clinics in England and Wales. These clinics can give you one-off, face-to-face advice if you have legal problems about consumer disputes, housing, social welfare law or employment.

NHS Resolution

resolution.nhs.uk

Part of the NHS. Aims to resolve clinical negligence complaints involving the NHS, and to help to prevent the same thing happening again.

Putting Things Right

puttingthingsright.wales.nhs.uk

Putting Things Right is the process for managing medical negligence concerns in NHS Wales.

The Law Society

020 7242 1222 (England)

029 2064 5254 (Wales)

lawsociety.org.uk

The Law Society provides details of solicitors in your area that you can contact for specialist legal advice.

Where can I get support?

Find an advocate

An advocate is a person who can both listen to you and speak for you in times of need. Having an advocate can be helpful in situations where you are finding it difficult to make your views known, or to make people listen to them and take them into account.

For information on advocacy services and groups in your area, you could start by contacting [the Mind Legal Line](#) and your [local Mind](#). You can also contact the [Patient Advice Liaison Service \(PALS\)](#) in England, or the [Community Health Council](#) in Wales.

Read more about [how advocacy might help you](#).

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References are available on request.