

What is clinical negligence?

If your life has been affected by spina bifida, hydrocephalus, anencephaly (or one of the associated conditions) you constantly place your health, and sometimes your life, in the hands of doctors, nurses or other healthcare staff. Parents and carers do the same for those they look after.

The care and treatment that we receive from the NHS in the UK is often outstanding. Generally, clinicians will take good care of you when you're being treated, yet sometimes things that could have been avoided go wrong.

When things do go wrong, individuals and families can live with the consequences for the rest of their lives.

If a doctor, nurse or other member of healthcare staff made an avoidable mistake which causes harm you would not otherwise have suffered, this may be **clinical negligence**. If negligence can be proved, you have the right to be compensated.

To prove negligence, you need to show that

1. The clinician owed a **duty of care** to you, your unborn baby or your child, to not cause injury
2. The clinician failed in that duty of care by making a mistake that no other responsible clinician in that speciality would have made – a breach of the duty of care
3. That mistake has caused harm to you, your unborn baby or child

You should always seek legal advice from expert clinical negligence solicitors if you feel someone was at fault or partly at fault for medical care or treatment which has gone wrong.

Why does Shine support the possibility of claiming for clinical negligence?

We offer support to those who are affected by hydrocephalus and spina bifida. Where our members have suffered harm or an injury as the result of an avoidable mistake, we believe we can support those members by recommending expert solicitors who can advise as to whether there is a potential clinical negligence claim.

We cherish the NHS but we also recognise that mistakes are made – sometimes with life-changing results. When an avoidable mistake is made it can have far-reaching consequences for you, your child and your wider family.

A successful clinical negligence claim can provide the funds you need to meet any extra challenges and costs (such as those for care, therapy and equipment) which have resulted from the failure.

Aside from compensation it is very important to Shine that health professions and organisations have an opportunity to investigate what went wrong and why, and make changes to ensure the same mistakes do not happen again in the future.

Common mistakes

When dealing with complex conditions like spina bifida or hydrocephalus, even the smallest mistake can have devastating results. Common errors which can have life-changing consequences include

- Delay in diagnosing a condition or complication
- Delaying treatment
- Not diagnosing patients with the right condition (misdiagnosis)
- Giving patients the wrong medicine or treatment

Examples of these would be where a delay in diagnosing a brain tumour caused hydrocephalus, or a failure to scan a baby's sacrum when born with a sacral dimple resulted in a delay in diagnosing a tethered spinal cord.

Proving there was clinical negligence

To be successful in a claim, three things have to be proved

1) Breach of duty

All clinicians have a 'duty of care' towards their patients. This means they have to work within certain standards to help people get better.

For a claim to be successful, you have to prove that a mistake was made due to 'substandard treatment'. To prove this, the question your solicitor will ask is whether other responsible clinicians would have made the same choices.

2) Causation

You also need to prove it was the breach of duty (the avoidable mistake or substandard care) that caused you (or your child) to suffer the injury, loss or damage that you are claiming for.

Another way of looking at 'causation' is to ask whether the outcome would have been avoided if the mistake had not occurred.

3) Harm

To bring a claim, you have to have suffered an injury or loss that would not have happened if the breach of duty had not occurred. This is important because often in medical care some harm will result in any event. For example, if there was a failure to diagnose a dysfunctional shunt and someone has to have surgery regardless of any delay, there can be no claim for having surgery as it would have been required anyway.

If you can establish these three elements, a legal claim can begin. You will be known as the 'Claimant', and whoever the claim is against is the 'Defendant'.

How will I know if there was 'substandard treatment'?

Expert witnesses are independent medical professionals such as doctors, nurses or other clinicians who are trained to understand the legal tests involved in a clinical negligence claim.

Your solicitor will ask expert witnesses to prepare a report on what happened. This includes whether it was an avoidable mistake and whether that avoidable mistake caused your injuries and losses.

Your evidence will be in the form of a witness statement. The expert witnesses consider your evidence and your medical records to prepare a report on the care you received. If these reports support your claim, your solicitor will be able to start court proceedings, if necessary.

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