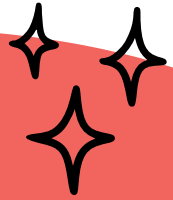




PEEPS

HIE CHARITY



**Medical negligence
and HIE injuries**



Legal support for you and your family

In this booklet we will explain what a clinical/medical negligence claim is, how they work and what they can achieve for families.

At Peeps we understand that many of the families we support may need help from a solicitor because they believe their child's brain injury was preventable with better medical care. For other families it may be that they are facing a challenge in relation to their child's education, are having difficulties with their employer, or need to plan for the future with a will or trust fund and need specialist legal advice.

To support our families with this we have established a panel of trusted law firms that have a great deal of experience of working on behalf of families with a child with a brain injury. These firms have gone through our due diligence process and have the necessary expertise and accreditations to represent children with brain injuries, and their families, with skill and sensitivity.

You can find out how to reach our legal panel at the back of this booklet.

Clinical negligence claims in a nutshell

In this booklet we are going to discuss clinical negligence claims, also known as medical negligence claims, in more detail, but first let's explain what they are.

A clinical or medical negligence claim is a legal avenue open to anyone who feels that mistakes have been made in their care, or in the care of a loved one, and that these mistakes have caused them harm or injury.

For families with a child with an H.I.E. brain injury, the poor care can often relate to doctors and / or midwives who were responsible for the child's birth and newborn period. Very sadly, mistakes made during this time can sometimes result in a baby's brain not receiving enough oxygen, which can cause them to be poorly and in need of urgent treatment.

What's the aim

The aim of a medical negligence the claim is to find out if the treatment provided was below an acceptable standard, and if it was, whether the fact that the care fell below an acceptable standard was the cause of the harm suffered. If the answer to those two legal tests is yes, and this has been proven, then the next step is to secure the compensation that the child is legally entitled to. This can pay for additional things they may need, such as specialist housing, care, therapy and equipment. In addition, compensation will be awarded to recognise the pain and suffering of the affected person.

The basic explanation is simple, but in reality, clinical negligence claims are complex and demanding, and that's why we recommend families only use legal firms that specialise solely in this area of law, and particularly in brain injury claims involving an H.I.E. injury. By doing so, families can not only ensure that they have the best possible experience on their legal journey, but they can also ensure that their case is handled correctly, and that their child will receive the maximum amount of compensation that they are entitled to.

Types of clinical negligence claims

There are many different types of clinical negligence claims, and there is no exhaustive list, because healthcare is so broad and unfortunately there can be many different things that can go wrong. If you have concerns about any treatment received, our legal panel solicitors will be able to provide a free assessment and tell you what the best next steps are.

However, some general case types that you might have heard of include:

- Brain injuries
- Birth injuries
- Delays in diagnosing conditions such as cancer or sepsis
- Surgical errors
- Medication errors
- Spinal injuries
- Other orthopaedic injuries, such as those affecting the knees, hips and other joints



What does a clinical negligence solicitor do?

When you make contact with a clinical negligence solicitor, they should offer you a free initial call to obtain your basic details from you, talk through all the relevant medical history and what you are concerned about. They will ask you for the dates of appointments and treatments and about any diagnoses that have been made. The call will be in complete confidence and there is absolutely no obligation to go ahead with anything. Specialist solicitors will understand that this will be a difficult process, for you and will be supportive and sensitive to your circumstances.

Often the solicitor will be able to tell you at this stage whether they can take things further and begin a full investigation. However, it is also sometimes the case that they will need some further information from you, such as hospital and clinic letters or scan or test results. For children with an H.I.E. injury, your solicitor will sometimes need to see their MRI scans and reports.

Medical records

Once the solicitor has decided that they can take the case on they will request all of your and your child's medical records from your GP and any hospitals that were involved in the care. They can request these on your behalf but will need you to sign a form to confirm you agree to this. The medical records will form a key part of the case, as your solicitor will rely on them to prove what happened and when. Clinical negligence claims are all about evidence, which we explain more about below.



The importance of evidence

The most crucial aspect of a clinical negligence claim is the support of independent medical experts. Your solicitor will have access to a network of the best experts working within the specific area of medicine that your child's care is concerned with. For cases involving children with H.I.E. injuries the experts needed will often work in the fields of midwifery, obstetrics, neurology, neuroradiology and neonatology, as they will know a great deal about what should and shouldn't be done during a baby's birth and the impact that mistakes can have on them. The solicitor will ask these medical specialists to analyse the medical records from the time of your child's birth and thereafter before preparing reports.

If the experts agree that mistakes were made, and that these mistakes caused your child's injury, then your solicitor will be able to push ahead with building a claim on their behalf. If the experts are unsupportive then your solicitor will sadly not be able to take things any further.

Next steps

If the case can proceed, your solicitor will start writing to the healthcare trust responsible to try to resolve the case as quickly as possible. This might result in the trust admitting that the care was negligent and agreeing that they should compensate your child. Your solicitor will then work with you, and the legal representatives on the other side, to ensure a fair and adequate financial settlement is reached that ensures your child has access to all the things that the experts agree that they need.

Your child will likely need to be seen and assessed by medical experts working in different specialisms, to determine what they need from their compensation. Their reports will form a vital part of the negotiations between your solicitor and the solicitor on the other side about what the final amount should be.

Dealing with set backs

However, it can unfortunately be the case that even if your child's case is very strong, the healthcare organisation in question will deny any wrong-doing. This can be upsetting and frustrating, especially when a child is involved, but your solicitor should support you through any set backs and reassure you that this does not mean that the case will not succeed. As long as your independent experts remain supportive of the case, there are steps that your solicitor can take to resolve the case and ensure that your child is compensated. This includes issuing court proceedings, which places further obligation on the trust to resolve the case, or face having to explain why they haven't before a court judge.

It is very rare for a case to reach court and in the vast majority of cases, a compromise is reached at an earlier stage.

How long does it take for cases to settle?

More complicated cases, including those involving brain injuries, can take longer to resolve as more experts are required and for the best experts the waiting lists can be long. For cases involving a brain injury to a child, the case might need to be put on hold until they get older and the full extent of their needs for the rest of their life can be assessed. Taking all that into consideration, it usually takes a few years for a brain injury case to finally settle.

That being said, there can often be an opportunity for your solicitor to obtain what is known as 'interim compensation', which is a significant lump sum that is paid to a person or family while they are waiting the case to reach final settlement. This can be used to ensure your child has access to the things they require now.

Your solicitor will always focus on ensuring your child receives every penny of compensation needed to move forward with their life.



What is compensation awarded for

The aim of compensation is to put the injured person back in the position they would have been (as far as is possible), had the negligent medical treatment not occurred. Any losses that they have suffered, such as lost earnings or future financial security, will be accounted for in the final settlement.

Care, equipment and aids that can help your child achieve more independence are also covered. For some children the level of independence they should have had can never be returned. That's very hard to come to terms with and it may feel like financial compensation is of small comfort. However, on a practical level it can make things much easier for your child and your family.

The below list gives an idea of the items that can be built into a compensation settlement if they are required by the injured person.

- Lost earnings, both historical and future
- Suitable properties and their adaptations
- Specialist carers
- Equipment, aids and therapy
- Specialist vehicles and transport costs.
- Technology
- Any additional costs associated with holidays and leisure time
- Help maintaining properties and gardens
- Professional advice e.g. From independent financial advisors

Who pays my solicitor' fees?

The majority of clinical negligence cases on behalf of children who have suffered an H.I.E. injury are funded by a 'no win, no fee' agreement, or legal aid, and there are pros and cons to both forms of funding.

Legal aid is only available for children who have suffered a brain injury while they were in the womb, during their delivery, or in the first few weeks after their birth. It also doesn't always provide enough funding to cover the cost of the best experts who will help your solicitor build the strongest case. If your case is being handled by a specialist clinical negligence solicitor, they should be able to make an application for legal aid on your behalf

'No win, no fee' agreements, also known as conditional fee agreements, are a widely used form of funding. All specialist clinical negligence solicitors should be able to offer this as a funding option if they believe you have a case. It means that if the case does not succeed, then you are not liable for any legal fees at all. This is because your solicitor will write off any of their own costs and will arrange specialist insurance that will provide cover for anything they cannot write off.

For cases that are successful, i.e., it has been agreed that you, or your child, will be compensated for any injuries, the vast majority of your legal fees will be paid by the insurers for the NHS or private healthcare trust responsible for the negligent treatment.

Success fees

As well as the standard legal fees of having a specialist solicitor handle your case, many clinical negligence claims will have a success fee added to the final legal costs. Success fees help law firms to offset the cost of investigating and bringing cases that unfortunately do not succeed. Success fees are paid from your child's compensation, but the amount should be capped, and this should be discussed with you in detail at the start of your case.



Other funding options

Trade Union Funding

Some trade unions provide their members with legal expenses cover so that they can bring a compensation claim for an injury that was not their fault, including those arising from clinical negligence.

If you are a member of a trade union and want to find out if you have cover, then let your clinical negligence solicitor know and they will be able to look into this for you.

Before the event legal expenses insurance

Sometimes existing insurance policies, such as those used to insure a home, offer legal expenses insurance. You should always check your existing policies at the start of your case and send these to your solicitor, so that they can check for any cover you might have.

Your solicitor should have a thorough funding conversation with you at the start of your child's case and also set everything out in writing so that you can choose the option that you feel best suits the needs of your child.



How long do we have to start our child's case?

Usually, people have three years from the incident that caused them harm, or the date they became aware that it had caused them harm, to start a clinical negligence case. However, for children this time limit does not begin until their 18th birthday. For anyone who is unable to manage their own affairs and make their own decisions (called mental capacity), due to a brain injury, there are no time limits.

Anyone who is under 18, or who does not have mental capacity, will require family member, carer or friend, to be their 'litigation friend' and make decisions about their case on their behalf, with guidance from their solicitor.



Who can help – the Peeps legal panel

At Peeps we firmly believe that our families should receive the highest standard of legal advice, from trustworthy firms with strong reputations.

The clinical negligence firms on our panel are ones that we know and have vetted through a thorough application process. They have attributes such as having solicitors accepted on to the Law Society's specialist panel for clinical negligence and a listing in the independent guides to the legal industry, Chambers and Partners and the Legal 500. We can't recommend any one legal firm, but we do advise families to speak to the firms on our panel if they feel they need legal support.



Further Details

For further details of the Peeps legal panel members please visit our [legal panel web page](#), or read / request the document entitled Peeps Legal Panel Members from us.

With thanks to our panel member
JMW Solicitors for their help in the
creation of this guide.



0800 987 5422



info@peeps-hie.org



www.peeps-hie.org

Charity No. 1179495