



Medicine for Managers

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Clinical Negligence

All clinical healthcare staff will do their very best in the care of their patients but sometimes things do go wrong, either because of carrying out an incorrect action or failing to do something that should have been done. This may result in harm being suffered as a result. If such an event can be attributed to one or more clinical staff, it is called clinical negligence.

Clinical negligence may be alleged against any practitioner or organisation and common examples may involve either making a wrong diagnosis or taking an unreasonably long time to make the diagnosis, poor or inappropriate management, medication errors or other incorrect interventions. Actions against practising clinicians is called medical negligence.

Within medicine itself, doctors in any speciality may be the subject of an allegation but the areas most subject to negligence claims are Emergency Medicine, Orthopaedic Surgery and Obstetrics.

Other areas commonly subject to claims are, perhaps unsurprisingly, General Surgery, Gynaecology, General Practitioner Services and Radiology.

Emergency medicine is consistently the area of medicine often with the highest percentage of medical negligence claims. Data shows that, for the period 2024-25, 13.1% of all claims were

related to the speciality, often related to misdiagnosis, delay in the provision of care or failure to recognise when a patient's condition was deteriorating.

Regardless of the speciality or nature of the medical practice, some types of errors occur frequently and form the core of medical negligence claims.

- Misdiagnosis
- Delayed diagnosis

Clearly, in circumstances where delay or error occurs, the consequences may be very serious, as for example in managing cancer.

- Medication errors are estimated to occur very frequently. Many are of little or no significance but using the wrong drug, incorrect dosage or failing to identify harmful drug interactions may be very dangerous.
- Surgical errors may include damage to body organs or tissues, leaving an

instrument or swab in side a patient or even removal of the wrong body part.

- Failure of care or treatment. This may involve any inadequate or negligent care, including failure to refer when necessary, failure to identify symptoms or changes and failure to monitor.

Complaints and claims are steadily increasing by anything up to about 7% or so in any one year. In 2022-23, the increase was 8.6%. The annual cost of settlements has approximately tripled over the last two decades.

In order for a patient to establish medical negligence, it is necessary to prove:

1. That the medical professional or the institution ***owed the patient a duty of care.***
2. That the care fell ***below the standard expected of a reasonably competent professional in that field.***
3. That the breach of duty directly caused ***a physical or mental injury*** and was the ***principal reason for the harm***, resulting in ***damages...*** for example, pain, suffering or financial loss.

The Process of Making a Claim

Although some patients take their action against a clinician or institution personally (called a ***litigant in person***), anyone considering litigation usually contacts a specialist medical negligence solicitor.

Many will provide a consultation at no charge to assess the initial merits of the case. Most such solicitors work on a ***"No win, no fee"*** basis. The solicitor will assist in the process of gathering evidence including medical records, evidence

from witnesses, details of recovery and information about expenses.

An independent medical expert should be consulted to assess whether the care in question was actually substandard.

The solicitor then writes a letter of claim to the practitioner or the healthcare provider. The recipients will consider the allegations with their medical defence provider and will decide whether to accept or deny responsibility.

Only a very small number go to court. Most are resolved by ***alternative dispute resolution (ADR)*** or negotiation.

The Three-Year Time Limit

In general a claimant has three years to start a claim or issue court proceedings,

- from the date that the alleged negligence occurred, or
- from the date at which the patient first became aware that harm was the result of potential negligence

Exceptions to this are:

- Children who can issue a claim up to their 21st birthday
- Patients whose mental capacity does not allow them to manage their own affairs
- In fatal cases, three years from the date of death

For the patient, the motive for making a complaint may govern the route taken. If wishing to obtain an apology or a change in

procedures, the patient may make a complaint through the formal NHS complaints procedure. This is separate from claiming financial redress through a solicitor and the court system. A patient may utilise both routes at the same time.

Patients may obtain advice and assistance from either **Action Against Medical Accidents (AvMA)** or the **Patient Advice and Liaison Service (PALS)** through the local hospital.

Government liability for negligence claims is now about £60 billion, an increase of £14.4 billion since 2006-7.

A significant amount of the costs is associated with a relatively small number of high cost claims with rapidly rising settlement costs.

In October 2025, the National Audit Office showed annual negligence costs had increased from £1.1 billion in 2006-7 to £3.6 billion in 2024-5.

Many feel that such costs are simply increasing out-of-control. Rather graphically, the Chairman of the Parliamentary Public Accounts Committee, Sir Geoffrey Clifton-Brown said

“Current Spending equates to £350,000 per hour, every single hour, 24 hours a day in the NHS”

A major contributor to claims of £1M or more is brain injuries suffered during maternity care, which involve about 125 children a year. The costs reflect the lifetime care required together life aids and adaptations required.

Clearly litigation costs are frighteningly high and contribute considerably to the overall costs

associated with medical injury. The increasing trend of costs must be arrested and reversed.

There are a number of factors where urgent attention is required:

- Many accidents occur because staff are sparse, rushed and harassed within the NHS. The country has to make a decision about NHS working conditions and facilities, either to increase staffing in those areas where it is clearly inadequate, or to continue with Streeter's slash and burn management to cut costs.
- Settlement times must be accelerated. It is reported that delay between notification and settlement has risen by 51% in the past decade. Many believe that cases can easily be speeded up to reduce stress on claimants and staff, and to reduce wasted costs.

Management and resolution of claims could be speeded up and clear staged timescales set, which would help to rein in claimant solicitors' costs.

Legal costs are 15% of total settled claim costs with claimant legal fees increasing to over half a billion pounds in 2024-25, up from £148 million in 2006-7.

Appallingly, for claims below £25,000, legal costs exceeded damages awarded by a factor of 3.7. The Conservative Government introduced plans to cap low value claim legal costs but, with the election of the Labour Government, the plans have not been implemented.

- Currently some claimants receive sums based on receiving private sector care,

whilst the actual care is provided through the National Health Service.

Of course the hardest and most insoluble problem which makes the whole process more convoluted, more expensive and more stressful for all concerned is the issues around 'the blame game'.

We all make mistakes, but sometimes it is very hard for clinicians to admit it, for a variety of reasons including partly out of pride, partly out of their fear of approbation and criticism by colleagues, partly because of being hounded by an organisation ready to criticise, and partly because in many cases they tried so hard to do the right thing and it simply was unsuccessful.

I doubt that the system will ever be made streamlined, criticism free, speedily managed, claimant solicitors reined-in and claimants or their families assisted without feeling the need to fight relentlessly for a long period.

But, I guess we have to keep trying!

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