

Medical Negligence

Expertise and Understanding

Legal advice from Irwin Mitchell

This booklet provides some guidance on the legal rights for those who may have suffered as a result of medical negligence, misdiagnosis or poor health care management.

This information relates to the law and procedures in England and Wales. Please contact us if you need advice about the law and procedure in other legal jurisdictions.

Choosing to pursue a personal injury claim following medical negligence is an important decision. What you need is expert advice from professionals acting in your interest – from initial enquiry right through to successful outcome.

Medical care in the UK is of the highest standard, however very occasionally things go wrong and patients can suffer great distress, serious injury and even death as a result of a medical accident or failure in their care.

Irwin Mitchell has the UK's largest and most experienced medical negligence team handling claims and recovering compensation for every kind of medical mistake.

We will fight fearlessly to achieve the best outcome for you and your claim. Our specialist team is renowned for understanding all the issues surrounding medical negligence, and we know what positive action to take to make a difference.

Our lawyers offer the highest level of professionalism in their advice and expertise combined, with dedication and sensitivity.

Above all, we put you first.

"Thank you so much for handling my case so well. You came to know us at a great time of sadness and you were so kind. We will always remember you as very professional but also very warm hearted."

- Sylvia

Talk to a specialist advisor today

Freephone **08000 23 22 33** or visit
www.irwinmitchell.com

If you've suffered as a result of a medical accident, misdiagnosis or poor management and care following a procedure, Irwin Mitchell can help you recover the compensation you need and deserve.

Medical mistakes

In general, medical care in the UK is of the highest possible standard. However, medical professionals can make mistakes and medical systems that they operate can fail. If you are worried that your treatment was not up to the standard you feel should be expected you should ask for an explanation. If you are happy with what your doctors tell you, you might decide not to take things further, but if you are not satisfied, there are a number of complaint options available to you which are explained below.

There are many types of medical accident but most will include one of the causes outlined below:

- A delay in you being diagnosed with a condition, which results in your chances of recovery being reduced.
- Badly performed surgery.
- Incorrect or inappropriate treatment.
- The failure of a medical device or product.
- A bad reaction to a drug.
- A delay in responding during child birth to signs of the baby's distress which leads to either the child and/or the mother being injured.
- Failure to protect a patient who is likely to hurt themselves if they are not properly looked after.

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Text claim to **61993** and someone will call you back

Medical professionals owe their patients what is known as a “duty of care”. This means that they are responsible for providing an acceptable level of care and for protecting you from harm. As a patient you are entitled to expect reasonable standards and if these are not met, your doctors and other health professionals may have committed a breach of their professional duty of care.

Duty of care

As well as caring for you, doctors are also responsible for making sure that you properly understand all the risks that might be involved in your treatment, including any surgery. This allows you to give informed consent for your treatment. If you are not given all the appropriate information, the doctor treating you may be in breach of their duty of care.

Consumer protection

Not all medical accidents happen because a medical professional has done something wrong. Sometimes a medical product such as a drug, or a medical device like a heart valve or pacemaker can be faulty or fail. If this happens, you may be able to claim compensation under the Consumer Protection Act 1987. In some cases where you can show that the product is faulty and that you have been harmed as a result, you do not have to prove that someone else was at fault. Claims like these are very technical and need to be handled by lawyers who have experience of handling similar cases.

At Irwin Mitchell, we have a wide range of experience in product liability claims, in areas including:

- Blood products.
- Breast implants.
- Cataract lens implants.
- Drugs.
- Heart valves.
- Human Growth Hormone.
- Replacement hips.

Irwin Mitchell is the largest and most experienced personal injury law firm in the country. Our reputation for recovering compensation following medical negligence is second to none and every year we recover many millions of pounds for people injured in this way.

Specialist team

Employing many of the country's finest personal injury lawyers, our highly specialised Medical Negligence team delivers expert, insightful and effective advice. Combining powerful legal arguments with care and consideration, we will handle your claim with strength and sensitivity to ensure the best possible outcome.

From gathering evidence to identifying the subtle personality changes of some injuries, we work tirelessly for you, introducing forward thinking and creative new ways to present your case, recover damages and thus improve the quality of your life.

A complete service

Looking at all the circumstances of your case, we will review your options, discuss them, answer your questions and outline the help you may be able to expect from us. Providing effective and practical legal advice we will also assist with your rehabilitation and return to everyday life.

Our service includes:

- Making immediate investigations to determine who was at fault.
- Applying for interim payments wherever possible to help fund private healthcare, rehabilitation and financial security.
- Taking into account any worries you may have which are for your financial needs, and your entitlement to state benefits and your employment or other rights.
- Finding expert support for you to access rehabilitation and employment opportunities.
- Offering specialist in-house services such as Personal Injury Trust advice, financial planning, wills, and Powers of Attorney.

The service we provide is about much more than securing compensation. We can help with all manner of health, social and financial issues, from arranging and purchasing specialist equipment and accommodation, to education, employment and income provision through various types of investment.

The law can help people who have been injured where someone is at fault and it is vital that you take legal advice. Our initial consultation is free and we will give you informed advice with which to decide what to do.

Your future wellbeing informs all our actions and is central to what we do.

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Irwin Mitchell is committed to you and achieving the best outcome for your claim. We'll ensure that you are well cared for throughout the process and do everything we can to secure the compensation to which you are entitled.

Campaign for improvements

At Irwin Mitchell we have a long history of campaigning with leading organisations active in the field of personal injury and medical negligence. We seek improvements in medical procedures and care to prevent medical negligence wherever possible, and to improve the quality of life and levels of compensation for those who have suffered injury, as well as ensuring the earliest possible rehabilitation of those who have been injured.

Over and above

Irwin Mitchell has long been considered a leader in developing new and innovative services for those claiming compensation as a result of medical negligence. We strive to help those whose circumstances may not allow a claim as much as those who can. We are sponsors and fund raisers for several leading charities and support groups - and a large number of our team volunteer their skills at national, local and individual level.

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You can talk to a specialist advisor today on freephone **08000 23 22 33**

Free advice

The sooner you contact us the better your chances of making a successful claim. To find out if your circumstances could lead to a claim contact us on the number above or visit our website and complete the online claims form.

Once you have made contact, we will give you free advice on whether we think you could make a claim. It is then up to you to decide to proceed. Should you wish to go ahead we will make an appointment to see you at a convenient time and place.

Complaints schemes

Various schemes exist specifically to deal with complaints about GPs and hospitals. These schemes are in place to allow patients to raise concerns about the treatment they have received and to help them gain a satisfactory response. In some cases, these kinds of complaints can result in small amounts of compensation being paid, or apologies being made.

If you are not happy with the response at this stage, the next step is to request that an independent inquiry be carried out. ICAS or PALS may be able to help you with this. If your complaint is more general then it should be referred to the Health Service Ombudsman.

If your complaint is more serious and there is evidence that the doctor treating you was not qualified to treat you properly (rather than your injury being a one-off mistake), the General Medical Council (GMC) may investigate your case. The GMC deals with disciplining doctors and identifying ones who may not be qualified or competent enough to practice medicine. Although the GMC cannot award compensation, many patients feel it is necessary to involve them to prevent the accident being repeated.

Independent inquiries

Sometimes medical issues can be more widespread than just one single case. Large groups of people can be mistreated because of faults and failings within the system.

In cases such as these, an independent inquiry may be launched to determine the exact cause of the problem, and how it can be put right. Inquiries can be held either in private or in public. If you become involved in an inquiry, you may well need legal advice and representation.

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In many medical negligence cases there are strict time limits on when you have to start court proceedings for your claim. For this reason it is vital that you seek advice from one of our specialist advisors immediately.

Time limits

In English law and in most cases, the time limit for starting a medical negligence claim is three (3) years from the date of the incident. However, that limit can vary and may be shorter or extended depending on the circumstances of your case.

You need to be aware that any claims brought under the Human Rights Act must be started within one year of the incident taking place.

The sooner you contact us the better we are able to prepare your claim, but in any case we will give you clear advice about the time limits that apply to your particular circumstances.

'I would like to take this opportunity to say thank you very much for all your efforts and hard work on my behalf, and how pleased I am with the outcome. It is the best part of five years since I first contacted you, and I knew immediately that I had made the right choice... you have always been extremely professional, patient and understanding of my situation, and I couldn't have wished for anybody better to represent me.'

- Terry

If a person dies whilst receiving medical treatment and those treating them failed to provide the necessary care, then an inquest may be held to find out how and why they died. If this happens, relatives must seek legal advice before the inquest takes place.

Inquests

A coroner's inquest investigates unexpected deaths wherever they occur; a death in the course of medical treatment will increasingly often be investigated by a coroner, especially now that certain sorts of inquests – particularly those held before a jury or in cases where there has been a system failure – are a sufficient independent inquiry for the purpose of the European Convention on Human Rights.

Inquests can prove vital in helping to highlight problems within the system and as a result, make sure that medical systems are changed to avoid other families having to suffer in the way that you have.

Inquests also play an important role when the deaths of patients who are kept in hospital or in secure units under the Mental Health Act are investigated.

It is crucial to seek legal advice before an inquest takes place. This will give your solicitor chance to get hold of medical records and other documents from the Coroner before the court hearing. They will also be able to ask witnesses questions during the hearing, and because inquests are public hearings, often attracting press and media attention, they will ensure your interests are properly protected.

Depending on what evidence comes to light during the inquest, you may be able to pursue a subsequent claim for bereavement and economic dependency arising from the loss of life. Your solicitor will go through all the options with you after the Inquest.

We will always give you an honest, straightforward opinion.

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Everybody has human rights. The Human Rights Act and the European Convention on Human Rights outline what our legal rights are.

"We as a family can't find the right words to thank you for everything and all the effort you've done. Luke has his new home planned and without you none of this would be happening! We are so grateful for what you have achieved for Luke and it's such a relief to know his future is secure".

- Kevin

Human Rights Law

In cases where an injury has occurred as a result of medical negligence, these rights have often been compromised. Here are a few examples of what the Human Rights Law states:

- **Article 2**
This protects the right to life, and can be cited when patients have received below-standard care, have been refused expensive drugs or have not been fed. It is Article 2 which demands that any untoward or unexpected deaths must be full investigated, usually through an inquest.
- **Article 3**
This forbids inhuman or degrading treatment. This may be relevant if you did not give proper consent for treatment. It can also support cases where vulnerable people, such as the elderly or mental health patients did not receive adequate treatment.
- **Article 8**
This states that there must be respect for private and family life, and can be quoted in cases where confidential medical information has been disclosed.
- **Article 14**
Bans discrimination of any kind and can be important in cases where age-based rationing of healthcare has taken place, or patients have been discriminated against in any way.

If you are unsure whether you have a claim, you must always call us to talk it over. We'll assess your case free of charge, tell you what we think and then you can decide if you want to go ahead.

Track record

At Irwin Mitchell, we have a long track record of winning compensation cases where the client initially thought they did not have a claim, or that the law did not protect them.

What are my chances of winning?

When you contact us we will give you realistic advice on the chances of winning based on the information you provide. It is not possible to give a definitive answer on any case, however, the more information we have the more accurate an assessment we can make.

We will always give you an honest, straightforward opinion.

"We found you very professional as well as approachable, helpful and caring. We can now move on and look forward to a more stable and secure future. I am sure that this would not have happened without yourselves being involved"

- Jayne

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If you are worried about legal costs, don't be.

Contacting us for initial advice on your claim will cost you nothing. If we advise you to pursue a claim with us, we will review all the options for funding it.

Options for you to consider:

Public Funding

Medical negligence claims can still be supported by Public Funding. The Legal Services Commission will assess your case and make a decision as to whether you are eligible for Public Funding.

Only those law firms which have been approved by the Legal Services Commission and have been awarded a Clinical Negligence Franchise can request public funding for their clients.

At Irwin Mitchell, all our UK offices have a Clinical Negligence Franchise either from the Legal Services Commission or the Scottish Legal Aid Board.

If your child has suffered medical negligence, your child can bring a claim in their own right. In situations like these you as their parent will act as their representative or "Litigation Friend". Most children will be eligible for Public Funding.

Legal Expenses Insurance (LEI)

As part of your household and motor insurance you may have LEI cover to bring a medical negligence claim. We are panel solicitors for most LEI providers and are likely to be able to act for you under such as policy, if the decision to proceed is reached.

"No Cost To You"

If you are not eligible for Public Funding or do not have Legal Expenses Insurance, at Irwin Mitchell our preferred option is our "No Cost To You" scheme which under a "no win no fee" agreement means that:

- If you win you keep 100% of your compensation.*
- If you lose, you pay nothing.**
- There are no hidden costs

When we discuss your claim in more detail we will tell you if the "No Cost To You" option is available or if we need to look at other funding options.

You may for example be able to fund your case through trade union membership or legal expenses insurance.

*Does not apply to group actions or accidents and illnesses outside England and Wales and is subject to compliance with the terms of your funding arrangements.

**Subject to entering a 'No Win, No Fee' agreement with us and complying with its terms.

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The amount of compensation you receive will depend on many factors, including the impact of the negligence and how it has affected your life, how much money you are considered to have lost and will lose as a consequence and the extra support you will need in the future.

Individually assessed

From the outset, our team will advise you on how the courts approach the assessment of compensation and how this fits with your circumstances. The fact is however that we are all different and the consequences of a similar injury will vary from person to person. The courts will always assess your claim on an individual basis and award compensation according to its findings.

If your claim is progressed under Irwin Mitchell's 'No Cost to You' scheme, you will receive 100% of any compensation* awarded to you.

Keeping you informed

As we learn more about you and your injury, and obtain further evidence such as medical reports, we will be able to provide a more accurate idea of what the court is likely to award to you. You can be assured that we will do everything we can to recover the maximum amount of compensation available to you and organise payment terms to suit your immediate and ongoing needs.

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We will investigate your case thoroughly by gathering statements, medical reports and other relevant details about your injuries and ongoing requirements.

Review

Once all the background information (a witness statement from you and all of your medical records and hospital background documents) has been collated this will be referred to a number of medical experts. These experts will review your statement and medical records and give their opinion on the standard of care that you received.

After this has happened, it is likely that your solicitor will arrange a meeting with the medical experts to discuss all of the information and to establish if you have grounds to pursue a claim against those who treated you. This will be a joint decision and based on a number of factors.

You will also have the opportunity to question the experts about any aspect of your treatment. If there is not enough information for the experts to give their opinion, or if they think you were not treated negligently, you will then be given the opportunity to talk through your treatment so that they have a better understanding of the medical care that you received.

If they are confident that you do have a case, your solicitor will start court proceedings.

Out of court

The vast majority of cases are settled before they go to court, however, some do proceed to court. It can take a lot of time to prepare a case for court so you will need to be prepared for delays. Don't worry, this is normal and we will keep you informed all the way through.

We know this is a lot to take in but we will be with you every step of the way making your claim as easy and stress-free as possible.

At Irwin Mitchell we understand that contacting a lawyer might seem like a big step, especially if you haven't done it before. That's why we go out of our way to make sure that if you get in touch with us we make you feel welcome, relaxed, safe and secure.

We understand the issues affecting you and your family following a claim for medical negligence and our renowned team of specialists will fight tirelessly to ensure that you get the best compensation, medical care, rehabilitation and support possible.

Talk to a specialist advisor

Freephone

08000 23 22 33

Text **'CLAIM'** to **61993**
and someone will call you back

or visit www.irwinmitchell.com

"I should like to take this opportunity to thank you for all your hard work in settling Gerald's claim. It has obviously been a very difficult time for me, and it has been much easier dealing with someone who has been so helpful and compassionate."

- Barbara

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AvMA (Action Against Medical Accidents)

44 High Street
Croydon
Surrey
CR0 1YB

Telephone: 0845 123 2352
Email: advice@avma.org.uk
Website: www.avma.org.uk

Baby Lifeline

Empathy Enterprise Building
Bramston Crescent
Tile Hill
Coventry
CV4 9SW

Telephone: 024 7642 2135
E-mail: info@babylifeline.org.uk
Website: www.babylifeline.org.uk

Birth Trauma Association

PO Box 671
Ipswich
Suffolk
IP1 9AT

Email: support@birthtraumaassociation.org.uk
Website: www.birthtraumaassociation.org.uk

Contact a Family

209-211 City Road
London
EC1V 1JN

Telephone: 0808 808 3555
Email: helpline@cafamily.org.uk
Website: www.cafamily.org.uk

Cruse Bereavement Care

PO Box 800
Richmond
Surrey
TW9 1RG

Telephone: 0844 477 9400
Email: helpline@cruse.org.uk
Website: www.crusebereavementcare.org.uk

The Erb's Palsy Group

60 Anchorway Road
Coventry
CV3 6JJ

Telephone: 024 7641 3293
Email: info@erbspalsygroup.com
Website: www.erbspalsygroup.co.uk

The Patients Association

PO Box 935
Harrow
Middlesex
HA1 3YJ

Telephone: 0845 608 4455
Email: helpline@patients-association.com
Website: www.patients-association.org.uk

SANDS (Stillbirth and Neonatal Death Society)

28 Portland Place
London
W1B 1LY

Telephone Helpline: 020 7436 5881
Email: helpline@uk-sands.org
Website: www.uk-sands.org

SCOPE

6 Market Road
London
N7 9PW

Telephone: 0808 800 3333
Email: response@scope.org.uk
Website: www.scope.org.uk

The Children's Society

Edward Rudolf House
Margery Street
London,
WC1X 0JL

Telephone: 0845 300 1128
Email: supporteraction@childrensociety.org.uk
Website: www.childrensociety.org.uk

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