

MEDICAL NEGLIGENCE CLAIMS

A step-by-step guide

How Medical Negligence
Claims Work in England
and Wales



NJS Law

Medical treatment is intended to **diagnose illness, relieve symptoms, prevent deterioration, and protect life**. When healthcare professionals fail to provide treatment to an **acceptable standard** and avoidable harm occurs, the consequences can be devastating. Medical negligence claims arise when a doctor, nurse, hospital, GP, dentist, surgeon, midwife, or other healthcare provider breaches their duty of care and causes injury that would otherwise have been **avoided**.

These cases are among the most **complex areas** of civil litigation, often involving detailed analysis of medical records, expert medical evidence, complex arguments about causation, delayed diagnosis of serious illness, surgical complications, birth injuries, permanent disability, psychological trauma, and long-term financial losses. Medical negligence claims are not about blaming healthcare professionals for unavoidable outcomes. Medicine is **not risk-free**. Instead, these claims examine whether treatment fell below a **legally acceptable standard** and whether that failure caused **avoidable harm**.

This guide explains what medical negligence is, the legal tests that must be satisfied, common types of claims, how investigations work, the relevant time limits, how compensation is calculated, available funding options and what to expect during the claims process.

Related Services:

[Medical Negligence Claims](#) | [GP Negligence Claims](#) | [NHS Negligence Claims](#) | [Private Hospital Negligence](#)

WHAT IS MEDICAL NEGLIGENCE?

Medical negligence occurs when two key elements are present. First, a healthcare professional must have breached their **duty of care** by providing treatment that falls **below** the standard expected of a **reasonably competent professional** in that field. Second, that breach must have caused **injury** or materially **worsened** the patient's condition or outcome.

Both elements must be **proven** for a claim to succeed. It is not enough to show that treatment was substandard or that a mistake was made. The claimant must also demonstrate, on the balance of probabilities, that the substandard care **directly caused harm** or led to a significantly **worse outcome** than would otherwise have occurred.

In many cases, this requires detailed medical evidence and expert opinion to establish both the **breach of duty** and the link between that breach and the **injury suffered**.



THE LEGAL FRAMEWORK

Medical negligence claims are governed by principles developed through **case law**.

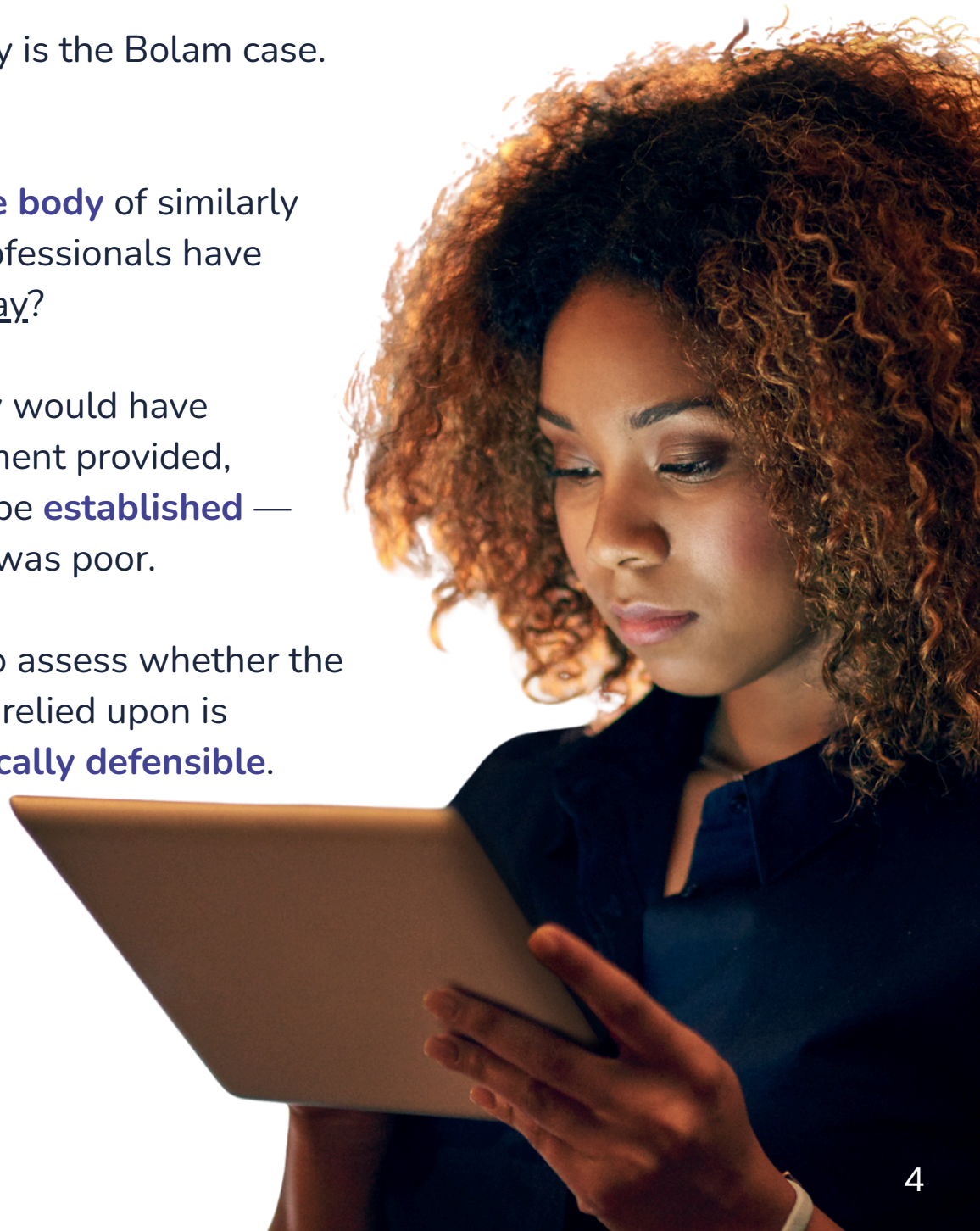
Breach of Duty: **The Bolam Test**

The leading authority is the Bolam case. The court asks:

Would a **responsible body** of similarly qualified medical professionals have acted in the same way?

If a responsible body would have supported the treatment provided, negligence may not be **established** — even if the outcome was poor.

However, courts also assess whether the professional opinion relied upon is **reasonable** and **logically defensible**.



INFORMED CONSENT: THE MONTGOMERY PRINCIPLE



Doctors must explain material **risks** of treatment and **reasonable alternatives**.

A failure to warn of **significant risks** may amount to negligence, even where the procedure was technically performed competently.

Patients are entitled to make **informed decisions** about their treatment.

CAUSATION: THE “BUT FOR” TEST

Even where breach of duty is **proven**, it must also be shown that:

“But for” the negligent treatment, the injury **would not have occurred**.

In **delayed diagnosis cases**, this may involve assessing whether earlier treatment would have improved **survival rates** or **reduced** long-term harm.

Causation is frequently the most **challenging** aspect of medical negligence litigation.

COMMON TYPES OF MEDICAL NEGLIGENCE CLAIMS

Delayed Diagnosis and Misdiagnosis

Failure to diagnose **serious illness** promptly is one of the most common categories of medical negligence.

Examples include:

- Delayed cancer diagnosis
- Failure to diagnose **stroke**
- Missed heart attack
- Misdiagnosed **infection** or **sepsis**
- Missed fractures
- Failure to interpret imaging correctly

In some cases, the delay significantly **reduces life expectancy** or causes **irreversible harm**. These claims often involve complex statistical evidence concerning prognosis.

Cancer Misdiagnosis Claims

Cancer claims may involve:

- Failure to refer urgently
- Misinterpretation of scans
- Failure to act on abnormal blood results
- Pathology errors

The key issue is often whether earlier diagnosis would have **improved** treatment options or **survival outcomes**.

Surgical Negligence

Surgical errors may include:

- Damage to **surrounding organs**
- Retained instruments
- **Wrong-site** surgery
- Poor surgical technique
- Failure to **manage complications**

Not all surgical complications indicate negligence. Surgery carries **inherent risks**. However, avoidable errors may give rise to a claim.

Birth Injury and Obstetric Claims

Birth injury cases are among the most **serious** and **high-value** claims.

They may involve:

- Oxygen deprivation leading to **cerebral palsy**
- Failure to monitor **fetal distress**
- Delay in performing a **caesarean section**
- Mismanagement of labour
- Maternal injury

These cases often require **multiple** experts, including obstetricians, neonatologists, neurologists, and care experts. Compensation may need to provide lifetime care.

GP and Primary Care Negligence

Primary care errors often involve:

- **Failure** to refer urgently
- Ignoring **red-flag symptoms**
- Failure to follow up test results
- Inadequate examination

GP negligence can delay life-saving treatment.

Medication Errors

Claims may arise from:

- Incorrect **prescriptions** being issued
- The **wrong medication** being dispensed
- **Dosage** errors
- Failure to check allergies
- Dangerous drug interactions

Medication errors can cause organ failure, brain injury, or **death**.

Anaesthetic and Critical Care Errors

These may include:

- Airway management failure
- Oxygen deprivation
- Monitoring failures
- Incorrect drug administration

Such cases are technically **complex** and require specialist **expert review**.

INVESTIGATING A MEDICAL NEGLIGENCE CLAIM

Medical negligence claims follow a structured process under the Pre-Action Protocol for the **Resolution of Clinical Disputes**.






STEP 1

All relevant records are requested from:

- GP practices
- Hospitals
- Private clinics
- Specialists

These may include **handwritten notes, imaging reports, laboratory results, and referral letters**. Records are reviewed **carefully** to establish chronology and identify **potential breaches**.



Independent medical experts are instructed in the relevant specialty to provide an **objective opinion** on the care that was provided. They review the **medical records** and assess whether the treatment met the standard expected of a reasonably competent healthcare professional.

They assess:

- Whether the standard of care was acceptable
 - Whether there was a **breach of duty**
 - Whether that breach caused or contributed to the injury

Supportive expert evidence is essential. Without it, a medical negligence claim **cannot proceed**.

STEP 2

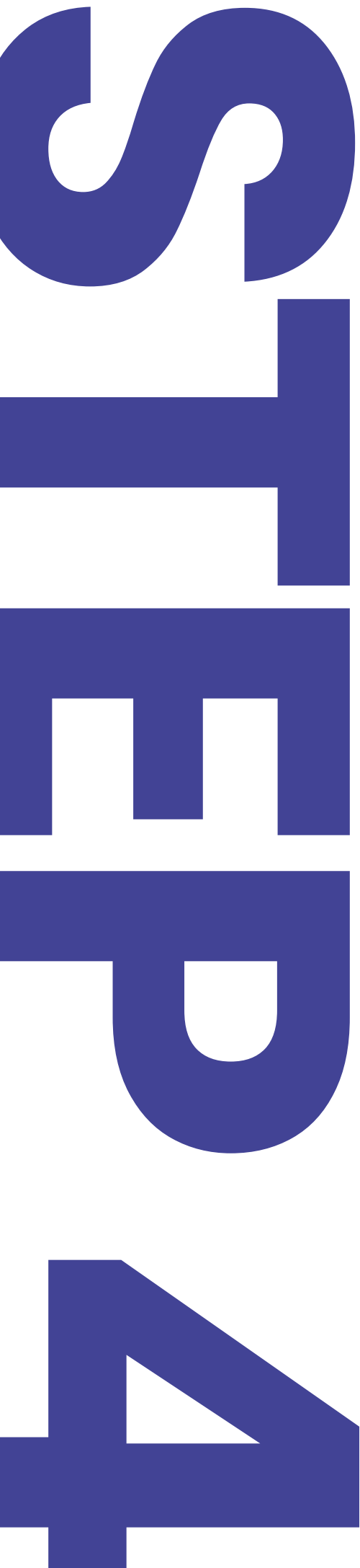
STEP 3



If expert evidence supports the claim, a formal **Letter of Claim** is sent to the healthcare provider or organisation responsible for the treatment. This is a key step in the **legal process** and sets out the case in detail, allowing the defendant to investigate the **allegations** and provide a formal response.

The Letter of Claim outlines:

- The **allegations** of negligence
- The factual background and **relevant** medical treatment
- The injuries and harm that resulted
- A summary of the financial losses and impact on the claimant



The healthcare provider is typically given four months to **investigate** the allegations and provide a formal response to the **Letter of Claim**. During this period, they review the **medical records**, obtain their own expert evidence where necessary and assess whether the care provided met the appropriate standard.

They may then:

- Admit liability for the negligence alleged
- Deny liability and dispute the claim
- Admit liability in part but challenge aspects of the claim

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If liability is admitted, the claim moves to the **valuation stage**, where the harm **suffered** and any **financial losses** are assessed. This may include compensation for **pain** and **suffering**, loss of earnings and future care or treatment needs.

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If liability is denied, court proceedings may be issued so the dispute can be determined through the **legal process**. However, most medical negligence claims still settle through **negotiation** before reaching a trial.

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TIME LIMITS



The Standard **Three-Year Limitation** Period

Proceedings must usually be issued within three years of:

- The negligent act; or
- The date of knowledge.

Children

Time runs from the child's **18th birthday**.

Lack of Mental Capacity

Limitation may not run while capacity is lacking.

Fatal Claims

Different time limits may apply under **fatal accident legislation**.

Limitation rules are strict. Missing a deadline can prevent a claim entirely.

REHABILITATION AND EARLY INTERVENTION

Where liability is admitted, early funding may be secured for:

- Physiotherapy
- Psychological therapy
- Specialist treatment
- Nursing care

Early rehabilitation can improve **long-term outcomes**.



CALCULATING COMPENSATION

General Damages

For **pain, suffering**, and loss of **amenity**.

Special Damages

These may include:

- Past loss of earnings
- Future loss of earnings
- Pension loss
- Care costs
- Rehabilitation
- Specialist equipment
- Adapted housing
- Travel expenses

Future losses are calculated using
actuarial multipliers.

INTERIM

PAYMENTS

Where liability is admitted, **interim payments** can be secured to fund:

- Treatment
- Care
- Financial stability

TIMESCALES



Medical negligence claims typically take around **18–24 months** for moderate cases and between **2–4 years or longer** for more complex claims. The timeframe depends on factors such as the availability of **medical records**, the need for **expert evidence** and the **complexity** of the medical and legal issues involved.

While the process can take time, it is important that claims are investigated thoroughly. Rushing a settlement can result in **under-compensation**, particularly where the long-term **impact** of an injury or **future care** needs have not yet been **fully understood**.

THE EMOTIONAL AND PSYCHOLOGICAL IMPACT

Medical negligence often leaves patients feeling:

- Betrayed
- Anxious
- Depressed
- Angry
- Fearful of further treatment

The **emotional** and **psychological** impact can be significant and long-lasting.

Where appropriate, psychological **support** or **therapy** may form part of the claim and can be included within the compensation sought to aid recovery and rehabilitation.



CHOOSING NJS LAW

Medical negligence claims are among the most **complex areas** of civil law. They require detailed legal analysis, independent medical **expertise**, careful **financial assessment** and realistic **strategic judgment**.

But beyond the legal complexity, these claims often arise at deeply **vulnerable** moments in a person's life.

Clients frequently come to us after:

- A delayed cancer diagnosis
- A traumatic birth outcome
- A serious surgical complication
- A worsening medical condition that should have been prevented
- The loss of a loved one

Many are still undergoing treatment. Some are coping with **permanent disability**. Others are trying to understand what happened and whether it could — and should — have been avoided.

Choosing the right solicitor in a medical negligence case is not simply about pursuing compensation. It is about **clarity**, **stability** and careful **long-term protection**.

At NJS Law, we approach medical negligence claims with **structure**, **sensitivity** and **rigorous preparation**.

A THOROUGH AND REALISTIC INITIAL ASSESSMENT

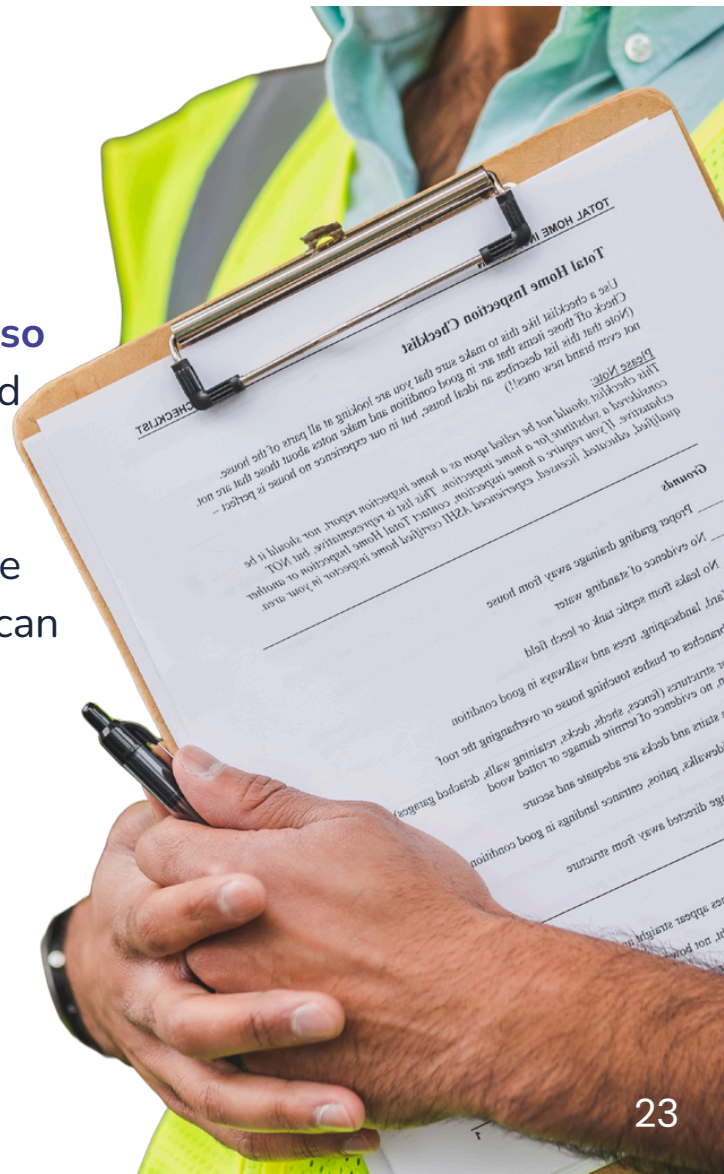
Medical negligence claims cannot proceed without supportive **independent expert evidence**. It is essential to assess a case properly before **formal allegations** are made.

From the outset, we:

- Review the chronology of treatment in detail
- Identify **key** healthcare providers involved
- Assess potential **breaches of duty**
- Consider causation challenges
- Evaluate limitation deadlines
- Provide a **realistic view** of prospects

If a claim is unlikely to succeed, **we will say so clearly**. If further expert screening is required before advising fully, we will explain why.

We do not encourage false hope. We provide **structured, honest** guidance so that clients can make informed decisions.



EVIDENCE-LED CASE PREPARATION

Medical negligence claims **succeed** or **fail** on the strength of expert evidence.

At NJS Law, we take responsibility for:

- **Securing** and **analysing** full medical records
- Identifying the correct **clinical specialties** for expert review
- Instructing appropriately qualified independent experts
- Ensuring that **breach of duty** and **causation** are addressed thoroughly
- Coordinating additional specialist evidence where required

In complex cases — such as **birth injury** or **delayed cancer diagnosis** — multiple experts may be required across **different disciplines**.

We do not rely on superficial opinion. We prepare cases carefully, methodically and in line with the **Pre-Action Protocol for Clinical Disputes**.

CAREFUL ANALYSIS OF CAUSATION

Causation is often the most technically **demanding** aspect of medical negligence litigation.

For example:

- Would earlier cancer diagnosis have materially **improved survival**?
- Would different surgical technique have avoided permanent damage?
- Would earlier treatment have prevented long-term disability?

These are not **straightforward** questions. They require statistical evidence, expert modelling and careful **legal argument**.

We ensure that causation is analysed rigorously before proceedings are considered.

STRATEGIC AND PROPORTIONATE LITIGATION

Not every medical negligence claim should proceed to court.

We consider:

- The **strength** of expert evidence
- The **likely response** from the defendant
- The **proportionality** of costs
- The emotional impact of litigation on the client
- The realistic value of the claim

Where liability is admitted, we focus on **fair** and **thorough** valuation.

Where liability is **denied**, we assess the strength of the evidence before recommending litigation.

Our approach is balanced and strategic — **not** reactive.

STRATEGIC AND PROPORTIONATE LITIGATION

Medical negligence cases often involve **long-term financial consequences**.

Compensation may need to address:

- Lifetime care requirements
- Loss of career
- Reduced earning capacity
- Ongoing therapy
- Specialist equipment
- Adapted accommodation
- Pension loss

In serious cases, we obtain:

- Care **expert evidence**
- Employment assessments
- Accommodation reports
- Actuarial calculations

We focus on securing financial stability — not simply **reaching a settlement**.



SENSITIVE HANDLING OF DISTRESSING CIRCUMSTANCES

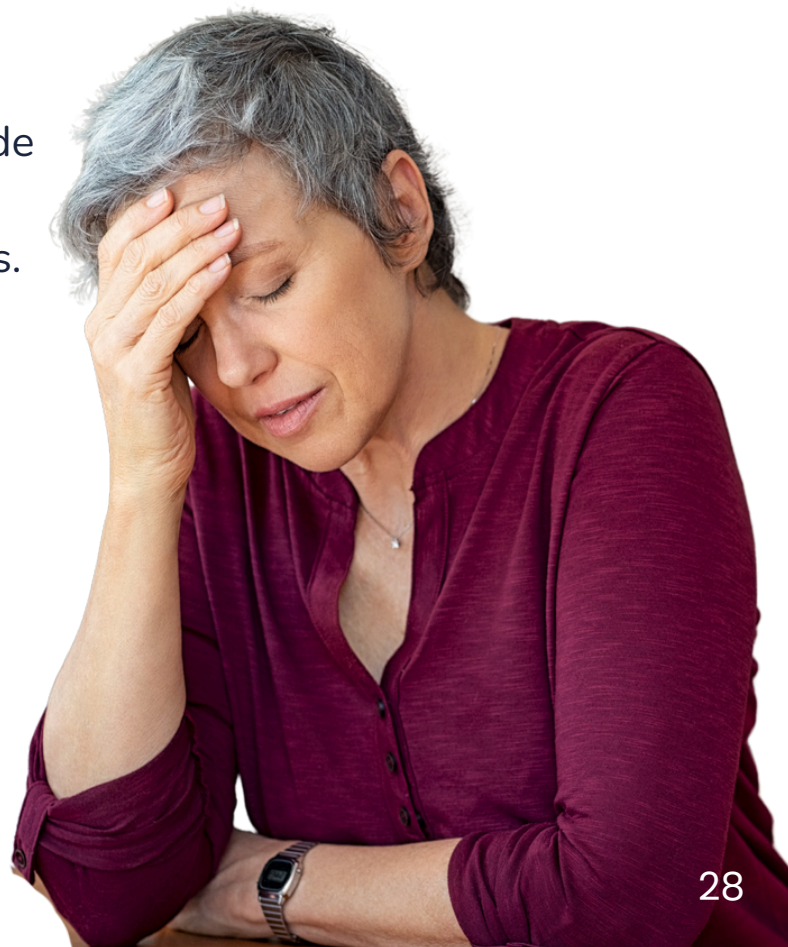
Medical negligence often leaves clients feeling:

- Betrayed
- Angry
- Confused
- Anxious about future treatment

Some cases involve the **death** of a family member or **serious injury** to a child.

We understand that pursuing a claim can feel daunting. Our approach is **measured**, **confidential** and **supportive**.

We explain each stage clearly. We provide **realistic** timeframes. We ensure that clients are **never** pressured into decisions.



CLEAR COMMUNICATION THROUGHOUT

Medical negligence litigation can be lengthy.

Throughout your claim, we:

- Provide **regular** updates
- Explain **medical** and **legal** terminology clearly.
- Discuss expert opinions openly
- Advise on settlement offers **carefully**
- Ensure that final decisions remain **yours**

Clarity reduces stress. Transparent communication builds confidence.



RESPONSIBLE CASE SELECTION



Medical negligence claims require **significant time** and expert resources.

At NJS Law, we only pursue claims where:

- There is credible evidence of **breach of duty**
- Causation can be supported by **expert opinion**
- The claim is **proportionate** and **viable**

If expert evidence does not support negligence, we will advise against proceeding.

This disciplined approach protects clients from unnecessary **risk** and **cost**.

NO WIN, NO FEE FUNDING

Most medical negligence claims are handled under a **Conditional Fee Agreement** (No Win, No Fee).

This means:

- No **upfront** legal costs
- No legal fees if the claim does not succeed
- A capped success fee if compensation is awarded

We also advise on **After the Event insurance** to protect against adverse **costs risks**.

All funding arrangements are explained in clear terms before any agreement is signed.

WHAT HAPPENS WHEN YOU CONTACT NJS LAW?

Your initial enquiry is **confidential** and without obligation.

During the first consultation, we will:

- Listen **carefully** to your concerns
- Establish a **clear timeline** of treatment
- Identify potential areas of **negligence**
- Explain limitation deadlines
- Discuss likely **next steps**
- Provide honest **preliminary advice**

If you decide to proceed, we take responsibility for managing the legal process — allowing you to focus on **recovery** and **wellbeing**.



A MEASURED, PROFESSIONAL APPROACH

Medical negligence claims require **calm judgment, technical precision and realistic expectations.**

At NJS Law, we are committed to:

- Thorough preparation
- Independent expert-led investigation
- Honest advice
- Strategic negotiation
- Long-term financial protection

We understand that behind every claim is a person whose life has been affected.

Our role is to guide you through the process **carefully**, protect your **legal position** and secure a **fair outcome** grounded in evidence — not emotion.

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Is every medical mistake considered negligence?

No. Not every poor outcome or complication amounts to negligence. To succeed in a claim, it must be **proven** that the treatment fell below a reasonable professional standard and directly caused **avoidable harm**.

What is the “Bolam test”?

The Bolam test is the legal standard used to assess **breach of duty**. It asks whether the treatment provided would be supported by a responsible body of medical professionals skilled in that particular area. If a responsible body would have acted the same way, negligence may not be established — **even if** the outcome was poor.

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What does “causation” mean?

Causation means proving that the negligent treatment caused **injury** or **materially worsened** the outcome.

For example, it may need to be shown that:

- Earlier diagnosis would likely have improved **survival chances**; or
- Correct treatment would probably have **prevented** further harm.

Causation is often the most **complex part** of a medical negligence claim.

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How do I know if I have a valid claim?

An **initial legal assessment** will consider:

- What treatment was provided
- Whether the outcome was **avoidable**
- Whether there is likely to be **supportive expert evidence**
- Whether you are **within the time limit**

Medical records and independent expert review are **essential** before a definitive view can be given.

How long do I have to make a claim?

In most cases, you have three years from:

- The date of negligent treatment; or
- The date you first became **aware** that your injury may have been caused by **negligence**.

Different rules apply for **children** and **individuals** lacking mental capacity.

Can I claim on behalf of a child?

Yes. A **parent** or **litigation** friend can bring a claim on behalf of a child at any time before their **18th birthday**. If no claim is brought earlier, the child has until their **21st birthday** to issue court proceedings.

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FAQ

What if the negligent treatment happened years ago?

You may still be able to claim if:

- You only **recently** became aware that negligence may have occurred; or
- You were **under 18** at the time; or
- You lacked mental capacity.

Historic claims require careful assessment of **limitation rules**.

Will I have to go to court?

Most medical negligence claims settle **without** a trial. Court proceedings may be issued as part of the process, particularly in **higher-value cases** but a final hearing is uncommon. If a hearing becomes necessary, **full preparation** and **representation** will be provided.

Will I have to go to court?

Compensation depends on:

- The **severity** of the injury
- Whether the outcome would have been different with proper care
- Financial losses (**past** and **future**)
- Care and rehabilitation needs

Serious cases involving long-term disability can result in **substantial awards**.

Can I claim for psychological harm?

Yes. If negligent treatment causes recognised **psychiatric injury** — such as PTSD, depression or anxiety disorder — this may form part of the claim. Medical evidence will be required.

What if the NHS treated me?

You can bring a medical negligence claim against **NHS providers**. Claims are handled through NHS Resolution, which manages clinical negligence claims on **behalf** of NHS trusts. The process is similar to claims against private healthcare providers.

Will making a claim affect my future medical care?

No. You are entitled to pursue compensation without fear of being denied future treatment. Healthcare providers **must** continue to provide appropriate care **regardless** of a claim.

What if the doctor says the complication was a recognised risk?

Some complications are recognised risks of treatment.

However, a claim may still arise if:

- The complication resulted from **negligent** technique; or
- You were not **properly informed** of material risks before consenting to treatment.

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What is informed consent?

Doctors must explain **material risks** of treatment and reasonable **alternatives** so that patients can make informed decisions. Failure to warn of significant risks may give rise to a claim, even if the procedure was **performed competently**.

How are future losses calculated?

Future losses are assessed using **actuarial calculations** that consider:

- Expected career trajectory
- Life expectancy
- Care requirements
- Inflation and discount rates

In serious cases, compensation may include **periodical payments** for life.

What are interim payments?

If liability is admitted, the defendant may agree to make **interim payments** before final settlement.

These payments can help fund:

- Treatment
- Care
- Rehabilitation
- Financial stability

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How long will my claim take

Medical negligence claims often take between **two** and **four years**. More complex cases involving multiple experts or disputed liability may take longer. Settlement should not occur until long-term prognosis is **properly assessed**.

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What are the risks of bringing a claim?

Risks may include:

- Expert evidence not supporting negligence
- Causation being **difficult to prove**
- Litigation taking longer than expected

Funding arrangements and potential **costs risks** are explained clearly before you proceed.

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How are legal fees paid?

Most claims are handled under a **No Win, No Fee agreement**.

This means:

- No **upfront** legal costs
- No legal fees if the claim does not succeed
- A capped success fee if compensation is awarded

Funding arrangements are explained in full before **any agreement is signed**.

What should I do next?

If you believe you or a family member has suffered **avoidable harm** due to medical treatment:

- Seek appropriate ongoing medical care
- Keep records of what has happened
- Obtain legal advice promptly

Early advice **protects** your position and ensures limitation deadlines are **not missed**.

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