



National Bobath
CEREBRAL PALSY CENTRE
supporting neurological conditions

An overview of Clinical Negligence



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FOR LIFE.**



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CEREBRAL PALSY CENTRE

Charity Number : 1191433

If your child has a disability, your family might experience a number of issues and obstacles to getting help. These may feel even harder to deal with if you think that your child's disability was the result of an avoidable injury.

Medical treatment in the UK is generally of a high standard, but sadly there are times when it falls short. This can result in conditions such as Cerebral Palsy leaving children and their families having to cope with lifelong disabilities and complex care needs.

The NHS has complaints procedures in place, which you can use to raise concerns about your child's treatment. After making a complaint you may receive an explanation and an apology. Your complaint may also help improve clinical practice and reduce the chance of the same thing happening in the future.

If your child has care and support needs arising from their injury, you may want to make a claim for *clinical negligence* to help you with these costs. If your child's claim is successful, they will receive compensation to meet their needs over their lifetime. The compensation can be used to fund their care needs, specialist aids and equipment, therapies, accommodation, education and any other needs identified.



"Of course, we learnt what Kit's needs in terms of physio support would be, but more importantly, through the support and communication of the wonderful staff, we learnt what living with CP would be like and not to be afraid of it. Rather, embrace what we have and focus on ways to make our life as a family as rich and fulfilling as possible."

Charles van Berckel - Kit's Dad



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How can I bring a claim for clinical negligence on behalf of my child?

For your child's claim to succeed the following elements must both be proven:

- **A breach of duty of care** – it must be shown that the medical care your child received fell below a reasonably acceptable standard.
- **Causation** – it must be shown that the substandard care caused your child's disability.

The law in this area is complex, so you should consult a *specialist solicitor* to help you decide if your child has a claim. Most solicitors offer a free initial meeting to discuss your child's case. They will also explain the funding options and provide more information about bringing a claim.

Once you instruct a solicitor, they will help you to access and review your child's medical records. They will ask independent and unbiased medical experts to give an opinion on the cause of your child's disabilities, and the standard of care they received.



If your child's case involves a possible birth injury, they may seek the opinion of an obstetrician, paediatrician, midwife, paediatric neurologist, neonatologist and neuro-radiologist.

The solicitor will then arrange a meeting between you, the medical experts, and a barrister. The aim of this meeting is to explain and discuss the evidence, and to decide whether or not your child has a claim.



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If the evidence indicates that your child was treated in line with normal practice and to an acceptable standard, they won't have grounds to make a claim. However, you will hopefully be reassured that your child's care has been fully investigated.



If the evidence indicates that your child's medical treatment was sub-standard and this caused their injury, their case will be able to proceed. The solicitor will write a *Letter of Claim*, which sets out the full details of your child's claim.

It will include the background facts and the allegations of negligence made. The other party will then conduct their own investigation and respond.

If they make an admission, your child has won their case and can proceed to the next stage of deciding how much compensation should be paid.

If the other party doesn't accept responsibility within their response, the solicitor will prepare your child's case for a court hearing where a judge will decide if the other party are at fault.

How much compensation will my child receive?

If your child's claim for clinical negligence is successful they will be awarded compensation. The purpose of this is to pay for your child's additional needs as a result of their injuries. This could include funds for:

- Adapted accommodation • Care
- Specialist equipment such as eye gaze sensor or smart wheelchair • Specialist therapies, such as occupational therapy, physiotherapy, hydrotherapy, or speech and language therapy • Medical treatment
- Transport • Future special educational needs
- Social and leisure pursuits.



To determine how much compensation your child should receive, the solicitor will gather evidence about your child's future needs from a range of medical and non-medical experts, including care experts, accommodation experts, occupational therapists, physiotherapists, speech and language therapists and educational psychologists.

They will assess your child and recommend support to help your child to live a happy, comfortable life, fulfilling their potential. Your child's compensation will also cover past financial losses, such as travel expenses and aids and equipment that have been purchased.

If you are thinking about making a claim for clinical negligence, it's useful to keep a diary of the additional costs that you incur as a result of your child's disabilities. It is also important to keep receipts for anything you have to buy as a result of your child's disabilities, including any travel expenses, aids and equipment or specialist therapies, such as those provided by the Bobath Centre.

What will happen to my child's compensation?

If your child is likely to have capacity to manage their own affairs in the future, their compensation will be held in court until they reach 18 years of age. It will then be paid out for them to manage. However, whilst the compensation is being held in court, the funds will be accessible to meet your child's needs.


If your child is unlikely to have capacity, the Court of Protection (CoP) will manage their money and ensure that it is used to meet your child's needs. Parents are usually involved in managing the award and deciding how it's spent. The associated costs of administering your child's award in the Court of Protection can be claimed as part of their compensation.



How do I pay for a clinical negligence claim?

Bringing a claim for clinical negligence can be expensive, and it's important that you are aware of the costs involved.

The main options for funding your child's claim are:



Legal Aid: If your child suffered a neurological injury during pregnancy, labour and delivery or up to eight weeks of age, they may be eligible for Legal Aid. This is subject to conditions and the solicitor can give you further advice about your child's eligibility and how to apply for Legal Aid funding.

Legal Expenses Insurance (LEI): This is usually an add-on to an insurance policy, such as home and contents insurance, car insurance or credit card insurance. The solicitor will help you to check whether you have this and whether it can be used to fund your child's claim.

Conditional Fee Agreement (No Win No Fee): Most firms will offer a no win no fee funding agreement, which could be used to fund your child's claim. Under the terms of these agreements, there is no financial risk to you if your child's claim is unsuccessful.



How long does my child have to bring a claim for clinical negligence?

Claims for clinical negligence must be brought within a period known as the *limitation period*. Claims brought outside of this period may be prohibited, but the Court may be persuaded to set aside the limitation period so it is important to seek legal advice as soon as possible.

For most cases, the limitation period is three years from the date of the negligent event.



In some cases, it can be argued that the limitation period should run from when an individual first knew, or suspected, that they were injured as a result of negligence. It is important to seek legal advice in respect of this.

For claims involving children, the three year period starts when they reach the age of 18 years, so they have until age 21 to bring a claim. There are a number of steps that must be taken before the limitation period expires, so it is important to seek legal advice as soon as possible, in order to ensure there is sufficient time for these steps to be completed.

If your child has a disability that results in them lacking capacity, the limitation period may not apply. The test for this is complicated and you should seek specialist advice from a solicitor as soon as possible if you think it might apply to your child. It is a good idea to seek legal advice as soon as possible, when events are clearest in your mind, and to allow your child to access compensation to meet their needs at the earliest opportunity.



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Who can help?

Although we can't recommend a specific solicitor or legal firm, the following firms have supported families at The Bobath Centre for a number of years. They are all recognised for their specialist expertise in Clinical Negligence law. Many of their solicitors are members of the Law Society Clinical Negligence Panel, Association of Personal Injury Lawyers (APIL) and the patient safety charity, Action against Medical Accidents (AvMA).

Visit our legal advice webpage to find out more

<https://bobath.org.uk/the-bobath-information-centre/legal-advice/>



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