



BIRTH  
TRAUMA  
ASSOCIATION

# TAKING LEGAL ACTION AFTER BIRTH TRAUMA

## OUR TRUSTED LEGAL PARTNERS CAN HELP

**S**ometimes women or babies are injured during birth. If this happened to you, and you believe it was the result of poor care during pregnancy, birth or after your baby is born, then you might want to consider taking legal action. This can be a difficult process, and we want to make sure that you get the best legal help possible by choosing a law firm with the appropriate expertise.

The Birth Trauma Association has partnered with six reputable law firms we trust to provide a good and compassionate service. They have helped us create this leaflet, which explains how the process works in England and Wales.



**'BECAUSE LEGAL FEES ARE  
EXPENSIVE, MOST MEDICAL  
NEGLIGENCE CASES ARE  
FUNDED THROUGH THE NO-WIN,  
NO-FEE ARRANGEMENT.'**

## I HAD A TRAUMATIC BIRTH. CAN I TAKE LEGAL ACTION AGAINST THE HEALTHCARE PROVIDER?

If you believe the injury that you or your baby experienced was the result of medical negligence, you may be able to take legal action against the hospital trust, board or other healthcare provider. This is also the case even if you gave birth at home rather than in hospital. If you are bringing a claim, you are known as a claimant.

Bringing a medical negligence claim can be challenging, and you will need independent medical expert evidence to prove a case. Cases can often take several years to conclude.

For some people, however, taking legal action is an important way to hold the healthcare provider to account for the harm done, and winning a case can help you feel a sense of resolution.

If your baby has suffered severe brain damage, compensation for medical negligence can be life-changing. It can enable you to pay for support services to help your child make the best possible recovery after a traumatic brain injury, as well as enable you to pay for the long-term care you or your child may need to live independently.

In other types of cases, the amount of compensation will depend on the extent of the injury, and other losses sustained.

## WHAT IS THE TIME LIMIT ON TAKING LEGAL ACTION?

The time limit depends on the type of case being brought:

- For most medical negligence claims there is a time limit of three years. This means you must issue court proceedings against the healthcare provider (usually the hospital) within three years of when the injury occurred, or three years from the date you became aware that you may have experienced negligence. (Sometimes it is not immediately obvious that ongoing problems were caused by failures in care, or symptoms of damage might not be apparent until sometime afterwards.)
- If your case is for a child under the age of 18, that three-year time limit runs from the date of their 18th birthday. It means that you have until the day before their 21st birthday to make a claim.
- A possible exception to the three-year limit for children is if the potential claimant lacks mental capacity – perhaps because of brain damage, learning difficulties or severe mental illness – to manage their own affairs when they turn 18. If this is the case, there is potentially no legal time limit for when they can make a claim. Any claims would need to be brought on behalf of the claimant by a responsible adult.

If court proceedings are not issued within three years, it is unlikely you'll be able to proceed with a case. Occasionally, however, a judge will allow a case to proceed after the three years if there are exceptional circumstances. It's important to seek professional legal advice as soon as possible if you think you or your child might have a claim.

## FINDING A SOLICITOR

If you want legal advice, we recommend you look for a reputable medical negligence solicitor from a firm specialising in obstetric negligence. The firm you choose does not have to be geographically near you.

The Birth Trauma Association has partnered with six highly reputable medical negligence firms, and their details are provided at the end of this leaflet. It is important to feel safe and comfortable with your solicitor, knowing they understand this area of law and have your best interests at heart.

Our legal partners are committed to ensuring the psychological safety of their clients, and they provide a trauma-informed approach to their legal practice. They will offer you free advice regardless of whether you have a claim to take forward, and they will often support you in making an official complaint or in signposting you to other sources of help.

The charity Action against Medical Accidents (AvMA) also offers free legal advice on medical negligence cases. Their website is [www.avma.org.uk](http://www.avma.org.uk).

## HOW MUCH WILL IT COST?

In England and Wales, most medical negligence solicitors work on a no-win, no-fee basis, so they will usually only take on cases they consider have reasonable prospects of winning. If you win your case, the law firm will take a share of your compensation to cover the legal costs. Our trusted legal partners will take no more than 25% of your compensation, as long as you have complied with their terms and conditions. Other solicitors may take more, so always ask and make sure you understand the no-win, no-fee agreement.

If you lose your claim, so long as you have complied with the terms and conditions of the no-win, no-fee agreement, there will be no cost to you.

If you are claiming for a child who experienced a brain injury at birth or during the early neonatal period, you may be entitled to legal aid. Legal aid is not available for injuries to the mother, however.

Some household insurance policies will cover legal fees and other expenses related to legal actions for medical negligence, so it is important to check if your household insurance policy covers legal expenses.

Because legal fees are expensive, most medical negligence cases are funded through the no-win, no-fee arrangement.

## IF THE LAWYER TAKES ON MY CASE, WHAT HAPPENS NEXT?

Your lawyer will ask you to provide information about your treatment and what you feel went wrong. They will also want to know about your injury and how it is affecting you. They will understand recounting events can be traumatic so this will be handled in a sensitive way. Bear in mind if they do take on your case, it can take a long time to resolve, and the hospital may reject your version of events. Your lawyer will explain the process to you and answer any questions you may have to support you through the process.



## OUR TRUSTED LEGAL PARTNERS

We are proud to have six trusted legal partners who work closely with Birth Trauma Association.

They are:



HODGE JONES & ALLEN  
SOLICITORS



**LEIGH DAY**



They all have expertise in medical negligence relating to birth and will be able to provide you with excellent specialist advice. They can also help with problems such as accessing your medical records or making a complaint.

For more information, go to:

**[www.birthtraumaassociation.org/trusted-legal-partners](http://www.birthtraumaassociation.org/trusted-legal-partners)**

## GET IN TOUCH

For more information, please contact us at;  
**[enquiries@birthtraumaassociation.org.uk](mailto:enquiries@birthtraumaassociation.org.uk)**



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*Note: All details are correct at the time of print.*