

Trust legal teams - Standing up for surgeons

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Julianna Jones is Deputy Head of Legal Services at Bedfordshire Hospitals NHS Foundation Trust, overseeing claims and inquests. Legally trained and a qualified diagnostic radiographer with a Master's in Forensic Investigations, she brings extensive experience in claimant, defendant, and regulatory practice, including roles with major London Foundation Trusts, to her work in medical law.

Medico-legal costs form a large part of the NHS' expenses each year. The National Audit Office report *Costs of clinical negligence* in October 2025 estimated the NHS paid £3.6 billion in costs arising from clinical negligence claims settled in England in 2024-25 with a total accumulated clinical negligence liabilities of £60 billion. NHS Resolution settled 1,100 claims for orthopaedics cases in 2024-25 alone at a cost of £178 million¹.

The in-house legal team form part of the NHS's response to legal action. The other parties may include NHS Resolution (Trust Indemnifier) and the practitioners' medical indemnity providers.

Each of these will have a different role. The Trust legal team will defend the Trust. The medical indemnifiers will help defend the individual surgeon. NHS Resolution will be the ones who will provide the umbrella legal cover (indemnity) which will represent you in the courts and make the payouts as appropriate. The principle issues handled by the Trust legal team relevant to surgeons are claims and inquests.

Inquests

Inquests are formal court proceedings where a coroner investigates the facts surrounding an adverse outcome, such as a patient death. The aim is not to assign blame or determine negligence, but to establish what happened, why it occurred, and how similar events might be prevented in future.

Clinicians involved – often consultants – are asked to provide factual statements supported by notes and records. Those directly connected to the case are designated as *Interested Persons* (IPs), giving them the right to participate in proceedings (Chief Coroner's Guidance, Chapter 2).

The Trust's legal team works closely with clinicians to manage the administrative aspects of the investigation and assist in preparing statements. While the legal team represents the Trust, clinicians may also seek advice from their own medical indemnifiers for additional support.

Clinicians are not always required to attend coroner's court in person; if written statements and documentation provide sufficient detail, the coroner may reach a conclusion without oral evidence. This makes the accuracy, clarity, and completeness of your statement absolutely crucial.

Draft statements often go through several revisions between the clinician, legal team, and other parties to ensure all queries are addressed. The goal is to provide a clear, factual account and timeline of events, outlining your role and rationale for any actions taken. Avoid opinions – state facts only. If interpretation or opinion is required, the coroner will request it directly.

If attendance is necessary, clinicians will be formally summoned, usually for an in-person hearing (occasionally virtual under exceptional circumstances). Providing early notice of clinical commitments helps facilitate scheduling, and coroners are generally accommodating.

Finally, keep your statement free from internal politics or interdepartmental disputes. Focus solely on the clinical facts – what was done, when, and why. The coroner's role is to determine what happened and identify any lessons to prevent future harm.

The Trust's in-house legal team works closely with clinical governance colleagues to coordinate documentation, gather records, and prepare clinician statements for the coroner's court. They also present the case findings and report outcomes back to the Trust.

In some cases, the coroner may issue a *Prevention of Future Deaths* (PFD) report – also known as a *Regulation 28* report – when they believe there are circumstances that pose a risk of further deaths and that action should be taken to prevent them. The recipient, whether an individual, organisation, or government body, must respond within 56 days (Chief Coroner's Guidance, Chapter 16).

Following the inquest, the coroner may recommend improvements if care is found to have fallen below expected standards. While the coroner does not determine negligence or liability, their findings may lead families or next of kin to pursue claims against the Trust.



Clinical negligence claims

Claims arise when it is alleged that a patient's care fell below a reasonable standard, resulting in harm or disadvantage – known legally as a *tort*. This can include cases of clinical negligence or instances where outcomes did not meet patient expectations.

The Trust's legal team coordinates the response, gathering records, imaging, and clinician statements, and liaising with NHS Resolution to manage the process appropriately.

The legal test for assessing standard of care is defined by the *Bolam* principle – whether the care provided aligns with that of a reasonable practitioner – and refined by *Bolitho*, which requires that the practice withstand logical analysis.

These claims are managed through the civil courts rather than the coroner's court, and the process can often be lengthy and complex.

What is expected of the clinician?

Clinicians may be asked to respond to allegations of substandard care raised through a *letter of notification* or a *letter of claim*.

A letter of notification is an early communication indicating that a potential claim is being investigated, allowing the Trust to begin its own review and, where possible, resolve matters before formal proceedings.

A letter of claim is a formal document from the claimant's solicitor outlining the alleged negligence, the resulting harm, and the compensation sought. It marks the beginning of the litigation process and offers the defendant an opportunity to respond before the case proceeds to court.

Most claims are resolved out of court and, within the NHS, are brought against the organisation rather than the individual clinician. In private practice, claims are made directly against the practitioner and managed by their medical indemnifier, though the Trust may be asked to provide supporting documentation if relevant NHS care is involved.

Upon receipt of a letter of notification or claim, the Trust's legal team initiates an investigation, collecting records from all involved Trusts, private providers, and often the patient's GP. Statements are then requested from the clinicians involved, with legal and governance teams available to assist in their preparation.

Given the strict legal timelines, clinicians are asked to respond promptly, providing accurate and comprehensive statements to ensure the process runs efficiently.

Points to note

It is important to understand the **statute of limitations** for medical negligence claims, which is generally three years from the date of the incident or from when the harm was discovered (Limitation Act 1980). Exceptions apply for children, who have until their 21st birthday to claim, and for individuals lacking mental capacity, where the time limit begins once capacity is regained. Claims may also arise after retirement, so clinicians should check with their medical indemnifier regarding ongoing coverage.

Many claims can be addressed by reviewing clinical notes and assessing whether care met established standards or guidelines. When a clear failure is identified, the Trust often settles out of court to avoid the high costs of litigation, with damages being equivalent.

Expert witnesses play a key role in this process. Practicing specialists in the relevant field review the notes, imaging, and events to advise the court or legal parties on what constitutes appropriate practice – not to defend the individual clinician. The Trust's legal team assists in coordinating these experts, while claimants engage their own. Clinicians may meet with Trust experts to clarify events or quantify risk, with legal representatives present to ensure accuracy and thoroughness.

In the majority of cases, claims are resolved either by abandonment from claimant solicitors or through out-of-court settlement facilitated by the Trust and NHS Resolution. Close cooperation with the legal team can help achieve faster, less stressful outcomes for clinicians.

Summary: The role of a Trust's legal team in supporting surgeons

A Trust's legal team plays a central role in managing clinical governance, patient safety, and medico-legal matters, working closely with surgeons to navigate complex investigations and claims. They coordinate responses to coroner inquests, gathering records, preparing clinician statements, and presenting facts to establish what happened and why, without assigning personal blame. The team also liaises with clinicians to ensure statements are accurate, complete, and submitted within strict deadlines, while providing guidance and administrative support.

In cases of clinical claims or alleged negligence, the legal team manages the investigation, collecting records from all relevant care providers and coordinating statements from surgeons. They work with expert witnesses to clarify standards of care and advise on risk, ensuring that clinicians are supported and that the process is fair and thorough.

Throughout, the legal team helps protect both the Trust and the individual clinician, providing advice on letters of claim, potential litigation, and the statute of limitations, while facilitating communication with NHS Resolution. By coordinating documentation, legal strategy, and expert input, they reduce stress for surgeons, streamline processes, and help resolve matters efficiently, often out of court; while ensuring patient safety and institutional accountability remain paramount. ■

References

1. National Audit Office. Costs of Clinical Negligence. 17 Oct 2025. Available at: www.nao.org.uk/wp-content/uploads/2025/10/costs-of-clinical-negligence-report.pdf.