# The cost of group B Strep infection

Group B Strep Support

www.gbss.org.uk

WORKING TO **STOP** GBS INFECTION IN BABIES.

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Registered charity number: 1112065 | Registered company number: 5587535

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## GROUP B STREP SUPPORT

Group B Strep Support is the only UK charity dedicated to eradicating group B Strep infections in babies.

We provide up-to-date, evidence based information on GBS to families and health professionals, and support to affected families.

We want every pregnant woman to be given information on group B Strep during routine antenatal care, and offered the opportunity to have a GBS-specific test late in pregnancy.

Ultimately, GBSS wants GBS infections in babies to be eradicated.

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Published September 2018

# Introduction

**Group B Strep (GBS) is the most common cause of life-threatening infection in newborn babies in the UK. Carried by approximately 25% of women without symptoms or side-effects, the first time many parents hear of it is when their baby is sick in hospital with meningitis, sepsis or pneumonia.**

On average in the UK two babies a day develop GBS infection. While most babies will make a full recovery from their GBS infection, sadly every week one baby will die, and another will survive with life-changing disabilities.

In many cases, nothing could have been done to change what happened to the baby. However, sometimes mistakes are made that result in babies developing GBS infection unnecessarily, or that result in the infections not being identified or treated promptly.

To understand better what factors drive parents to take legal action with regard to GBS cases, and what lessons can be learned from these cases, we asked members of the charity's expert Legal Panel to provide information on their current and past clinical negligence cases involving GBS. The survey was completed between December 2017 and January 2018 with cases covering a period from 2006 to 2018. Most cases were in progress at the time of providing the information.

## Methodology

This report is based on a survey of six of Group B Strep Support's expert Legal Panel members. Responses related to 32 cases of potential or admitted clinical negligence where a GBS infection was suspected or confirmed.

Group B Strep Support is grateful to our expert Legal Panel for providing the data from which we have compiled this report. We receive financial support from these legal firms but the analysis of the data has been conducted independently.

# Executive Summary

Group B Strep (GBS) clinical negligence represents a significant burden to families and their babies, emotionally and financially. This negligence also has a significant financial burden to the NHS, both through successful negligence cases and through ongoing care for many of the babies who survive.

**Settled cases and cases where liability had been admitted had a combined value of nearly £40million.**

**This figure excludes ongoing cases, which could potentially cost another £10million.**

**If all ongoing cases taken by just the six firms contributing to this report settled in the claimant's favour, the total cost to the NHS would be around £50million.**

The best way to reduce the number of clinical negligence cases relating to GBS is to reduce the number of GBS infections and clinical negligence relating to GBS. Much can be learned by the NHS from mistakes made.

To gain insight into the burden of GBS clinical negligence cases, and a better understanding of what drives families to take legal action, UK charity Group B Strep Support asked the members of its expert Legal Panel to provide information on current and past clinical negligence cases where group B Strep was a key factor in bringing the claim.

**The survey found three main factors in making clinical negligence claims relating to group B Strep:**

- **Failure to follow either local or national guidelines.**
- **Failure to escalate cases appropriately.**
- **Missed signs of infection, either in hospital or reported by parents.**

**Families reported taking legal cases forward for a variety of reasons, with the three main themes reported being:**

- **Dissatisfaction with investigations or the handling of a complaint.**
- **Clinical failings around the time of birth or issues emerging later, e.g. a child not meeting developmental milestones.**
- **Need for financial support for the continuing care of a child.**

The survey demonstrates there is more that could be done by the NHS to improve the prevention, recognition and treatment of GBS infection in babies and, as a result, reduce related clinical negligence claims.

# Making a Claim – Key factors

For many claimants there was no single reason they made a claim. Often there were several reasons, which overlapped – such as dissatisfaction with the way an event was handled, and a desire for lessons to be learned for the future.

**The top three reasons given for making a claim were broadly:**

Dissatisfaction with investigations or handling of a complaint.

Clinical failings around the time of birth or issues emerging later, such as a child not meeting milestones.

Need for financial support for the continuing care of a child.

Ten claimants (31%) reported dissatisfaction with the way an event or complaint had been investigated. This included parents wanting answers not provided by the Trust or during Serious Untoward Incidents (SUI) investigations.

Six claimants (19%) stated that clinical failings around the time of birth and/or first signs(s) of infection were a key reason for bringing a claim.

Financial support for the continuing care needs of a child harmed by a GBS infection was a key factor for a further six claimants (19%).

Other prompts for making a claim included a desire for lessons to be learnt and to improve practice (4 claimants 12.5%) and for more practical reasons, such as a claim being the only way of securing legal representation at an inquest (three claimants 9.4%).

Tragically, two mothers wanted answers to their questions because they felt responsible for the GBS infection that had had a life-changing effect on their child.

# Breach of Duty – What happened?

Breach of duty of care is when a person or organisation has a responsibility to care for a person, but fails to meet that responsibility.

In nearly two-thirds of cases (62.5%), injury was solely down to a breach of duty of care. In other words, without mistakes or errors, these injuries would not have happened. In 23 out of 29 cases (79%) where there was any breach of duty of care, the breach was exclusively related to group B Strep.

The most commmon reason for a breach was a negligent failure to administer antibiotics.

**This breach was mainly in two situations:**

1. Failure to give antibiotics as a timely preventative action – typically where a mother was known to carry GBS, and preventative antibiotics were not given.

2. Failure to spot the significance of emerging warning signs of infection – protocols and procedures were not followed, or followed too late.

## Specific themes to emerge around breach of duty included:

### Guidelines not followed

In most cases there was one or more failures to follow established guidelines which, had they been followed, would have led to the timely administration of antibiotics.

There were two cases where hospitals failed to follow not only national but also their own local guidelines.

### Failure to administer appropriate intrapartum antibiotic prophylaxis

The biggest single cause of a breach of duty was failure to offer intrapartum antibiotic prophylaxis (IAP) in the presence of known GBS carriage and/or recognised risk factors. In 13 cases, the mother was not given antibiotics during labour, including in five cases where she was known to carry GBS.

There were additionally four cases of delays in providing intrapartum antibiotic prophylaxis.

**Examples of risk factors missed in the mother included:**

Maternal pyrexia in labour (fever)

Prolonged rupture of membranes

## Failure to advise the mother about a positive result showing maternal GBS bacteriuria

There were two cases where routine testing of the mother's urine during the pregnancy detected GBS, but insufficient efforts were made to contact the mother, so the messages were never received. As a result, no treatment for the GBS bacteriuria was given and no intrapartum prophylaxis was offered.

## Failure to act on signs of potential infection to the baby

There were nine cases of a failure to identify GBS infection, or to take signs of infecion sufficiently seriously.

**Signs missed in the baby included:**

- Inability to feed or poor feeding
- More than 10% loss of weight following birth
- Grunting and respiratory problems

**In two of these cases, there was a failure of health professionals to respond appropriately to reports from parents after the baby had been discharged:**

- Failure to advise a mother to take her baby for an urgent medical assessment, even though the baby's signs, described by the mother on the day after discharge, included a 'purple rash', lack of feeding and rigid arms.
- Inappropriate and premature discharge from hospital and a failure subsequently to act on a family's concerns when the baby lost more than 10% of birthweight.

In addition, there were four cases where signs of meningitis and/or sepsis were missed, including two in which although the diagnosis was eventually made the missed signs resulted in a severe delay in starting treatment.

## Inadequate consent and failure to document

**Cases included:**

- Documentation – two cases: specifically, a failure to make any record of a telephone conversation and the advice given about the baby in question, and a failure to document the reasons behind why multiple membrane sweeps were conducted.
- Consent – two cases: specifically, a failure to discuss the risks of returning home as opposed to staying in hospital and a failure to discuss the pros and cons of different options, constituting a failure to obtain fully informed consent.
- Failure to offer GBS testing and antibiotics despite a previous diagnosis of GBS carriage.

Culture-proven evidence of GBS infection was available in most cases, though not all, after the immediate presenting signs.

# Causation – did the errors make a difference?

It is not enough to demonstrate breach of duty of care, for a clinical negligence case to be successful, it must also be demonstrated that the breach of duty of care caused injury.

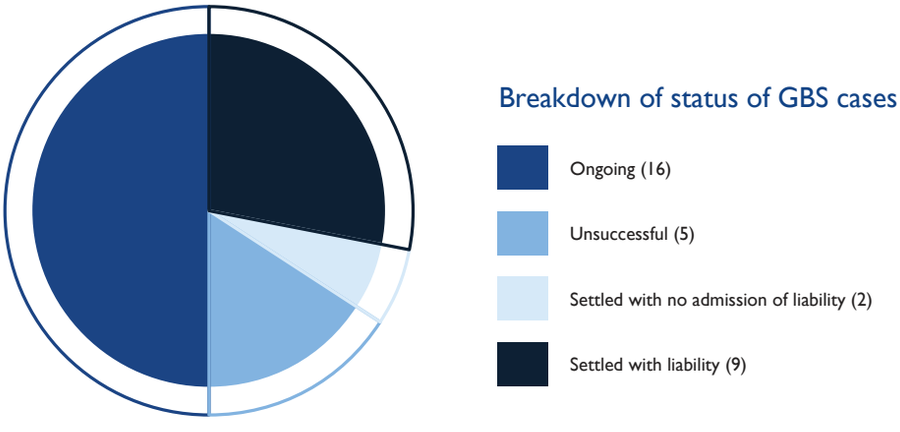
To explain this in simpler terms, a hospital might admit that staff missed signs of infection, but claim that even if they had picked them up in a timely way, it would have made no difference to the outcome.

In nearly two-thirds of cases (62.5%) the injury was solely as a result of a breach of duty. For example, that there was a delay in diagnosis and treatment of a baby with group B Strep infection.

In 23 out of 29 cases (79%) with any breach of duty, the breach of duty only related to group B Strep

# Outcomes and damages

Out of the 32 cases, nine settled with liability admitted and two settled with no admission of liability. Five cases were unsuccessful. Sixteen cases are ongoing, and in most of these the baby has survived. These cases have a much higher monetary value than where the baby died, and so are often resisted more vigorously by the hospital or GP legal teams.




Where figures were provided for the size of damages, those involving the death of the baby were in the range £10-30,000. The law allows a set figure of just £12,980 plus funeral costs as compensation for the loss of a baby, but the total can sometimes be much higher if, for example, there were also earnings lost by the parents.

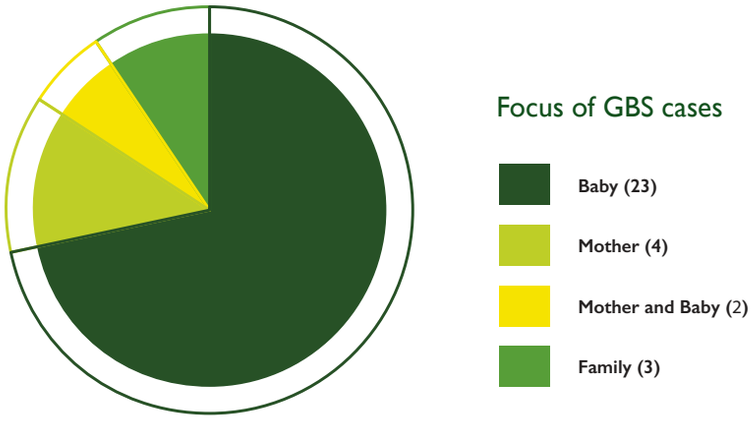
The damages where a baby survived with long-term health issues were much higher, reflecting the significant lifetime support needs of the individual, with one case valued at between £1-3 million, six cases between £3-10 million and one case between £10-30 million.

**Value of GBS cases where the baby survived:**


Of the 27 ongoing or successful claims, a Periodical Payment Order (PPO) was not applicable for 16. A PPO is where annual payments are made for as long as the affected child lives, rather than the damages being paid entirely in a lump sum. Of the remainder, four will involve a PPO, five are ongoing or still to be confirmed, one provided a lump sum equivalent figure and the other provided an annual figure.

Of the cases currently unresolved, the law firms' views of the likelihood of a claim being successful was in most cases estimated to be 50-90%, with a median of 60%. In one case there had been admission of liability in full, in three cases admission to breach but not causation and for the rest there was no admission of liability for breach or causation.

Out of the 32 cases, 23 (72%) of the claims focused exclusively upon the baby. The focus was the mother alone in four cases (12.5%), 'the family' in three cases (9.3%) and 'mother and baby' in two cases (6.2%).



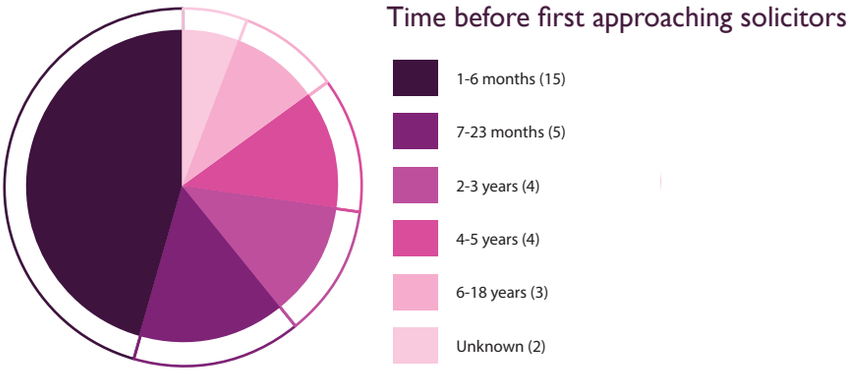

Half of the babies were affected during or at birth. A few (three cases) developed signs at between two and 24 hours, while a further eight did so at between two to five days. There were five cases of late-onset GBS infection, ranging from eight days to seven weeks.

Out of the 32 cases, two-thirds of babies survived their infection (21). Of those who survived, almost all (20 out of 21) were reported as having some long-term health issue or disability, including failure to meet development milestones, seizures, and/or emergence of a disability including hearing and vision impairment, brain damage and cerebral palsy. Often it was the emergence of these issues that was the prompt for making a claim.

# Legal claims – No 'quick win'

In all 11 cases where the baby died, the initial approach to solicitors was made between three weeks and 13 months of the baby's birth (median six months).

Where the baby survived, eight of the approaches to solicitors were made between one and six months of the baby's birth, one between seven and 23 months, four between two and three years. Beyond that, three of claims were made between three and five years while there were three claims stretching out between six and 18 years.




Liability (negligence) is usually agreed within three or four years at most – if a claim lasts longer than this it is mainly because quantum (the amount of damages) cannot be agreed until the affected child's condition has stabilised and his/her future prognosis is predictable. When that happens it is possible for an interim payment of some damages to be paid to help the family with more immediate needs until a final compensation figure is calculated and negotiated.

With respect to the time between the first approach to solicitors and completion of a claim, many of the cases where the baby survived are continuing, and we currently have insufficient data to provide a range. Where a baby died and a timeline for a claim is known, the seven cases range between seven and 50 months, with an average of 26 months.

Parents of a baby need to be aware of several different time limits:

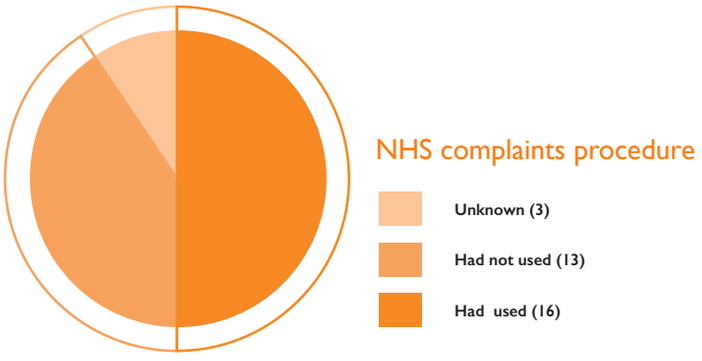
Firstly, a claim for negligence must be brought before the child's 21st birthday, unless s/he lacks capacity (the ability to make decisions) in which case there are no time limits.

Secondly, a claim under the Human Rights Act must be brought in court within a year of the 'GBS event'.

Finally, an NHS Complaint should be brought within a year although there is some flexibility here – the deadline is often relaxed if there are good reasons why the Complaint could not have been made within 12 months. A NHS Complaint is often a useful way to identify the strengths and weaknesses of any potential legal claim.

# Complaints – can the NHS do more?

Of the 32 responses, half stated they had used the hospital's complaints procedure, and 13 (40%) had not, with three (10%) responses unknown.




Feedback on the NHS complaints procedure was generally one of dissatisfaction. Delay, denial, or guarded responses were reported to be common. Other comments criticised the outcome of investigations, implying cover-ups, or the burden on parents having to provide evidence into what had or had not happened.

In several cases, the failure of the NHS complaints procedure directly led to legal action being taken – one family tried to make a complaint but received little information and so made a legal claim. Improving NHS complaints procedures could help avoid clinical negligence claims.

# Recommendations

While the number of clinical negligence cases is small, there are clear similarities and themes between many of the cases.

Three main areas were drivers in families taking legal action:

**Dissatisfaction with investigations or handling of a complaint.**

**Clinical failings around the time of birth or issues emerging later, such as a child not meeting milestones.**

**Need for financial support for the continuing care of a child.**

These areas could be addressed as follows:

1. There is an opportunity to improve complaints and internal investigations process by involving parents earlier and throughout the investigation.

2. By following national guidelines on GBS from the Royal College of Obstetricians and Gynaecologists, and offering better training to staff involved in maternity care on preventing, spotting and treating GBS infection.

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# Contributing Law Firms

Six firms of solicitors, experts in the field of group B Strep clinical negligence, contributed cases.

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royds withy king
lawyers ahead of the curve

IM irwinmitchell
solicitors

TOZERS LLP
Solicitors

Leigh Day

Wolferstans
SOLICITORS