

## THE NEW DEAL...

...that's the real deal in ATE insurance  
for clinical negligence specialists  
from Temple Legal Protection

[Click here to read more](#)



## Welcome to the latest edition of our 'Clinical Thinking'

This issue starts with an in-depth analysis of how COVID-19 clinical negligence claims might develop. There's also a guide to best practice risk assessment for your clinical negligence cases, a look at the basics of why mediation matters plus lots more. Just click on the image or gold colour heading below and you'll go straight to that article. Enjoy reading our views; if you'd like to share yours please get in touch with our team - contact details are on page 9.



### COVID-19 CLAIMS - THE ELEPHANT IN THE ROOM?

A key issue for clinical negligence lawyers is on the horizon; we've got expert insight into the two big questions - [Page 2](#)



### ADAPTABILITY, MITIGATION AND POSITIVITY - FOOD FOR THOUGHT FOR 2021:

A look to the future and hopefully a transition to a more optimistic year ahead - [Page 3](#)



### REALLY QUITE INTERESTING? A TOP 5 READING LIST:

The most popular clinical negligence and personal injury litigation articles we've published recently - [Page 4](#)



### THE ROLE OF MEDIATION IN MEDICAL TREATMENT DISPUTES:

For those newer to this subject, Paul Balen explains why it matters and the benefits it brings - [Page 6](#)



### RISK ASSESSMENT FOR CLINICAL NEGLIGENCE ATE INSURANCE:

We see the good, the bad and the ugly case assessments - here's how to get it right - [Page 7](#)



### WALKING THE TALK FOR OUR CHARITIES IN 2021:

Find out what we've been up to and what we have in mind to support our chosen charities this year. - [Page 8](#)



## Covid-19 claims - The elephant in the room?

By Matthew Best, Senior Underwriting Manager

*The idea of suing the NHS for compensation of a wrongdoing/malpractice may not seem the right - or popular option right now. Everyone in our sector is wondering how this will pan out. Clinical negligence case numbers have dropped for certain law firms but maintained a sustainable level for others. The High Court is certainly seeing lower numbers than the County Courts. People may not want to pursue action against the NHS at this moment, but there will come a time where people will indeed want redress.*

In my discussions with clinical negligence solicitors I have been asked many times if we are likely to be hit by a 'tsunami of pandemic-related cases'. I believe that in relation to cases involving Covid-19 itself, no we will not. However, we may be presented with high volumes of case numbers in relation to a delayed diagnosis or treatment of specific conditions. I cannot see those being brought for a few years yet though, as it is clear the NHS is way behind on investigations and reviewing complaints etc.

High on the agenda are calls for an enquiry into the Department for Health and Social Care and its management of the response to the coronavirus. Without doubt, once the dust has settled on this most awful period of time, serious questions will need to be asked - and answered.

It is highly likely (perhaps certain) that these matters could end up in the courts, and see judges establishing precedents on claims relating to alleged clinical negligence over this period.

One other point I want to address before moving on is in relation to the possibility of a 'no fault scheme' health minister Nadine Dorries recently advised is being considered. I have to say that I find this idea astonishing. Surely by introducing a 'Swedish-style' model it will increase the amount of cases that compensation is paid out on? It will do so because it effectively removes breach of duty.

To put this in context if we think about all of the cases where breach of duty wasn't proven, those would likely settle under this 'no fault scheme'. I find the proposal at odds with the long-term aim of saving money. I would be very surprised if the government entertained such an idea seriously as it simply is not sustainable.

Turning now to the 'elephant in the room'... [click here](#) for expert insights into two big questions -

1. Should patients be able to claim damages for negligent care during the Covid-19 pandemic?
2. What standard of care should be required and expected in the midst of a global pandemic?

---

Whilst Temple has contacted a number of our customers on a private 'one-to-one' basis to discuss a number of topics, please do call me on 01483 514804 or email [matthew.best@temple-legal.co.uk](mailto:matthew.best@temple-legal.co.uk) with your observations on these issues or to discuss your ATE insurance requirements.



## Adaptability, mitigation and positivity - personal injury 'food for thought' for 2021

By Philip Pipkin, Underwriting Support Manager

After a turbulent 2020, it is perhaps time to look to the future and hopefully a transition to a more optimistic 2021. Change has been continuous in recent months as we have navigated national and regional lockdowns; life in general has often been a challenge, impacting how we socialise and our working environments. That being said, a theme for the coming year I'd like to propose for personal injury lawyers and their ATE insurance providers is adaptability, mitigation and positivity.

**One thing almost certainly going to happen this year is the whiplash reforms.** When this comes into place in May, the adaptability of law firms and their clients is going to be tested. We are a long way from what many saw as the 'heyday of the personal injury claims market' and, by now, all firms in this sector should have planned for this 'new normal'.

- **These much-delayed reforms, when implemented,** will significantly change how lower value personal injury cases are litigated. Here's one important question - might your clients end up under-compensated because they do not fully understand the long-term effects of their injuries?
- **This situation could arise because clients will now not be able to seek advice** from an experienced personal injury lawyer. Or, if a claimant does that, could this be seen as disproportionate - the government's view being it's 'a hammer to crack a nut' that simply isn't needed.
- **Clients are going to have to adapt to litigating their cases independently** without expert assistance. Here at Temple, we entirely agree with the view of APIL and others that the consumer will not benefit from the whiplash reforms.

With the extraordinary delays caused by the pandemic this has impacted many areas of litigation. One example being court hearings switching to a virtual format - or not being heard at all in some cases.

- **I can envisage that in 2021 mitigation through mediation** will become a more popular choice for many law firms. The necessary but inevitable inconvenience of having to wait for clients with serious injuries will make the option of mediation even more attractive.
- **Lawyers settling cases quicker must benefit all involved** - Temple has championed mediation for a long time. To show our commitment we include mediation incentives in our ATE cover.

**There is some light at the end of the tunnel, a positive aspect of the coming year** is that we will all have the option to be vaccinated and, at the appropriate moment, the ability to meet up again.

- **Whilst Zoom and Teams has proven invaluable, in particular for vulnerable or incapacitated clients,** the resumption and additional reassurance for clients being able to meet their legal representative for a face-to-face discussion about their case will be welcomed.
- **Similarly, for the providers of access to justice** including law firms and ATE insurers - we look forward to starting to plan for major conferences we can attend in person.

**In conclusion, we will continue our support through ongoing dialogue** with our partner law firms. We are here to help you overcome the challenges in 2021 as they occur. If you have any questions or want to share your views, please email [Philip.Pipkin@temple-legal.co.uk](mailto:Philip.Pipkin@temple-legal.co.uk) or call 01483 514417.



## Really quite interesting? A Top 5 reading list - that you decided.



We all love a list, especially a useful list. Below is the most popular articles on clinical negligence and personal injury litigation that we've published recently.

1. **Top, and by quite some distance, was a report on disbursement funding interest recoverability** - a seemingly never-ending story. Whilst we won't see interest due under a disbursement funding CCA being awarded in future detailed assessments soon, there are a few solutions to help your clients that are available. Get in touch to find out more.
2. **In second place is our look at multiple defendant cases**. You fed back to us that Temple's ATE insurance product really does give peace of mind from the risk of paying potentially expensive Defendants' costs.
3. **Next were details of the reasoning behind our 'New Deal in ATE insurance for Clinical Negligence cases'**. You spoke and we delivered, but we do not intend on stopping there, we are always looking to review our products to make sure what we are offering really is the best choice.
4. **A Cauda Equina case study, also proved popular**. These are very complex cases, whilst extremely painful for those who suffer from it. It was found useful sharing our experience on both successful cases and the ones that lose.
5. **Our Get Ahead On Costs webinar held last October** also proved popular. We will certainly be holding more of these in 2021 so please keep an eye out for that.

For the latest news on the Temple website please visit [www.temple-legal.co.uk/news/](http://www.temple-legal.co.uk/news/), our podcasts can be listened to at [www.temple-legal.co.uk/news/podcasts/](http://www.temple-legal.co.uk/news/podcasts/) and previous webinars watched at [www.temple-legal.co.uk/news/webinars/](http://www.temple-legal.co.uk/news/webinars/)

## ATE Insurance In Action Case Study: Personal Injury - Multiple Injuries



This case study is based on an actual claim but the names and some other details have been changed in order to protect client confidentiality.

### Description

Personal injury claim resulting from a fall.

### The Claim

While staying at a hotel, the claimant fell from a first-floor window during the night, landing on a patio area below. The fall occurred due to incorrectly installed window opening restrictors; these were fitted but not fixed in place - thus allowing the window to open fully.

As a result of the fall, the claimant suffered multiple injuries to their pelvis and back plus internal injuries to their organs.

### Current situation

This case has recently been placed on cover.

The defendant has argued that the claimant was not vulnerable and there had been no other accidents of this kind at the premises. The claimant's position was that if the window restrictors been fitted in place and correctly then the accident would not have happened.

Due to pandemic-related delays caused, proceedings have only recently been issued. ATE cover is required in order to protect the claimant's position as a result of the stance taken by the defendant and the extent of evidence required.

The cover provided by the Temple ATE insurance policy has allowed the claimant to obtain further evidence from an engineer and medical experts, along with being able to issue proceedings without the fear of being liable for a £10,000 issue fee.

If you would like further details on how Temple ATE insurance for personal injury claims can protect you and your clients, please call Peter Morgan on 01483 514800 or via email to [peter.morgan@temple-legal.co.uk](mailto:peter.morgan@temple-legal.co.uk).



# All under one roof

## ATE insurance and disbursement funding

When your client is provided with a Temple ATE Insurance policy - with no upfront premium - your client will also be eligible for disbursement funding.

There's just one application form, the same easy-to-use administration system, your own dedicated scheme manager and a low interest rate of just 10%.

For a free, no-obligation discussion of your litigation requirements please call us on **01483 577877** or email [ate@temple-legal.co.uk](mailto:ate@temple-legal.co.uk)

Temple Legal Protection and Temple Funding are authorised and regulated by the Financial Conduct Authority

**temple**  
legal protection

The experts in  
litigation insurance  
and disbursement funding

Contact us now on  
**01483 577877**

[www.temple-legal.co.uk](http://www.temple-legal.co.uk)

WE HELP MORE





## The role of mediation in medical treatment disputes

**By Paul Balen, Mediator and Director of Trust Mediation Ltd**

*As readers of these newsletters know, Temple is a long-time advocate of ADR, in particular for the use of mediation to settle clinical negligence cases. Of particular interest to those who may be newer to the subject matter, below Paul Balen explains the role of mediation in medical treatment disputes.*

**Mediation is a confidential, interactive process where an impartial third party, the mediator, assists disputing parties in resolving conflict through the use of specialised communication and negotiation techniques. It is a highly flexible concept, adaptable to both complex and straightforward disputes and, importantly, proven as particularly effective in facilitating a greater understanding when emotions run high.**

Mediation in medical treatment disputes can help with -

- **Disputes between patients, or their relatives and medical practitioners/hospital authorities** are, as we know, unfortunately not uncommon. As the modern healthcare system becomes more complex and expensive, such as for developments in intensive care medicine and new treatment options, so does the scope for a dispute increase.
- **Patients who may previously have died now survive, but often in a parlous state;** people are generally living longer and therefore decisions about treatment options are becoming increasingly difficult. Then there are NHS clinicians having to make decisions simultaneously - as doctors who owe a duty of care to a patient but also as publicly accountable officials making decisions on the basis of limited resources.
- **Patients who feel let down when denied NHS treatment despite having a medical need** may well feel aggrieved and raise a complaint. Then there are patients recommended to have life-saving treatment also with legitimate concerns; whilst for some relatives decisions advising that further treatment would be futile may also raise a difference of opinion with those charged with their loved one's care.

Judges in cases such as *Re Y* [2018] UKSC 46 or that of Charlie Gard [2017] EWHC 1909 (Fam), have highlighted the importance of trying to achieve consensus about treatment options. The NHS Early Notification Scheme for cerebral palsy children, Jehovah's witness cases and 'end of life' decisions are other examples where the Court remains available if consensus cannot be reached.

**Mediation can often provide a quicker, more humane** and less costly option either to either resolve the whole dispute or at least help narrow the issues and create a greater understanding. The preservation of relationships which are otherwise potentially damaged by lengthy disputes and litigation is an acknowledged benefit which mediation can usually deliver.

**Clear communication and explanation is vital in an era where** patients can “Google” a diagnosis, research potential treatment options and communicate instantly via social media. They can also involve special interest groups, doctors from other jurisdictions and be influenced by ‘fake news’.

**In summary, faced with a potential avalanche of opinion and (mis)information, mediation provides an ideal forum away from the intensity of the hospital ward where an informed neutral party can help diffuse tensions and misunderstandings.**

In addition to our work in the clinical negligence and personal injury fields, Trust Mediation can provide legally and medically qualified mediators to help with most types of dispute concerning people in the medical/clinical/healthcare sector. For more information about Trust Mediation's work in this field please email [registrars@trustmediation.org.uk](mailto:registrars@trustmediation.org.uk)



## ATE insurance for clinical negligence - have you got your risk assessment right?

By Paul Bonner, Senior Underwriter

*As ATE insurance underwriters we see the good, the bad and the ugly, so see us as adding value to your risk assessment process. Here at Temple, we share a combined 100 years' experience of underwriting clinical negligence cases and wanted to share some of that in order to you help maximise your fee-earning.*

**We're here to help, not to second-guess you.** You may well be equally experienced, but below is a view from the receiving end of your cases that could save you a great deal of time and costs. It share ours experience of why -

- **Many cases are discontinued far too late** - this causes a higher claims exposure - something that benefits nobody.
- **We see many more cases stalling** due to inadequate case timetable management. Too much time is spent identifying appropriate experts, followed by long delays in obtaining the experts reports - without ever having a 'Plan B' in place.
- **Too much time and money is also spent** trying to turn an unsupportive expert around. If the answer is not 'yes', then the case is probably a 'no go'.

See below for an overview of the key principles or [click here](#) for our updated guide to risk assessment for clinical negligence cases.

### The client isn't always right

The rise in clinical negligence ATE insurance claims has often been due to accepting subjective evidence from the client alone. This is not a good risk assessment. We require a law firm to obtain all relevant

medical notes and records and review them. This is one of our Eligibility Criteria before a case can be insured under delegated authority.

If this was a school exam, 'show your workings' would still gain you some marks even if the final answer was incorrect. Here the stakes are somewhat higher, but the principle still stands - reviewing your rationale can give insights you, your client and your ATE insurer could all benefit from.

The [risk assessment guide](#) is by no means a comprehensive list but adherence to it will, we suggest, lead to less time being written off and reduce claims, including the amount of the monetary claims.

In summary - aim to develop a detailed risk assessment process backed by objective evidence and, ideally, a separate case plan setting out defined goals with a strict timetable.

If you can confidently say that all the risk assessment best practice from the guide is happening, you should be seeing healthy wins statistics and few claims. If not, please call 01483 577877 or email [Matthew.Best@temple-legal.co.uk](mailto:Matthew.Best@temple-legal.co.uk). We are only too happy to work with you to create a more robust process.

## ATE Insurance and Disbursement Funding Product Guides

Get all the facts about our ATE insurance and funding facilities, [click here](#) to download your copy of the Clinical Negligence Product Guide and [click here](#) for the Personal Injury Product Guide.





## Disbursement funding 'fiction' - what are the 'must-haves' you really need?



Whether you run clinical negligence cases, personal injury claims or commercial disputes, we know you want to provide your clients with the best chance of obtaining the access to justice with an agreeable financial settlement.

[Click here](#) to find out what you should be looking for when choosing an ATE and funding provider.

## New: Case-type specific web pages for Surgical Negligence cases



'Surgical negligence' is the latest addition to our website with in-depth ATE insurance information on these cases for clinical negligence litigators. [Click here](#) to find out more.



## Walking the Talk for our Charities in 2021

*Here at Temple we remain committed to our charitable endeavours and despite 2020 'not working out as planned' we are finalising plans support our chosen charities in 2021. Read on to find out what we did and what we have in mind.*

**There is no doubt that numerous charities are facing cuts to services** and a significant loss of income as a result of the pandemic. It is therefore vital that businesses such as ours redouble their efforts to support charitable organisations during these tough times, as without this support it is hard to see how many of them can continue their essential and worthwhile work.

**Despite the numerous restrictions through most of last year**, Temple was still able to support a number of fundraising activities. These included the [London Legal Support Trust](#) where we took part in and socially distanced walks and online quizzes.

**In addition, a number of our staff also took part in 'The 2.6 challenge' to raise money** - this involved us participating in events connected to the number 26, such as 26 press ups or walking 2.6 miles and provided a welcome respite to the struggles of lockdown.

**The Queen Elizabeth Foundation and the Brain and Spinal Injury Centre** are two other charities we are hoping to work closely with again in 2021. For more details on the support these charities provide please visit their websites [www.qef.org.uk](http://www.qef.org.uk) and [www.basiccharity.org.uk/](http://www.basiccharity.org.uk/).

**As well as organising fundraising events for our chosen charities**, Temple is also keen to take part in 2021 conferences arranged by charities. With that in mind we are proud to be present at the virtual Child Brain Injury Trust (CBIT) conference being held on 20th and 21st April 2021 - and delighted to welcome attendees to our virtual stand. For more information on the work carried out by CBIT, please visit their website <https://childbraininjurytrust.org.uk/>.

**We're also proud to have had a number of staff who engaged in their own charitable efforts throughout 2020 to raise money for good causes**, many of which are charities close to their own hearts. This included exhausting marathon challenges and 'Santa's on the run' - and have more planned for 2021 that we will report on in future newsletters.

If you would like to know more on the charitable work that Temple undertake or get involved with any of the great charities mentioned above, then please don't hesitate to contact me on 01483 514872 or via an email to [lisa.fricker@temple-legal.co.uk](mailto:lisa.fricker@temple-legal.co.uk)



# CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple  
legal protection

## Contacts:

### Matthew Best

#### Senior Underwriting Manager

Matt's day-to-day role involves managing a large number of ATE insurance schemes for law firm's clinical negligence and personal injury claims. In addition he uses his experience to ensure that their Temple disbursement funding facilities are set up and run smoothly. He is often seen at APIL, AvMA and SCIL conferences sharing his expertise.



01483 514804  
[matthew.best@temple-legal.co.uk](mailto:matthew.best@temple-legal.co.uk)

### Lisa Fricker

#### Solicitor Services Manager

Lisa has over 15 year's experience in the legal insurance industry, and is used to working closely with solicitors to develop and maintain good working relationships. In her role Lisa manages our internal and external review process and is focused on ensuring that the quality of service provided by Temple remains at the highest standard.



01483 514872  
[lisa.fricker@temple-legal.co.uk](mailto:lisa.fricker@temple-legal.co.uk)

### David Stoker

#### Senior Underwriter

David's experience allows him to undertake a key role within Temple's ATE insurance personal injury and clinical negligence teams. He also participates in the assessments of delegated schemes that Temple provide to help our customers make the most of the products and services we offer.



01483 514808  
[david.stoker@temple-legal.co.uk](mailto:david.stoker@temple-legal.co.uk)

### Peter Morgan

#### Senior Underwriter

Peter is an Underwriter within the Personal Injury and clinical negligence team and is responsible for assessing risks along with the day to day management of delegated authority schemes. He is also available to help with any underwriting questions to ensure customers are getting the best of their ATE and funding products.



01483 514800  
[peter.morgan@temple-legal.co.uk](mailto:peter.morgan@temple-legal.co.uk)

### Alex Stracey

#### Senior Underwriter

Alex has over 14 years experience within the LEI market in both ATE and BTE. She is used to working closely with solicitors to ensure the best outcomes for their clients. Her experience allows her to match customer requirements with Temple's products and services. Alex is happy to assist with any queries that arise on a day to day basis.



01483 514870  
[alex.stracey@temple-legal.co.uk](mailto:alex.stracey@temple-legal.co.uk)

### Philip Pipkin

#### Underwriting Support Manager

Philip's integral role at Temple is to ensure that personal injury and clinical negligence underwriting tasks are dealt with quickly and professionally. He mainly deals with initial ATE insurance enquiries and general underwriting issues but also assists in the maintenance and introduction of delegated schemes to Temple's customers.



01483 514417  
[philip.pipkin@temple-legal.co.uk](mailto:philip.pipkin@temple-legal.co.uk)

## Take part in our ATE insurance survey

*"But I'm not a customer of yours - why does what I think about ATE insurance matter?"*

Perhaps it's exactly that - If you're not a customer, we want to see how we can make a difference.

Asking for feedback via a newsletter may seem a little impersonal, but if you haven't done so yet we really would value your thoughts. It takes 2 minutes and you could win a £50 Amazon voucher. [Click here](#) to take part.



### Temple Legal Protection

Portsmouth House, 1 Portsmouth Road, Guildford, Surrey, GU2 4BL  
Tel. 01483 577877 | DX. 83188 Guildford | [www.temple-legal.co.uk](http://www.temple-legal.co.uk)

In partnership with

