Knowing your rights relating to delayed diagnosis, misdiagnosis and mistreatment of meningitis and septicaemia

helpline@meningitis.org
www.meningitis.org
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About this guide

Meningitis and septicaemia are serious, life threatening diseases that can make someone seriously ill very quickly. They can kill within hours, so receiving a timely and accurate diagnosis and treatment can mean the difference between life and death. Those who survive can be left with life-changing impairments.

When symptoms appear, it is important to receive medical help urgently and receive an accurate diagnosis. To be able to respond and diagnose quickly enough, medical professionals need to be well-informed and alert to the early onset symptoms of meningitis and septicaemia in order to increase the chance of patient survival and recovery.

Whilst most people receive excellent treatment, in some cases this does not happen. We continue to work with health professionals to promote the importance of early recognition and diagnosis of meningitis and septicaemia to ensure rapid treatment. However, delayed treatment, misdiagnosis and mistakes in treatment of meningitis and septicaemia can occur, with life-changing implications.

This handbook is designed to help people if things do go wrong, and offers information about steps that can be taken, including legal action relating to misdiagnosis and mistreatment of meningitis and septicaemia.

The legal firms listed in this handbook are experts in the field of clinical negligence in England and are on-hand to offer advice and support to those who may have suffered meningitis and septicaemia-related negligence. We are grateful for their contributions towards the publication of this handbook, and for the ongoing services they can provide to some of the people we support. We are currently looking to expand the range of legal film partners in across all regions of the UK.

Disclaimer: The firms listed are all independently accredited by the Chambers and Partners guide as leading firms in the field of clinical negligence, and are listed by the Law Society and Action against Medical Accidents (AvMA). We accept a sponsorship fee from the firms mentioned which goes towards our important work in research, support, awareness and advocacy; helping us to defeat meningitis and enable a better quality of life for those with after-effects. Meningitis Research Foundation believes that the law firms in this handbook are highly experienced and knowledgeable, and are best placed to guide our supporters through their clinical negligence claims. However, Meningitis Research Foundation does not specifically recommend or guarantee services from any one provider in the handbook.
Finding the right solicitor

Making a clinical negligence claim can be a daunting prospect. Contacting a solicitor is a big step, and talking about your experience of illness and associated medical care can bring back painful memories.

It is important to choose a firm of solicitors which has proven expertise in the field clinical negligence, with individual solicitors who are members of the Law Society and/or AvMA (Action against Medical Accidents) specialist panels, the only two approved lists of specialist clinical negligence solicitors. The firm should be recognised by leading independent bodies such as Chambers Guide to the Legal Profession and the Legal 500.

It is important to find the right firm for you. You might wish to speak to a number of firms for an initial discussion before making a selection.

We have partnered with the following law firms based in England who are leaders in their field. All are independently accredited by the Chambers and Partners guide, and cover specific regions of England. We are currently developing our partnerships and are seeking new partners in other regions of the UK.

Freeths LLP
Tel: 033301 001 014

Wolferstans
Tel: 01752 663 295

Stewarts Law LLP
Tel: 020 7822 8000

Anthony Collins Solicitors
Tel: 0121 200 3242
What is meningitis?

Meningitis is an infection of the meninges (the protective lining around the brain and spinal cord) caused by bacteria, viruses or fungi. These same germs can cause septicaemia (also known as sepsis) which is a life-threatening blood poisoning, resulting from the body’s response to an infection.

Meningitis and septicaemia are uniquely fast-acting and devastating illnesses which can kill or seriously disable within hours. Early warning signs are also notoriously difficult to spot and symptoms can often be mistaken for something much less serious like flu.

Being meningitis aware and being able to recognise the symptoms of meningitis and septicaemia is vital - early recognition and treatment provide the best chance of a good recovery.

Go to www.meningitis.org/meningitis/check-symptoms for more information on the signs and symptoms of meningitis and septicaemia.

After effects of meningitis

The after-effects of meningitis can be devastating. For every 10 people affected by bacterial meningitis around the world, one will sadly die and two will be left with life-altering impairments.

Meningitis affects
5 million people globally every year

1/10 people who get bacterial meningitis will die
2/10 people who get bacterial meningitis are left with an impairment like brain injury

Meningitis and septicaemia can cause a range of disabilities and problems which alter lives. These after effects can be temporary or permanent, physical or emotional. Whilst physical disabilities may be obvious, neurological and emotional problems can cause a wide range of challenges.

If things go wrong:

Meningitis is fast acting and difficult to diagnose in the early stages. Most people recover from meningitis without long-term complications thanks to the excellent work of health professionals. This means that most people seeking medical treatment are happy with the care they and their loved ones receive. The health service employs doctors, nurses and other health professionals who work hard to treat everyone properly and promptly and their skill and dedication save many lives. However, on rare occasions things do go wrong and when this happens it can impact you and your family physically, financially and emotionally.
If you have concerns about the standard of care and treatment you or a loved one has received, there are many ways to resolve this, including:

1. Speaking with the health professionals involved
2. Talking to patient advocates, such as Patient Advisory Liaison Service (PALS)
3. Using the NHS complaints procedure
4. Pursuing a clinical negligence claim

It is important to think carefully and seek appropriate advice when deciding how to move forward with your concern. Meningitis Research Foundation is here for you if you’d like to talk it through. Please call the Helpline on 080 8800 3344 (UK) or 1800 41 33 44 (Ireland).

1. Pursuing a complaint

How can I make a complaint?

If you are disappointed with the quality of care you received, the behaviour of a health care professional or if you experienced delays in treatment, you may wish to make a complaint.

A complaint can either be made informally through patient advocates such as The Patient Advice and Liaison Service (PALS) in England – or counterpart services in Wales, Scotland and Northern Ireland detailed below - or formally through the NHS complaints procedure.

As a general rule, the complaints system will not award any compensation. Compensation can only be sought through a legal clinical negligence claim.

It is best to put your complaint in writing so you have a record of your concerns. Include a note of the relevant date, time, names and conversations as this will help you remember the details in the future.

If you want to make a formal complaint about an NHS service, ask the service for a copy of their complaints procedure as this can often be different across different NHS organisations and locations in the UK.

What is the time limit for making a complaint?

In England and Wales, you should make a complaint to the NHS within 12 months of the treatment you received.

In Northern Ireland and Scotland, a complaint should be made within 6 months of the event or within 6 months of realising there was an issue to complain about, but no longer than 12 months after the event.

Where can I get help with my complaint?

England

Patient Advice and Liaison Service (PALS)

- Employed by the NHS to assist patients with their problems and assist with early resolution of disputes
Healthwatch

- A national independent champion with a network of local organisations who can assist you with your complaint

Scotland

Patient Advice and Support Service (PASS)

- An independent service which provides free, confidential advice and support

Wales

Community Health Councils

- Offer Patient Advocacy services, which provide practical help and advice

Northern Ireland

Patient and Client Council

- An independent service which helps people with a complaint about any aspect of health and social care

Important things to remember when making a complaint

- You can make a complaint verbally, in writing or by email. If you make a complaint verbally, a record of your complaint will be made and you'll be provided with a written copy.

- If you're complaining on behalf of someone else, make sure to include their written consent.

- Make sure to include a detailed account of what has happened.

- Although the complaints procedure can result in a recommendation for compensation, this is relatively rare and the amount is likely to be limited. If you have ongoing injuries or disabilities it is important to seek legal advice before accepting any sum in compensation to ensure that you are adequately compensated. Please note that you cannot accept money in settlement of a potential claim and then return to ask for more.

- If the negligent treatment took place in Wales and a complaint is made, the complaint may fall into the NHS Redress scheme. If this is the case, then compensation of up to £25,000 can potentially be awarded under this scheme.

- To obtain appropriate compensation you will usually need to make a clinical negligence claim. You do not have to have made a complaint in order to bring a clinical negligence claim, although it is often useful to do so as it can provide helpful evidence.

- If you are not happy with the complaint response you receive from the NHS, you can contact the Parliamentary and Health Service Ombudsman in your country who will conduct an independent investigation into the handling of your complaint.

Can I pursue a legal complaint through the NHS complaints procedure and ask a solicitor to investigate a compensation claim at the same time?

In England you can do this. The NHS service you are making a complaint about should seek to continue to resolve the complaint unless there are clear legal reasons not to do so. If this is the case, the complaint will be put on hold and this should be explained to you.
However, if you have expressed an intention to take legal proceedings, by default the complaint will continue to be resolved unless there are clear legal reasons not to do so.

In Scotland you cannot pursue a complaint through the NHS complaints procedure if you are already taking legal action. However, you can consult a solicitor for legal advice whilst the complaint is ongoing.

In Northern Ireland you will not have access to the second stage of the complaints procedure involving an independent review by the ombudsman if you have already started to take legal action.

In Wales an NHS complaint cannot be started or continued once court proceedings are issued, so if court proceedings are issued when a complaint is already under investigation, the investigation will be stopped. However, there is nothing to prevent you from instructing a solicitor to begin investigating a claim before or during the complaint process providing they have not yet issued court proceedings.

2. Clinical negligence

What is clinical negligence?

Clinical negligence refers to a failing or mistake on the part of a health professional. The purpose of a clinical negligence claim is to compensate a patient or their family for loss they have suffered due to a professional’s negligence.

Making a clinical negligence claim

In order to bring a claim in clinical negligence, three tests have to be satisfied: Breach of Duty, Causation and Loss.

1) Breach of Duty

This is the mistake or negligence itself. Health care professionals owe a duty to their patients to act with reasonable care. In order to demonstrate whether there has been a breach of that duty, the patient has to show that the care provided to a patient fell below an acceptable standard.

Examples of breaches of duty in a meningitis cases may include a failure to refer a child to hospital; a failure to run adequate tests; or a failure start treatment based on presenting symptoms.

2) Causation

Causation refers to the need for the breach of duty to have caused an injury or adversely affected the patient. In order for a claim to be successful, it has to be shown that the outcome for the patient is worse than it would have been had they received appropriate treatment.

An example of this could be a delay in diagnosis of meningitis. If a GP failed to make an early referral to a hospital when a child presented meningitis symptoms, this may be breach of duty on their part.

If the child’s parent took the child to A&E half an hour later and the child goes on to make a full recovery, the outcome will not be worse for the child despite the lack of referral from the GP, meaning the breach of duty has not caused an injury. The test for causation will not be satisfied and there will not be a claim.

However, if the child is taken to A&E due to their symptoms worsening overnight, and as a result of the delay in treatment caused by the GP’s breach of duty, the child goes on to develop epilepsy or cerebral palsy, the test would be satisfied. This is on the basis that had the child received the appropriate treatment, their outcome would likely have been more positive.
3) **Loss**

Clinical negligence centres on the idea that a patient who has suffered negligence should be awarded compensation to put them in the same position they’d have been in had it not been for the negligence.

Compensation can be split into two categories:

- **Special damages** refers to monetary loss. This includes past expenses as well as the future lifetime costs of caring for a person with meningitis – for example, care and assistance, medical costs, home adaptations and specially-adapted prosthetics.

- **General damages** refers to the non-economic losses a person may suffer. This is an award of compensation based on the additional pain, suffering and loss of amenity a person with meningitis after-effects has or will suffer as a result of negligence – for example, the loss of opportunity to play or live an active life, or the loss of educational or employment opportunity due to cognitive impairment.

**What is the time limit for making a clinical negligence claim?**

There is a strict time limit called the limitation period during which a person must issue court proceedings in order to bring a clinical negligence claim. Failure to issue a claim within this time will usually mean that they are statute barred and no longer able to do so.

It is however advisable to contact a solicitor as soon as possible if you wish to investigate a claim. Bringing a clinical negligence action is a lengthy process and a significant amount of investigation is required before court proceedings can be issued. Also, as time passes it can also become more difficult to remember details of what has happened.

For adults, the limitation period is 3 years from the date of the negligence, or the date upon which the person knew or should have known that the negligence had occurred, that they had suffered an injury, and who it was that had been negligent - this is known as ‘date of knowledge’.

In **England, Northern Ireland and Wales**, if the negligence occurred when the person was under 18, the limitation period begins to run once they reach they age of 18. They then have 3 years in which to bring a claim, meaning the limitation period will expire on their 21st birthday.

In **Scotland**, if the negligence occurred when the person was under 16, the limitation period begins to run once they reach the age of 16. They then have 3 years in which to bring a claim, meaning the limitation period will expire on their 19th birthday.

Where a person lacks mental capacity - for example as a result of a brain injury - the limitation period does not apply and will run for as long as they continue to lack capacity.
Funding a claim

There are a number of ways in which to fund a clinical negligence claim, including public funding, legal expense insurance, a Conditional Fee Agreement ("no win, no fee" agreement) and private funding.

Public Funding / Legal Aid

In England and Wales, Legal Aid is only available in cases where:

- the child is severely disabled; and
- the child suffered a neurological injury; and
- the negligence occurred within 8 weeks of the birth.

In the context of meningitis, an example would be if a new born baby contracts meningitis as a result of undiagnosed and untreated group B streptococcus at birth and subsequently suffers a brain injury as a result.

Even if Legal Aid is a possibility, it is not a certainty. If your solicitor thinks you may be eligible for public funding they must make an application to the Legal Aid Agency. They will take into account a number of factors, such as the strength of evidence, financial circumstances and the degree of injury sustained before deciding whether to grant Legal Aid to investigate the claim. In Scotland and Northern Ireland, Legal Aid follows different rules, and you should consult your solicitor for advice.

Legal expense insurance

Many people have Legal Expense Insurance (LEI) attached to one of their insurance policies, such as car or home insurance. However, not all policies will cover medical negligence. You should either discuss the policy with your chosen solicitor or contact your insurance provider to clarify whether you are able to use your existing insurance.

Conditional Fee Agreement

Your solicitors may consider entering into a Conditional Fee Agreement ("no win, no fee") to cover your legal fees. If your case is unsuccessful there should be nothing for you to pay. If your case is successful, your solicitor is entitled to take a percentage of your overall compensation. This will not exceed 25% of the compensation for general damages and past financial losses.

Your solicitor will look at all information and will make an assessment of the likelihood of your case succeeding. If their assessment suggests that your case is unlikely to succeed, they will not offer you a "no win, no fee" agreement. A solicitor will provide you with a Conditional Fee Agreement if you have a 51% or greater chance of success.

Private funding

You could opt to pay privately for a solicitor to investigate your case. The solicitor should give you a clear estimate at the outset and agree with you limits for each stage of the case.

However, if a solicitor is not willing to offer you a no win, no fee agreement it is probably because they are not confident in the prospects of the case being successful, and, as such, it is risky to pay privately. Clinical negligence cases are long running and expensive and it is important to consider whether pursuing a case in these circumstances is in your best interest.
Frequently Asked Questions

What is the difference between 'medical negligence' and 'clinical negligence'?
They mean exactly the same thing: when injury or death is caused or contributed to by a failure in the duty of care during medical, nursing or other clinical consultation or treatment.

Will bringing a claim affect medical care? Will I be struck off my doctor's list?
No. Pursuing a compensation claim should not affect the medical care offered and you will not be struck off your GP’s surgery list. If it does, you should speak to the services mentioned above.

Can I bring a claim on behalf of my child?
Yes. Any child under 18 must have an adult representative, usually their parent, known as their "Litigation Friend". The solicitors acting for your child will take instructions from the Litigation Friend and correspond with them, not the child. The Litigation Friend must make all the necessary decisions in relation to the case, and act in the child's best interests. In a claim on behalf of a child, the Court must approve any out-of-court settlement that is reached.
This also applies to disabled adults deemed a 'protected party' under the Mental Capacity Act 2005. They too will require a Litigation Friend to conduct their claim for them.

How do I win a claim?
All clinical practitioners, including doctors, nurses, and physiotherapists, owe their patients a duty of care. To bring a successful clinical negligence claim you need to show that firstly there was a breach of that duty of care and, secondly, that as a result you, or your child or loved were injured (or died) or the outcome of the illness was made worse. You must show that the treatment provided fell below the standard expected of a reasonable competent practitioner in the relevant field.
Your solicitor will seek an opinion from an independent medical expert on your case. The expert will base their opinion on your medical records, your statement about what has happened to you or your child or loved one, along with any other information supporting your case. If your solicitor cannot obtain a supportive report from an independent expert, then your case will not succeed.

What if a solicitor doesn't take my case?
If a solicitor turns down your case, ask why and make sure you get a detailed answer. If you are not satisfied, you might want to seek further opinions: possibly the solicitor you have chosen is just not suitable or lacks the time to handling your case. However, even if the care you received was negligent or sub-standard, it may be that legal action is not a realistic option. Other options may be open to you. You can ask your solicitor or PALS or an independent complaints advocate or AvMA about what else you can do to get an explanation or an apology for what went wrong, or to improve care at your hospital or surgery for others in the future.

How long will a claim take?
This depends on many things, including the nature of the injury, the complexity of the case and case notes, the number of medical specialties involved, and whether the healthcare provider admits liability early on or not. As a general guide the whole claims process may take between 2 and 5 years to complete. Cases involving very young children with significant injury may not be fully resolved until the child is old enough for their long-term prognosis to be known. This can take longer than 5 years as time may be needed to allow the child to develop.

However, once the liability (fault) part of the matter is resolved, payments can be sought from the Defendant to meet the child’s ongoing needs, such as professional care, specialist aids/equipment or suitably adapted accommodation, whilst the full extent of these needs is being determined.
Will I have to give evidence in court?
Clinical negligence claims rarely end up in Court. Both sides are encouraged to settle the matter quickly to avoid incurring extra costs. The vast majority of claims are settled before legal proceedings are issued, and before a trial commences.

What happens if I win my case?
If you are successful, then the Defendant will pay the compensation and all your reasonable legal costs. In some instances, they may offer an apology as well, but they cannot be required to do so.

What happens to the compensation for a child?
First, the Court will need to approve any settlement or award of compensation to a child or an adult who lacks capacity. This is to make sure the settlement is in their best interests. Once approved, your child’s money will be paid into the Court and managed and invested on your child’s behalf. Cases concerning those under 18 and those who lack mental capacity are managed by the Court of Protection. As a general rule, a child of full mental capacity will not be allowed control of their compensation until they are 18 years old. However, the Court will release money to be used to meet your child’s needs up to the age of 18, with the balance paid to your child thereafter.

Can I make a claim on behalf of someone who died if I think their death was due to negligent medical treatment?
Yes, the administrator or executor of their estate can bring a claim on their behalf. It may also be possible to claim for loss of financial support from the person who died. These dependency claims can be made by children, siblings, and common-law partners (if co-habitation for 2 years plus can be proved), as well as parents and spouses, but only if they can show that they were financially dependent on the person who died.
A claim for bereavement damages (specific compensation for the loss of a loved one) can be made only on behalf of specific relations of the deceased including the spouse of the person who died, or his or her parents, if it was a child who died.

Useful links

**Action against Medical Accidents (AvMA)**
https://www.avma.org.uk/

**Patient Advice and Liaison Service - NHS Complaints**

**Parliamentary and Health Service Ombudsman**
https://www.ombudsman.org.uk/

**Welsh Redress Scheme**
http://www.wales.nhs.uk/sites3/home.cfm?or gid=932

**Law Society**
http://www.lawsociety.org.uk/

**Legal Aid Agency**
https://www.gov.uk/check-legal-aid

**Scottish Legal Aid Board**
http://www.slab.org.uk/

**Northern Ireland Legal Services Agency**
http://www.nilsc.org.uk/
MENINGITIS RESEARCH AND AWARENESS IS AN ISSUE THAT WE’RE VERY PASSIONATE ABOUT

We have witnessed the catastrophic effects of meningitis first-hand; having worked with and secured substantial settlements for clients whose contraction of the disease has left them in a life-changing condition, through circumstances that could have been avoided.

We are proud to support the Meningitis Research Foundation in their aims to tackle meningitis and septicaemia, and look forward to helping them make a difference by reducing the spread and impact of these diseases in any way possible.

We represent clients of all ages, who have suffered all types of meningitis, whether this is viral or bacterial; our award-winning personal injury team and clinical negligence team stand out from the crowd with their caring approach to each client, fighting for justice for them and their families.

We can also advise on a wide range of related matters such as welfare rights, education, community care, wills, probate and the court of protection.

To find out more about the work we do or how we can help, please contact:

Rankeshwar Batta
Partner
Tel: 0121 214 3578
Email: Rankeshwar.batta@anthonycollins.com

Birmingham | Manchester | anthonycollins.com | @acspiclinneg
FREETHS
Specialist medical negligence advice and support

Our clients speak for us:
“I really want to say how fantastic you and your team have been. I have been overwhelmed at times at your kindness and compassion when dealing with myself and our family. You have made the worst situations bearable by how you have treated us all and I am forever grateful to you for this. I have trusted you implicitly and knew that any advice given was to be trusted 100%.”

Our specialist solicitors are on hand to support our clients and families through the litigation process and beyond: helping them to find answers and secure early access to rehabilitation, assistance and equipment that can improve their lives.

We have seen too often the devastating impact that meningitis and septicaemia can have on patients and their families. We are proud to partner Meningitis Research Foundation in their fight to eradicate this terrible disease so that no patient and no family suffers in future.

We are top ranked in both Chambers & Partners UK and Legal 500. Carolyn and Catherine and individually recognised for their expertise. We are panel members for both AVMA Clinical Negligence and Law Society Clinical Negligence.

Carolyn Lowe
Partner
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E: carolyn.lowe@freeths.co.uk

Catherine Bell
Senior Associate
T: 01865 781140
E: catherine.bell@freeths.co.uk
Suffering serious injury as a result of medical treatment can be both traumatic and life changing. Our aim is to secure the best possible future for you and your family.

Unlike other law firms, Stewarts focus exclusively on claims involving serious injury. Our lawyers understand how the failure to properly diagnose, treat or manage medical issues can lead to serious injury or death.

We are ranked No.1 for clinical negligence in both The Legal 500 and Chambers. Our legal expertise and willingness to push boundaries has enabled our clients to achieve record-breaking compensation awards.

If you or a family member have been injured as a result of medical negligence or feel that you are not getting the specialist advice you require on an ongoing case then please contact us.

www.stewartslaw.com
+44 (0)20 7822 8000
Meningitis?
Contact Your Clinical Negligence Experts

We are here to provide you with sensitive, expert advice if you or a loved one have experienced medical errors involving a delay in diagnosis of meningitis, or have concerns about the medical treatment received. We have been supporting those affected by meningitis for many years and understand the devastating consequences that this illness can have on those affected and their family.

We regularly act for clients throughout England and Wales and have extensive experience of both viral and bacterial meningitis claims including:

- Misdiagnosis or late diagnosis of meningitis resulting in amputation or hearing loss
- Brain injury caused by meningitis
- Meningococcal septicaemia (blood poisoning)
- Loss of a loved one

If you or a family member have been affected by meningitis and would like to have a free, confidential discussion, please contact Elizabeth Smith on 01752 292309 or esmith@wolferstans.com.
Get involved
Together we’ll defeat meningitis and septicaemia.

We are an international charity funding research to prevent meningitis and septicaemia and to improve survival rates and outcomes. We promote education and awareness to reduce death and disability and give support to people affected.

**Fundraising**
Everything we do we rely on voluntary donations, so we need people like you to help us raise money.

“I find collecting addictive, particularly when it’s for a cause close to my heart. But as well as that for me the ‘fun’ in fundraising remains key.”  
Alex Brown

“I’ve received great care and think it’s only right to try and give something back.”  
Alan Smith

**Support**
If you have a personal experience of meningitis and septicaemia, you may be able to help others. You could train to become a befriender, or share your story on our online Book of Experience.

“She had a lot of experience behind her which we simply do not have and to get some ‘mum’ info was invaluable.”  
Lucy Steel on befriending.

**Taking action**
One of the ways you can take action to defeat meningitis is by visiting research projects or taking part in studies and surveys.

“It was an amazing experience... and to me and other supporters it is the end result of our fundraising efforts. In some way this helps deal with the loss.”  
Jenny Winch after a site visit.

**Awareness**
Help raise awareness in various ways to ensure people know the symptoms.

“If talking about my experience raises and saves just one life then it’s all worth it.”  
Kate Ogden

**Advocacy**
By joining our campaigns you help create a stronger voice demanding action to defeat meningitis.

www.meningitis.org
I would like to know more about:

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Your details:

Name ________________________________

Email ______________________________

Address ____________________________________________

Telephone ____________________________________________

We are always looking for businesses to support us. If you are happy to tell us where you work and what you do, please complete below ____________________________________________

We need permission from you to stay in touch and send the information that you want. Communications may include charity information, news and fundraising updates. Tick to be contacted by

| Email: | Yes ☐ No ☐ Post: | Yes ☐ No ☐ Phone: | Yes ☐ No ☐ |

You can change your mind at any time by contacting our offices.

For full details of our privacy statement visit: www.meningitis.org/privacy

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