



Legal Support Service East England

Support for life after childhood brain
and other serious injuries

www.childbraininjurytrust.org.uk

Hello and welcome to the Legal Support Services booklet for East England

You may not know this, but every 30 minutes, a child or young person will acquire a brain injury. It might be the result of an illness or an accident, such as a road traffic collision. If you're reading this booklet, you're doing so because you and your loved ones have been affected by a child or young person's acquired brain injury.

The Child Brain Injury Trust supports children and young people who have suffered an acquired brain injury and their families, helping them to understand and cope with what the future holds. The Legal Support Service ensures that all the children, young people and families that we work with get the right legal support as soon as possible. This can cover a wide range of topics, from assisting with pursuing a claim for welfare benefits or compensation to understanding what your employment rights are if you need to take time off work to care for your child.

Slater and Gordon

Slater and Gordon can assist at a difficult time to explain, in simple terms, the legal and practical implications of a brain injury.

Slater and Gordon is one of the UK's largest law firms with 1,450 staff and 18 offices in England, Scotland and Wales. With over 85 years' experience, our reputation is built on the range of expertise offered by our lawyers and on the scope of their practical experience.

Angela Beric is a Principal Lawyer specialising in child brain injury claims and is based at Slater and Gordon in Cambridge. Angela understands that many of her clients turn to her at a time when a variety of emotions are involved; upset, anger, confusion and regret. With over 15 years' experience in bringing claims on behalf of children with an acquired brain injury, Angela is an "outstanding"^{*} Principal Lawyer who has a calm, sympathetic and reassuring manner.

* Chambers and Partners, 2015

Please contact **Angela Beric** at Slater and Gordon on
01223 653243 for no obligation advice.

Why and when should I talk to a solicitor?

If your child has suffered a brain injury we understand that your immediate focus will be to ensure that your child receives all the treatment and rehabilitation that they require to recover as best they can. We understand that speaking with a solicitor is not one of the first things that you will think to do. We also understand that it is quite usual to feel blame towards the person who caused your child's injury. It is advisable to speak to a lawyer before you discuss the incident with the person who caused the injury. Your lawyer will be able to advise whether they can help you and also the procedure that should be followed.

Slater and Gordon offer an initial meeting with a lawyer **free of charge** to discuss the merits of the claim. We also offer hospital and home visits for people who cannot attend our offices or who prefer to be in familiar surroundings. During the meeting, the lawyer will discuss the circumstances that led to your child's brain injury in order to determine who is responsible. In law, your lawyer is required to determine whether a duty was owed to your child, whether the duty was breached and whether such breach was foreseeable. From the outset we will try to give you our honest view of how successful your child's claim is likely to be and will be able to guide and support you every step of the way.

It is always advisable to speak with an experienced personal injury lawyer from Slater and Gordon as soon as possible after the injury. There are three main reasons for this:

- Once the lawyer is instructed on your behalf they will be able to ask the opponent to fund rehabilitation and provide interim payments to ease financial worries.
- Fundamental facts about the circumstances of the incident and the injury will be recorded to ensure that they are not forgotten over time.
- It ensures that certain actions are undertaken within the required deadlines.

Rehabilitation and interim payments

Medical evidence suggests that your child's brain will not stop developing until they reach an age between 21 and 25 years old. Clear medical evidence commenting on your injured child's future medical condition is required before your child's claim can conclude. Therefore it can often take many years after the accident for a claim to conclude. During the intervening period there can be very little rehabilitation available from the health service. In addition, the intervening period can be financially quite difficult for the family.

Even if fault has not been admitted, Slater and Gordon will ask the opponent to fund rehabilitation, whether this is a therapy (such as physiotherapy, hydrotherapy, speech and language therapy), an aid (such as a wheelchair or adaptations to the family home), or a support worker to ensure your injured child is safe. Slater and Gordon will continue to seek funding for rehabilitation throughout the duration of the claim, and if it is refused, will make an application to the court for an order that the opponent make an interim payment.

Once the opponent has admitted that they caused the incident and your child's injury, Slater and Gordon will request that the opponent make interim payments to you to ease any financial

difficulties the family is facing. Such payments are especially important if one parent remains off work to look after your injured child. They also help to maximise your child's recovery and quality of life. The amount of the interim payments depends on the nature of the case. When the final amount for compensation is made, the interim payments will be deducted from the total amount of compensation paid (interim payments are in effect payments on account ("mini-loans") of the overall compensation your child will receive).

Angela is a strong advocate for funding under the Rehabilitation Code of rehabilitation and care packages by the opponent. If that is not possible, she will apply to the court to obtain interim payments to allow rehabilitation and care packages to be put in place quickly.

Facts preserved

A claim for compensation can take many years to conclude. The sooner you contact Slater and Gordon the sooner the facts surrounding both the incident, that led your child to suffer a brain injury, and the immediate aftermath of the incident, can be recorded by the lawyer. This means that important, and at times crucial, detail is preserved and can be referred to many years later if a dispute arises.

Action within deadlines

The general rule is that a claim for compensation for brain injuries must be commenced at Court within three years of the date of the injury. An exception to this rule is regarding children. The three year period for children does not commence until the child reaches the age of 18. However, there are exceptions to this rule, and one of those can be if a child acquires a severe brain injury. It is important that evidence, including medical reports, is obtained by the lawyer to ensure that deadlines are complied with.

Funding options

Although legal aid is no longer available for personal injury claims, various funding options are available to assist you.

The majority of claims for compensation are funded by a Conditional Fee Agreement, commonly referred to as a 'No Win, No Fee' agreement. This means there is no financial risk to you.

Funding will be discussed with your lawyer at your initial meeting. The Law Society recommends a list of questions to ask your Solicitor at the initial meeting:

- How much is a case like this likely to cost, and how are the costs worked out?
- Can there be a 'No Win, No Fee' arrangement for my claim?
- How will my fees be paid if I lose?
- Will I need insurance cover to protect against the possibility of paying the opponent's costs?
- Are there any further options for funding?

At Slater and Gordon we always try to answer these questions in the initial meeting without being asked. However, if you feel you require clarification, we are always happy to explain things further in a clear, comprehensive but simple manner.

98% of Slater and Gordon's personal injury claims are funded by a Conditional Fee Agreement.



Education

After a brain injury has occurred, family and friends may feel overwhelmed by the amount of changes occurring. Our solicitors at Slater and Gordon can assist not only with the legal implications of an injury but also with the practical considerations, including your child's education.

A child of compulsory school age, or a young person, is classified as having a learning difficulty or disability if she or he has:

- a significantly greater difficulty in learning than the majority of others of the same age, or
- a disability which prevents or hinders her or him from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

If your child is classified as having a learning difficulty or disability, they have special educational needs which will have to be provided for. This means education or training that is additional to, or different from, that which is available for others of the same age.

The law surrounding special educational provision altered in September 2014. Whereas previously you may have heard of a child having a Statement, an Education, Health and Care Plan will now be issued. The main points to note are:

- An obligation is placed on all local authorities in England to identify children and young people in its area who have or may have special educational needs or who have a disability.
- An Education, Health and Care Plan can only be issued after a child or young person has gone through the process of having their education, health and care needs assessed.
- The request for an assessment can be made to a local authority in England by the child's parent, the child/young person or a person acting on behalf of a school.
- At the end of that process, the local authority can choose to either issue an Education, Health and Care plan or not.
- The local authority must notify the child's parent or the young person for the reasons behind their decision.
- When making their decision, the local authority must consider the views, wishes and feelings of the child or young person and their parents.

If an Education, Health and Care plan is required to meet a child or young person's special educational needs, the main points to note are:

- The local authority must ensure that an Education, Health and Care plan is prepared for the child or young person.
- The plan will confirm the specific needs of the child or young person, the outcomes sought and any special educational provision required.
- It is at this stage that the parents, child or young person will be asked to name the type of school they wish to be entered into the education, health and care plan.
- The local authority will directly liaise with the elected school for you.

A local authority may continue to maintain an Education, Health and Care plan for a young person until the end of the academic year during which the young person turns the age of 25.

How we can help you

Slater and Gordon have specialist education lawyers who will be able to assist should a dispute occur regarding your child's return to school or a Education, Health and Care plan.



Employment

Employees are allowed time off work to take necessary action in situations involving their children. The statutory right applies to all employees, irrespective of the length and duration of the work. The right does not apply to those that are self-employed.

You are allowed a reasonable amount of time off to deal with a situation whereby your child suffers a mental illness or injury. The illness or injury does not have to be serious or life threatening. What is considered to be "a reasonable amount of time" depends upon the nature of the incident and the employee's individual circumstances.

Your employer may pay you for time off to look after dependants but they do not have to. It is important to check the terms of your contract.

It is essential that you notify your employer, as soon as possible, of the reason for your absence. You must also let them know how long you expect to be absent for, unless it is not reasonably practicable to tell your employer of the reason for absence until you return to work.

How we can help you

Slater and Gordon's specialist employment lawyers will be able to advise you in relation to your employment rights and any dispute should it arise.

Financial advice and state benefits

As a result of a child suffering a brain injury it is not unusual for the family to experience financial difficulty due to one or both parents spending time with their injured child rather than going to work. This can result in a loss of income which can have a catastrophic impact upon the family. It is important to access advice about which state benefits are available and help you apply for those benefits.

Means tested benefits:

- These are only available if you meet certain criteria based on you or your family's income, savings and other assets. They are intended to give financial support by providing a basic income or topping up a low income.
- Include – child tax credit, council tax benefit, housing benefit, income support.

Non-contributory benefits:

- These are not dependent on you having made sufficient National Insurance contributions.
- Include – carer's allowance, child benefit, disability living allowance, guardian's allowance.

Contributory benefits:

- To qualify you must have made sufficient National Insurance contributions.
- Include – incapacity benefit

How we can help you

Slater and Gordon will arrange for a review to be undertaken of any benefits you currently receive, as well as an assessment of which benefits you are entitled to receive. If appropriate, they will also help you apply for those benefits.

Clinical negligence claims

Clinical negligence claims require your injured child to prove two things; that the healthcare professional failed to carry out their responsibilities, and that this is what caused your injured child to be in the position that they are in now.

The timeframe in which to start a claim for clinical negligence is three years from the date of the injury. An exception to this rule is regarding children. The three year period for children does not commence until the child reaches the age of 18. However, there are exceptions to this rule including if the claim date commences from the date of knowledge. We advise that you speak to a solicitor as soon as possible after deciding to obtain legal advice in order to ensure that all deadlines are complied with.

How we can help you

Your solicitor will need to obtain detailed statements and expert medical evidence, as well as obtain full copies of your child's medical records. Your Slater and Gordon specialist clinical negligence lawyer will arrange all this on your behalf.



Criminal injuries claims

Your injured child may be eligible for compensation if they sustain a criminal injury which is directly attributable to them being a direct victim of a violent crime.

An award will be withheld unless the incident giving rise to the criminal injury has been reported to the police as soon as reasonably practicable.

Types of payments which may be received are:

- Injury payments
- Loss of earnings payments
- Bereavement payments
- Certain other payments in fatal cases

The maximum award to a person sustaining one or more criminal injuries directly attributable to an act of violence, before any reductions, is £500,000.

An application for criminal injury compensation must be received by the Criminal Injuries Compensation Authority within two years after the date of the incident. If your injured child was under the age of 18 on the date of the incident, the application must be submitted by your child's 20th birthday.

How we can help you

Slater and Gordon lawyers are specialists in criminal injuries claims. We are able to complete the application on behalf of your injured child and also conduct the claim on their behalf, including any review or appeal of decisions made by the Criminal Injuries Compensation Authority.

Court of Protection

When someone suffers a serious brain injury, they can often lack mental capacity to be able to manage their personal and financial affairs. When a child sustains an injury they will not, due to their young age, have mental capacity to manage their personal and financial affairs. Therefore, the Court of Protection will appoint a 'Deputy' to look after their financial affairs. If a large interim payment has been received, to fund adaptations to the family home or therapies, then a Deputy will be required to manage that interim payment.

A Court of Protection Deputy can be a family member, friend or a specialist Court of Protection Solicitor. The Deputy needs to listen to their client, and their client's close friends and family, before they make decisions. The Deputy must act in their client's best interests and comply with the rules contained in the Mental Capacity Act.

How we can help you

Slater and Gordon has an experienced Court of Protection team in Cambridge which is overseen by Principal Lawyer Jocelyn Fox. Jocelyn has acted as a professional Deputy since 1998 and specialises in acting as a Deputy for many children with brain injuries. The Court of Protection team has past experience of preparing annual accounts to the Office of the Public Guardian, preparing income tax returns, employing carers and support workers, seeking local authority funding or permission to pay gratuitous care.



Example case studies

Elliot sustained a severe brain injury at birth. He received compensation of £1.25 million plus periodical payments of £100,000 each year to cover the cost of his care. A property was bought and adapted for Elliot to live in with his family. He has a case manager and support workers to allow Elliot to access additional activities.

Leo was 16 years old when he sustained a traumatic brain injury while a rear seat passenger in a car being driven by his friend. His parents instructed their "family" solicitors, who investigated the claim. Following the accident, Leo went on to complete his A-levels and obtain a First Class degree from University. He obtained a job on a graduate management programme at an international company. Leo was left with short-term memory and organisation problems. Prior to our involvement the opponent in the claim made an offer of £210,000. His previous solicitors and the barrister they instructed advised Leo to accept the offer of £210,000. Leo then transferred instructions to Slater and Gordon. Following further investigations, and instruction of a different barrister, Leo received over £640,000. This amount was in excess of three times the original offer he had been advised by his previous legal team to accept.

Charlie was 14 years old when he was hit by a lorry while cycling across a road. Charlie sustained a severe traumatic brain injury. Charlie's parents witnessed the immediate aftermath of the accident and brought a claim for the nervous shock that they sustained. Charlie achieved some GCSE qualifications, but not at the standard he had, pre-accident, been expected to achieve. He went on to further education, studying music technology. Charlie's main difficulty was with short-term memory and organisation. He received interim payments to fund case management, support worker input and various therapies but subsequently developed strategies so that he didn't require this support. He received £700,000 in compensation.

Alex was 17 when he sustained a traumatic brain injury as a result of a road traffic accident. He is severely disabled requiring 24/7 care including waking night care. His health is very fragile. He has a property which is being dramatically adapted to meet his needs. He received an award of £5 million, plus periodical payments of £430,000 every year to cover the cost of his care needs.

Key individuals

Personal injury

The following lawyers are all members of the Law Society's specialist accreditation panel for personal injury work.



Angela Beric

Angela specialises in child brain injury claims. She is a strong advocate of rehabilitation and care packages funded under the Rehabilitation Code. She always tries to obtain the maximum interim payment to help meet the immediate needs of her clients. She is outstanding, thorough and well-prepared, whose calm, sympathetic and reassuring manner make clients feel like they are in good hands.

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Emma Truin

Emma is Practice Group Leader for Cambridge specialising in serious injury claims and excels at representing clients in brain injury claims. Emma's client handling skills are often praised. Clients regularly say when their case is over that they feel as though they are losing a friend and often refer other cases to her. Emma mentors other personal injury lawyers in her team and the firm.

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Paul Tapner

Paul specialises in serious injury claims and is part of highly-qualified teams in Cambridge and Manchester who fight complex and difficult cases. He routinely wins large sums in compensation for claimants – many in excess of one million pounds.

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Richard Gaffney

Richard specialises in handling cases involving serious injury and accidents in the Armed Forces. He has significant experience in claims involving head injury and multiple orthopaedic injuries as well as fatal accident claims. Richard spent 10 years in the armed forces before becoming a lawyer.

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Miriam Edwards

Miriam has an excellent understanding of the complex issues surrounding claims involving serious injury. She also possesses a level of sensitivity and an ability to translate difficult legalese, which make her the ideal litigator to handle such cases and find practical solutions to problems. She ensures her clients get the right treatment at the right time to give them best possible recovery outcome.

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Court of Protection



Jocelyn Fox

Jocelyn heads the Court of Protection team at Slater and Gordon Lawyers in Cambridge. She acts as professional Court of Protection Deputy for around 65 clients and also acts as professional attorney and trustee of personal injury trusts. Jocelyn specialises in acting as deputy for clients with Acquired Brain Injury, but also acts for elderly clients with dementia and other capacity issues.

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Clinical negligence



Tim Deeming

Tim leads the clinical negligence team in Cambridge and has vast experience helping injured clients and their families, achieving many multi-million pound settlements along the way. Tim ensures that effective support is put in place to enable rehabilitation goals to be exceeded. He is proactive in ensuring that lessons are learnt to prevent avoidable errors and improve patient safety.

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Notes



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