

Anthony Collins
solicitors



Legal Support Service Midlands

Support for life after childhood brain
and other serious injuries

www.childbraininjurytrust.org.uk

Hello and welcome to the Legal Support Services booklet for the Midlands

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.

At Anthony Collins we have over 40 years of experience in dealing with all types of child injury claims, from the minor to the most serious. We are recognised as market leaders in the legal 500 and Chambers UK Guide and are proud to be the Legal Support Service provider in the Midlands for the Child Brain Injury Trust. We recognise that claims involving children, particularly injuries to the brain are specialist claims and need to be dealt with by solicitors experienced and sensitive to the needs to these types of cases – not only for the child themselves but also for their families who often have to pick up the pieces with little or no support following the injury.

We have a dedicated and specialist team of solicitors who are accredited to the Law Society and other panels for Personal Injury and Clinical Negligence and have vast experience of handling child brain injury claims which can arise from clinical negligence, birth injuries, road traffic accident, abuse claims, criminal acts and general accidents that can happen at school or other public places.

We have been selected by the Child Brain Injury Trust to provide vital legal support services across the East and West Midlands but are happy to try and help any child with a brain injury out of the region if required.

Having worked with the Child Brain Injury Trust for a long time, we share a very common goal to support the rehabilitation of those who are suffering from the effects of life changing catastrophic injuries.

A brain injury can leave a child with a range of symptoms depending on the severity of the injury and the parts of the brain that have been affected. Like the Child Brain Injury Trust, regardless of the type of head injury suffered we are committed to securing the highest standard of medical care and rehabilitation at the earliest stage possible. We appreciate the need for prompt action and intervention and have a nationally recognised team who have a wealth of experience in dealing with setting up care packages, appointing case managers to provide support and assistance and with obtaining suitable accommodation as well as securing interim payments to provide assistance during the course of the claim before it is resolved. Our highly skilled brain injury lawyers have a high level of commitment to client care and understanding of our client's needs which include:

- The greatest amount of progress occurs in the first six months of rehabilitation so early intervention is paramount.
- Knowing who to contact and seeking support from specialist agencies is key to attaining the highest level of independence for a child with a brain injury.
- In cases where a brain injured child does not have mental capacity they may need someone else to deal with their claim who is normally a parent. The Court of Protection may also need to be involved and we have a specialist Court of Protection team which provides protection for an injured child's damages when required. We know and understand that the legal process can be very daunting particularly for the family who are having to deal with a range of medical and rehabilitation issues as well as trying to work through the legalities of a potential claim. We pride ourselves on providing a holistic approach to supporting brain injured children and their families so that they can secure specialist advice on a range of related issues including continuing care, special education needs, welfare and employment rights and future planning.
- We know that coming to a solicitor's office is not always possible and can be intimidating. We are happy to visit at home or at a hospital and indeed anywhere in the country in order to make that initial contact as easy as possible for you.

Please contact Rankeshwar Batta, head of clinical negligence and personal injury at Anthony Collins Solicitors for more information on **0121 212 7479** or **Rankeshwar.batta@anthonicollins.com**

Why and when should I talk to a solicitor?

Caring for a child with a disability presents many challenges. Ensuring the right provision and support is available to meet your child's needs is no mean feat. With all the day to day hurdles to overcome, it can be difficult to decide which way to turn when trying to secure support and planning for the future after sustaining a life changing event such as a serious brain injury.

Consulting a solicitor with specialist knowledge and experience at the earliest stage is vitally important to help provide assistance and support to adapt to the change in circumstances and ensure that any legal entitlement to a claim or related matters is set out correctly right from the very outset. If you delay seeing a specialist solicitor or are given incorrect advice in the early stages, this can often have a detrimental effect on the future progression of the claim and may mean that key aspects of liability and quantum investigations are missed which would have an impact upon any final assessment of a case. Our experienced solicitors offer a holistic approach from day one, working together with brain injured children and their families to address their immediate needs as well as guiding them through the complex legal maze that surrounds many cases. The reality is that it will take a few years before a final settlement is reached in a brain injury claim. Investigations and specialist reports from medical and other experts will be required before a final position on a case can be reached and it is not advisable to settle a claim until such final opinion is available.

Our specialist lawyers recognise that a brain injured child will have needs which will need to be met immediately before their claim settles. These needs relate to finance, rehabilitation, treatment, care, aids and equipment, accommodation and transport. As long as liability is not a significant issue or liability is admitted at an early stage, we can secure what is legally known as an "interim payment" for you. An interim payment is effectively money on account of final compensation which is usually obtained with the agreement of the other side but if necessary an application can be made to the Court. An interim payment can potentially be for a substantial sum and it is usual for more than one interim payment to be paid in a claim for a brain injured client. With this money, we can help secure vitally important services and aids and equipment (even new accommodation) and we would seek the input of a specialist and reputable case manager to help with the assessment of immediate needs. The case manager will also make recommendations about how these needs will be met in the best interests of the child who has been injured.

Funding options

If you are worried about ending up with a large legal bill at the end of a case then DON'T BE! Contacting us for initial advice on your claim will be absolutely free so you can relax and tell us about your case without feeling that you need to clock watch. We will tell you whether or not it is worth pursuing your case or not following the first meeting and try and put your mind at rest with various funding options that may be available to you.

Usually, there are a number of ways to fund your case. They include:

- Legal Aid is now only available in cases for children with brain (neurological) injuries resulting in severe disability which arises during pregnancy, child birth or up to eight weeks following birth.
- Legal expenses insurance may well be available as part of your household or car insurance. This may have legal expenses cover to help with legal costs in terms of pursuing a claim.
- It may be that if you are a member of a trade union they may provide help with certain types of legal cases. It is worthwhile asking your union if they would fund your child's claim even if it is something that only relates to you.
- A Conditional Fee or No Win No Fee Agreement is probably the most popular choice for clients because it broadly provides a risk free way to pursue a case.

Following our initial meeting we should be in a position to let you know what the best funding option is for you and you can then make an informed choice as to how you wish to proceed.

If after reviewing all of the funding options with you, we recommend a No Win No Fee, we would strongly advise taking out an insurance policy designed to protect your position. There would be no financial risk to you if you are unsuccessful and we promise that there will be no hidden costs involved in pursuing the claim with us. Remember a No Win No Fee Agreement means there is absolutely no financial risk to you. If you are successful the majority of your legal costs will be recoverable from the defendant and any costs that are not recoverable from them will be capped so you get the fairest possible deal.

Making a criminal injuries compensation claim

If your child has been the victim of a violent crime in the UK which has resulted in an injury, including a brain injury, you might not know that you may be entitled to make a claim for compensation on their behalf.

There is a government body called the Criminal Injuries Compensation Authority (CICA) that has been set up specifically to administer a compensation scheme for victims of violent crime. As long as your particular situation meets the scheme criteria, you should be able to make a claim. To make a claim:

- You must have reported the assault to the Police as soon as possible.
- You must have sought medical attention for your personal injury.
- Normally you would have to make your application within two years of the incident but where a child is involved that deadline does not apply and there may actually be no time limit that is imposed at all if your child lacks capacity due to his or her brain injury.
- There may be a possibility of claiming even if the person committing the assault was not actually prosecuted by the Police.

It is possible that you could make a claim to the CICA as well as making a personal injury compensation claim against the person who committed the violent crime. However the amount of compensation you receive from the personal injury compensation claim would be deducted from any claim paid by the CICA (or vice versa) and we would be able to fully advise you of your options in these circumstances. We can help with these types of cases and can work with the Police, Victim Support and other related agencies in order to help with related investigations and any support that you may need when making a claim.

Court of Protection, personal injury trusts and peripheral matters

With all the day to day hurdles to overcome following a family experiencing a traumatic brain injury to their child, it can be tempting to put important planning for the future on the back burner and to push important legal matters which may be affecting immediate family members to the bottom of the to do list. However, by doing so, there is a risk that your child and your family may find themselves in a difficult position later down the line.

We pride ourselves on being able to provide a full holistic service to a child suffering with a brain injury and their family members and our specialist solicitors are committing to relieving the family of any additional worries where they can and providing advice tailored to your individual situation. Here are a few examples of how we can help:

Wills

Dying without a Will means your estate is distributed in accordance with the intestacy rules. This may not be the outcome you would have hoped for. Any money left outright to a child with a brain injury will affect their entitlement to means tested benefits and might also destabilise any care package in place. Inheriting a sizeable sum of money may also leave your child vulnerable to the attentions of unscrupulous "new friends". These concerns can easily be addressed though appropriate advice and a Will (which may include Trusts) tailored specifically to the circumstances, needs and wishes of you and your family.

Trusts

Saving money for a child with a brain injury to help them in the future could in fact prevent them from receiving benefits and a state funded care package should they need one. If you would like to make sure that money can be available to your child to "top up" their benefits in the future, Trusts can be a good way of achieving this. We have specialist advisors who can guide you as to the best option available for you and your specific needs.

Court of Protection

If your child has money in their own name and turns 16/18 (depending on the bank), you may no longer be able to access their account as your parental authority will cease. Problems can also arise if your child receives money from other sources, such as a gift or inheritance, as your child is likely to need support in the management of that money (if it is not held in an appropriate Trust).

Furthermore, it is likely that after a serious brain injury, your child is unlikely to make his or her own decisions regarding their finances. In these circumstances it may be necessary to apply to the Court of Protection for someone to be appointed as what is legally called a "Deputy". The Court of Protection makes decisions on behalf of a person who lacks capacity to make that decision for themselves and a Deputy can then make that decision for the person in question.

These decisions must always be in the “best interests” of the person who lacks capacity. A Deputy can be a family member, friend or even a professional. We can advise both on the process of appointing a family member as a Deputy or one of our specialist solicitors who have a wealth of experience in acting as professional deputies for children with brain injuries.

Care, support, funding challenges and disputes

Our specialist team has years of experience in working closely with families and relevant professionals to make sure that appropriate action is taken to ensure that the support a brain injured child needs is delivered.

As your child moves towards adulthood, there will be new challenges to face. Parents can feel side lined in discussions to consider where the future and the best interests of their child might lie. This is often an emotional time for all involved and the family may find themselves in unfamiliar territory. Our team is highly experienced in handling funding challenges to ensure your child secures the services and financial help he or she is entitled to and in relation to disputes as to what sort of provision may be in your child’s best interests.

Lasting Powers of Attorney

As a parent, looking after your child is your foremost priority. It is important to consider though what might happen if circumstances (such as an illness or injury) caused you to lack capacity to make your own decisions or manage your own affairs. Who would have access to your money and be able to pay the bills? Who would make health and welfare decisions for you, if you became unable to make those decisions for yourself? Preparing a Lasting Power of Attorney (LPA) enables you to appoint those you trust most to make decisions for you and so keep the family ship afloat and ensure proper decisions are made about all relevant matters (most importantly your child), if you lose mental capacity yourself at some point in the future.

LPAs can cover property and financial affairs and health and welfare. We have specialist advisors who can help you through the process as well as preparing the necessary documents.

Special education needs

If your child’s brain injury interferes with his or her ability to learn at school you are entitled to ask the local education authority to consider whether additional support, such as specialist teaching, therapy or one to one assistance is needed. The process of assessment is complex and parents often need guidance. Often the local education authority will agree to assess any special education needs which your child may have. If they refuse to do so, or if having assessed these needs they offer provision which you regard as insufficient, then you have a right to appeal at a tribunal. We can explain your rights in this area and help ensure your child’s needs are properly assessed and provided for.

Finance and investment of damages

Any award of damages whether ordered or approved by the Court will be paid into the Court and invested on your child's behalf. As a general rule, a child of full mental capacity will not be allowed control of any damages until the age of 18 but the money is there to meet their needs from the outset (with any decisions being made by the child's parents or guardian and vetted by the Court).

It may be that a Trust Fund can often be established with the monies to give greater flexibility and we can provide you with specialist advice on how this can be achieved. We are also able to suggest reputable IFAs and specialist financial advisors who have experience in dealing with investing damages for children with brain injuries.

Employment and disability rights

Sometimes, it may not be possible for you to do the job you were doing before your child's brain injury occurred. In the event that your employers create difficulties for you in relation to your employment we recognise that this can be extremely stressful on top of everything else to deal with relating to your child. At times like this, clear and supportive advice can make all of the difference. Our employment team are not only specialists in their field but aim to provide pragmatic and practical advice in plain English. We can advise on a range of issues including advice on disciplinary and grievance procedures, disability rights, unfair dismissal through to general discrimination claims and holidays/absences. Our employment team is committed to providing you with the support that you need and achieving the best result that we can for you.

Welfare rights

If your child has suffered a brain injury it is likely to have a significant effect on the family's finances and claiming benefits can help ease the pressure. The system is extremely complex and can be confusing. It is vitally important to get proper advice and apply for the right benefits straight away so you do not lose money.

We can guide you as to your entitlement to benefits and can liaise with specialist case managers who will be able to check it is correct. In the event that you need to challenge the authorities for not making correct payments, we can help ensure that your entitlement to a full range of benefits are properly assessed and provided for.

Clinical negligence

At Anthony Collins Solicitors, we have a national reputation in the field of clinical negligence as recognised by the independent publications The Legal 500 and Chambers UK Guide. Our specialist team handle all aspects of clinical negligence work but have a particular specialism for brain injury claims. Several of our solicitors are accredited to the Law Society and AvMA panels for personal injury and clinical negligence and the two partners in the team have been recognised as “elite” lawyers by The Legal 500.

If you believe that your child's brain injury may well have been caused by poor medical treatment it may be possible to bring a claim for compensation. As with all injury claims, legal advice should be sought at an early stage even if you are unsure as to whether or not you are entitled to compensation. Sometimes, there is a fear that by bringing a claim against the hospital which is actually caring for your child, this will in some way affect continuity of medical care for your child. Nothing could be further from the truth. Even if the hospital is being pursued by way of a clinical negligence claim, it is under an obligation to provide continuing care and in the event that there are difficulties experienced by you, we can take this up directly with the hospital and ensure your child's ongoing care and treatment is not affected in any way.

The legal process can be long and complex and for this reason it is important to start investigating the claim as early as possible which will enable us to collect and obtain information whilst memories are still fresh.

We offer a free initial consultation to all potential clients and will aim to try and determine whether or not we can assist at the very first meeting. We have a specialist in house nurse who works within the team and she will be able to assess the medical issues in the case at an early stage and we are also able to access a wide range of medical experts through our database which has been built up over many years to assist in assessing the merits of the case. If we believe that there is a claim worth progressing we will obtain all of the relevant medical records and begin to analyse the key stages of your child's care and treatment as provided by the doctors and nurses in question.

In certain situations, Legal Aid is available to help fund a claim and we can advise you more fully about this when considering the particular circumstances of your case. Alternatively, there would be a potential range of other funding options available including a Conditional Fee Agreement (no win no fee agreement), legal expenses insurance, trade union cover and possibly private funding. We would advise you as to the best options available for your particular circumstances.

Jane's story

Jane was born on 10 January 2002 at Birmingham Women's Hospital. Due to her mother's previous caesarean section, she had been counselled by the doctors in charge of her care about whether or not to opt for spontaneous labour; to be induced or to proceed to a caesarean section. The plan so far as Jane's mother was concerned was for her to attempt a spontaneous delivery but if she went beyond term by approximately 10 days, a caesarean section would be carried out.

The day before Jane was born, whilst in hospital, the doctors involved did not, give her the option of a caesarean section. She was keen to have a caesarean section due to the risk of a uterine rupture of the previous caesarean scar. According to Jane's mother, she was not given such an option despite her request and the doctors proceeded to induce her. Tragically, uterine rupture did occur which resulted in an emergency caesarean section. Jane was without oxygen for at least 20 minutes which caused permanent brain damage and cerebral palsy of all four limbs, marked developmental delay and related symptoms. Jane would need round the clock 24 hour care for the rest of her life and would never be independent.

The Defendants disputed the fact that a caesarean section was not offered to Jane's mother despite the fact that the contemporaneous records did not support their version of events. Matters proceeded on a fully contested basis and proceedings had to be issued out of Birmingham High Court. Once all relevant liability and quantum evidence had been obtained, the parties began to negotiate. At a without prejudice round table discussion meeting, ultimately a settlement was reached which was a flexible mix of a lump sum order and periodical payments. The periodical payments element of the settlement will ensure that Jane will receive adequate compensation for her reasonable needs and requirements for the remainder of her life.

The settlement comprised of an immediate lump sum payment of £1,200,000 with stepped periodical payments at different stages of J's life. Overall, the settlement will exceed over £5,000,000 should Jane exceed her life expectancy. Our client's parents were extremely pleased at the settlement after having to endure almost 6 years of lengthy litigation against the Defendants. They said that they were relieved that Jane would now be adequately compensated for the rest of her life and they could pay for adequate care and equipment so that Jane could at least attempt to reach her full potential in all of the circumstances of the case.

Mark's story

Mark was ten years old at the time of his accident and was still at school. He was a passenger in a car which was involved in a head on collision. He suffered serious orthopaedic injuries and tragically a significant injury to his brain.

Prior to the accident, Mark was considered to be very able academically but he was unable to return to school without specialist support and did not complete his GCSEs as planned.

We helped Mark's parents through the difficult process of his education with independent experts who advised on the educational options that were best for him. Ultimately Mark was properly statemented and received specialist support at school for his particular needs.

Thankfully, liability was admitted at an early stage and we were able to ensure proper rehabilitation, aids and equipment and support towards medical and therapy costs at an early stage. It took some time to finalise Mark's medical condition because his cognitive capabilities were evolving and medical opinion remained divided as to the final condition and prognosis. We were able to help Mark and his family with ongoing interim payments throughout the lifetime of his case.

Ultimately, the case settled by way of a combined lump sum and periodical payment scheme which amounted to a multimillion pound settlement.

Our specialist Court of Protection team then became involved in the case and helped with the investment of Mark's damages to ensure that his best interests were being met.

Lucy's story

Lucy was walking to school one morning and when she arrived at a pelican crossing, she ran out into the road whilst the lights were turning from green to red. The accident happened in a split second when a van driver sped in the outside lane and collided with Lucy causing a significant injury to her brain.

Liability was disputed by the driver's insurers on the basis that Lucy was of an age when she should have been able to comprehend how to utilise the road and that she was the author of her own misfortune. We investigated the claim on Lucy's behalf and obtained independent factual witness evidence as well as a forensic expert to examine the police collision report, photographs and other related evidence. Even though the police had not prosecuted the driver, we advised Lucy and her family that we could still pursue a civil claim in compensation.

Lucy's parents both worked and cared for her. Sometimes they just needed a break. They would arrange for respite care twice a year. It was good for Lucy and a change for her to make new friends. However, Lucy's parents could not fund this themselves so when the Local Authority tried to take it away, we stepped in and made representations on behalf of Lucy's parents which resulted in them still receiving this ongoing care. In addition, at different times of Lucy's development and rehabilitation, both of her parents had to take extended time off work. The employers involved were understanding but it was difficult at times and eventually Lucy's parents had to seek employment advice. We supported and guided Lucy's parents in connection with their rights and they were able to explain the situation to their employers. As a result, they have been able to carry on working and supporting Lucy properly.

Ultimately, negotiations took place between the parties and a compromise was reached resulting in a multimillion pound settlement which will ensure Lucy receives care, rehabilitation and ongoing support and assistance for the rest of her life.

Meet the team



Rankeshwar Batta

Rankeshwar is the Partner and overall Head of the Clinical Negligence and Personal Injury Department. He qualified in 1995 and handles a wide variety of clinical negligence and personal injury cases including maximum severity injury cases and professional negligence work. He is accredited to the Law Society Personal Injury and Clinical Negligence Panels as well as the AVMA Clinical Negligence Panel. Rankeshwar is also commended in the Legal 500 and Chambers and Partners Guide to the profession with observers noting he is, "respected by clients and colleagues alike...with an impressive handling of complex cases" and is dubbed as "someone who is calmness personified under pressure where his intellect really comes to the fore". In the 2014 Chambers and Partners Guide Rankeshwar was described as "one of the best clinical negligence lawyers in Birmingham," and is highlighted for his exceptional client care." Rankeshwar is noted as an "elite lawyer" in the Legal 500 which is rarely given to professionals in his specific field. He also sits as a Deputy District Judge on the North West circuit.

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Sarah Huntbach

Sarah is a Senior Associate Solicitor and the Department Manager in the Clinical Negligence and Personal Injury Department. She qualified in 1994. She handles mainly clinical negligence matters but has conduct of some personal injury claims. She is extremely well regarded in her field having previously worked within Defendant health care litigation and her expertise in this area of law is invaluable to the Department. Sarah has had many notable successes in complex maximum severity claims and places an emphasis on assisting Claimants with rehabilitation as well as advancing their legal claim. She is accredited to the Law Society Clinical Negligence Panel and can also provide guidance in relation to community and continuing care matters.

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David Evison

David is a solicitor in the department having joined the team in September 2010 upon his qualification. He was previously a trainee solicitor in the team and now specialises in all aspects of clinical negligence and personal injury work. He has successfully been involved in several successful brain injury claims within the team and has a particular interest in developing abuse claims relating to vulnerable people including children with acquired brain injury.

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Victoria Fullilove

Victoria is a solicitor in the department having joined the team in September 2013 upon her qualification. She was previously a trainee solicitor in the team and now specialises in all aspects of clinical negligence and personal injury work. She has been involved in several successful brain injury claims within the team and has a particular interest in Public Liability and Road Traffic Accident Claims. She can also provide guidance in relation to SEN matters.

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Sarah Owen

Sarah is a legal assistant in the department and assists all of the admitted staff in relation to various aspects of the day to day running of their cases. David Evison is her supervisor. She can also advise you in relation to CICA claims and procedure.

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Stephanie Moustache

Stephanie is a medico-legal advisor in the team. She was a Senior Practice Nurse for 20 years in general practice and has a wealth of experience in all aspects of adult and child healthcare. Her knowledge and insight into healthcare practice is an invaluable resource to the department. She supports all the team in relation to the medical aspects of our clinical negligence and personal injury cases. Stephanie's expertise and understanding of the medical issues underpins a full holistic service we aim to provide our clients.

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Anthony Collins

solicitors

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