

FootAnstey



Legal Support Service South West

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 South West

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 helps their families 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.

Foot Anstey are proud to have been chosen as the Legal Support Service provider for the Child Brain Injury Trust in the South West.

Bringing a claim for clinical negligence or a serious personal injury can be a daunting prospect, and Foot Anstey can help guide you through the process, helping to find the right funding option, obtaining evidence from our panel of expert witnesses, and negotiating a settlement which can be used to provide security for your child's future.

Foot Anstey has one of the leading specialist injury teams in the South West, with over 50 lawyers. Our experienced team includes members of the Law Society specialist panels, Association of Personal Injury lawyers and AvMA specialist clinical negligence panel. Patricia Wass, a consultant in our Mental Capacity team, is one of only a limited number of professionals appointed nationwide to the panel of approved deputies, created by the Office of the Public Guardian (OPG).

We have a unique understanding of the many challenges that face individuals who have suffered a brain injury as a result of either medical negligence, or a serious accident. As well as extensive legal expertise, some of our team members have first-hand experience from previous work in medicine.

We offer advice in relation to a wide range of claims from multi-million pound birth injury or serious injury compensation claims, through to queries relating to capacity and the management of deputyships. We also offer representation at inquests and court of protection cases and provide advice or guidance relating to education and employment issues, property adaptation, and future financial planning.

Why and when should I talk to a solicitor?

Brain injuries are more complicated than any other type of injury, with those suffered in childhood bringing even more complexities. If you think there may be a claim, you need to be confident that your solicitor fully understands the nature of your child's injury and the implications for your child, both now and in the future. It is important to instruct a solicitor to investigate a potential personal injury and clinical negligence claim as early as possible.

Because the impact of a brain injury can be so complex, you will require a specialist lawyer who will build up a comprehensive body of evidence to show the true effect of the head injury on your child's day to day functioning. The earlier the process can start, the better.

We can help by:

- Giving an initial free interview
- Giving clear advice about whether your claim is likely to succeed and explain your funding options
- Providing advice on finances, special educational needs, welfare benefits and investment of compensation
- Arranging an early immediate needs assessment to aid rehabilitation
- Seeking early and regular payments of compensation
- Arranging the appointment of a case manager



Funding options

The thought of bringing a claim for negligence can be very stressful, particularly when you need to think about how that claim may be funded.

There are a number of funding options available, which present little financial risk to you, these include:

1. **Conditional Fee Agreement ("No Win, No Fee")** – This is an agreement that enables your costs to be paid at the end of the successful claim by your opponent. If for any reason the claim was to fail, there would be no charge to you.
2. **Legal Expenses Insurance** – This is often found as an add-on to home and other forms of personal insurance. This has the potential to cover you, and members of your family, for claims made.
3. **Legal Aid** – This is still available for a small number of birth injury claims. Foot Anstey hold a legal aid franchise, and can therefore help you access legal aid.



Supporting you beyond your claim

Caring for a child who has suffered a brain injury can have far-reaching repercussions which go beyond the need to pursue litigation. At Foot Anstey we work with other professionals and charities to ensure that we can offer help with many of the potential hurdles.

Education

Educational issues can arise when caring for a brain injured child. You may need assistance with finding an educational environment which meets your child's complex needs, or there could be behavioural issues which are affecting your child's placement. Help may also be needed with arranging a return to their school or college. We have access to specialists with a range of expertise, to ensure that your child receives the education they deserve.

Employment

An understanding employer can be a great source of support, but if they choose to be obstructive, this can have a detrimental effect on your entire family. As the parent of a disabled child, you may well be classed as a "carer" in an official capacity. If this is the case, you have a legal right to request flexible working hours from your employer, in addition to asking for "reasonable" time off work to deal with any emergency. Our advisors can help you in understanding your rights and guide you through your options.

Benefits rights

Parents of a brain injured child may well find that this has an impact on their financial situation, whether this is due to care costs, purchasing specialised equipment, or a variety of other factors. Financial support is available for all parents. However, when your focus is on caring for your child, it can be difficult to make certain that you are receiving your full entitlement. We work with organisations that can provide help and guidance with finding out which benefits you are entitled to, and take you through making the application.

Independent financial advisors

If your child has received funds in settlement of a clinical negligence or personal injury case, receiving independent financial advice can ensure that these monies are put to the best possible use. We can assist you with choosing the right financial advisor, and work with them to ensure that your child's settlement is being looked after in the most efficient way.

Future planning

Ensuring the future well-being of your child is at the forefront of every parent's mind. However, when your child also has a serious brain injury, this becomes more essential than ever. We have access to specialists in property adaptation, rehabilitation, will drafting, pensions and investments, all of whom can work with you to secure the future for your loved one.

Your rights in making a claim for clinical negligence

If a child has suffered injury as a result of negligent medical treatment, for instance a delay in relation to their birth causing Cerebral Palsy, they may have a claim for compensation.

Any claim made by a child must be brought by an adult on their behalf, this is known as the 'Litigation Friend'.

A successful claim can provide lifelong financial security for the child, providing funds to pay for their care, education, therapy needs, equipment and accommodation needs.

In order to make a successful claim, the child has to show that the Healthcare Provider (be it a hospital, midwife, GP or therapist) breached its duty of care, causing the damage for which the child seeks compensation. This is entirely dependent on expert evidence.

Anyone seeking to bring a claim for negligent medical injury has three years to do so and this is known as the 'limitation period'. For children, the three year period does not start to run until the child turns 18. In addition, if there is a significant brain injury, the child may not have the capacity to litigate in adulthood and the limitation period will not apply.

As with all claims, it is vitally important that you seek advice from a specialist solicitor who deals only in complex clinical negligence claims.

Criminal injuries compensation claims for children

The Criminal Injuries Compensation Scheme is a government funded scheme designed to compensate blameless victims of violent crime in England, Scotland and Wales. The Criminal Injuries Compensation Authority (CICA), administer the Scheme and decide all claims. The rules of the Scheme and the value of the payments awarded are set by Parliament and are calculated by reference to a tariff of injuries.

There are strict criteria to satisfy in order to be eligible for a compensation payment. A person must apply as soon as it is practicable to do so. In the case of children under the age of 18, special provision is made and applications may be allowed up to a child's 20th birthday.

The maximum amount of compensation payable under the scheme is £500,000. As an example, a very serious brain injury could result in a payment of £175,000. In addition, special expenses, such as the cost of care and equipment, or loss of earnings, can be claimed. It is important to receive advice from a specialist solicitor in the event of a claim for a serious brain injury.



Court of Protection

The Mental Capacity Act 2005 protects those who can't make decisions for themselves by reason of their incapacity.

The Act assumes that everyone has capacity unless there is evidence to prove otherwise. Where a lack of capacity is shown, every effort should be taken to involve the individual in their own decision making.

Professional advice should always be sought on these issues and consideration given as to whether a Professional Deputy should be appointed, particularly where someone's affairs are considerable and complex.

Compensation Protection Trusts (CPT)

If you are in receipt of means-tested benefits, those benefits may be stopped where a compensation payment (including an interim payment) is received and the amount of the payment will take you over the means-tested financial threshold. Leaving that payment with your solicitor or transferring it to someone else will not prevent these rules applying.

Having that compensation paid in to a Trust may preserve your entitlement to benefits. Professional advice should always be obtained on these issues.



Example case studies

The circumstances leading up to an accident can vary greatly, and this can make it hard for those who have been injured (or their parents or guardians) to judge whether or not they have a claim to pursue. Here are some examples in which you can consider a claim:

1. The driver who struck my child wasn't speeding

There is a duty of care placed upon drivers which goes beyond simply travelling below the speed limit. The expectation is that drivers will maintain an awareness of their surroundings and control their vehicle accordingly. There are numerous documented cases where a driver has been found at least partly liable for causing an accident, even when it appears it may have been 'one of those things.'

2. The injured child ran out into the road

The law does not expect that a child will share the same awareness of danger as an adult, and this is reflected in the way that cases involving road traffic collisions are dealt with by the Court. It is very rare for a child claimant to be held wholly responsible for being injured as a pedestrian, even when they have run out into the road. This is especially likely in a heavily residential area or near the entrance to a school. Drivers remain responsible for monitoring their surroundings and altering their behaviour accordingly.

3. Your child has been injured in a ball game at school

Your child's school must take reasonable measures to ensure their safety whilst they are in their care. There have been many cases where a child was injured whilst taking part in a ball game at school, and the setting is no barrier to bringing a successful claim.

The most important thing to consider is that if you believe your child may have a claim, you should contact a legal professional. They will be able to discuss the matter with you in confidence and provide a way forward for you and your family.

4. Errors were made during your child's birth and they suffered a brain injury

Medical accidents, though rare, can have devastating effects on the people whose lives they affect. We all put a great deal of trust in medical professionals which goes beyond that of any other role. In turn, medical professionals have a duty to ensure the safety of those in their care. Delays in delivery in particular can have devastating effects on the health of a baby.

If your child has sustained a brain injury during delivery, or as a consequence of delay in recognising and treating an illness, and you believe that the standard of care provided was not satisfactory, you may be able to bring a clinical negligence claim against those involved.

Key individuals



Robert Antrobus – Partner

Robert is a partner and head of the Clinical Negligence, Personal Injury and Mental Capacity team. Robert's specialism is in pursuing clinical negligence claims on behalf of claimants. He deals with all claims but has a particular interest in those resulting from injuries sustained at, or shortly after birth, and those with complex quantum issues.

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Juliette Clarke – Legal Director

Juliette is head of our Personal Injury team with over 25 years' experience in dealing with a broad range of claims. She specialises in high value personal injury claims including claims for children, acquired brain injuries and spinal injuries. She has also dealt with a number of complex cases for those injured abroad.

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Stacey Bryant – Senior Associate

Stacey is an senior associate in our Mental Capacity team. She is appointed by the Court of Protection as Deputy for property and financial affairs for many clients who don't have capacity to manage their own affairs. This can be by reason of a birth injury, or acquired brain injury (for example, following an accident).

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