



Legal Support Service South

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

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 (ABI).

The Child Brain Injury Trust supports children and young people who have suffered an ABI 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.

Learning that your child has sustained an ABI can be an incredibly daunting time, with many families facing new challenges that will require a wide range of specialist advice and support.

Child brain injury is an extremely complex area with the full effects of any injury only being understood as the child progresses through its normal developmental stages.

The team at Moore Blatch is highly knowledgeable and experienced in advising and supporting children and their families following an ABI. Our specialist lawyers understand the complexities of child brain injuries and will help you build the best possible case for compensation to ensure that you can provide your child with the medical services they require. The firm also has dedicated education and community care teams to ensure that future educational needs and ongoing care and support are accurately assessed and secured.

A claim on behalf of your child will consider their care, financial, medical and support requirements from the immediate aftermath of an injury, through the whole process of rehabilitation to renewed independence. Often a key priority for many parents is to secure an early payment for direct funding of private rehabilitation. We are very aware that with brain injuries there is no 'one-size-fits-all' cure and will work with you to appoint a case manager and/or social worker that will ensure that your child receives the best medical care to suit their needs.

Moore Blatch solicitors' is proud to be the Legal Support Service provider for the Child Brain Injury Trust across the South of England; which includes Hampshire and the Isle of Wight, Berkshire, Oxfordshire, Buckinghamshire, Surrey, West Sussex, East Sussex and Kent. We believe that parents will benefit greatly from this new service, ensuring your family receives support from admission into hospital and after as you transition through life as a family following an ABI.

Why and when should I talk to a solicitor?

If you believe that you may have a claim or are unsure as to whether you are able to claim, we would advise you to speak to us early about your circumstances.

An initial consultation is free and we can arrange to meet you at any of our offices, or visit you in hospital or your home.

Child ABI claims are extremely complex and it is likely that we will need to document a lot of detailed information on your behalf. If this is done early, we can accurately record the circumstances leading to your child's injury and agree a plan for moving forward.

An initial consultation also presents a good opportunity for your solicitor to discuss the possibility of obtaining an early payment from your opponent, which would help put in place vital practical support and rehabilitation for your child.

Alternatively you may ask us to help you negotiate a suitable package of care from the NHS; an assessment to consider your child's eligibility will take place before they are discharged from hospital.

Initial Needs Assessments and Interim Payments

For personal injury claims, The Rehabilitation Code, prioritises rehabilitation and provides for an Initial Needs Assessment of your child's injuries, irrespective of whether any fault has been determined.

An Initial Needs Assessment will assess your child's physical, social and psychological needs. If this process is carried out early, it will give your solicitor a good idea of the value of any interim payment to request on behalf of your child and justify the amount being requested.

The amount of interim payment will depend on the value of individual cases, but will represent a reasonable proportion of your compensation.

This money can be used by you to pay for private medical treatments which can include; rehabilitation support and equipment, adapted accommodation, loss of earnings or help put in place a system of care. All of this will help your child to maximise their recovery and improve their quality of life.

We may also consider the appointment of a case manager on your behalf to assist with implementing the care necessary under the Initial Needs Assessment as well as ensuring there is no break in the integrated services when your child moves from health to social care.

Funding options

It is likely that you will have some questions about how your claim can be funded. If your claim is worth pursuing, we are confident that we can agree a method of funding that does not expose you to any financial risk or worry. There are a number of alternatives available to you and we can advise you of the best option for your claim.

1. Legal Expenses Insurance

You may have legal expenses insurance attached to your home and contents insurance or some other insurance policy. This type of cover may allow you to pursue a personal injury claim.

2. Conditional Fee Agreements

Conditional Fee Agreements (CFA) are often termed “no win no fee” and can help to fund your personal injury claim. If we are successful on your behalf, the majority of our costs will be paid by your opponent. But there are still some items which you will be responsible for from the compensation you recover; these include part of any insurance premium and our success fee, together with any shortfall between costs claimed from your opponent and costs recovered. The vast majority of damages you recover will be protected and untouched by these payments.

If your claim is not successful, you will not be charged anything.

3. Privately Paying

If we feel unable to offer a CFA on day one as the merits of your case are unclear, we may offer a privately paying arrangement to include a fixed fee retainer. This will be limited to carrying out an initial investigation before offering you an alternative method of funding.

4. Legal Aid

Legal aid through the Legal Aid Agency is only available in the case of a child with a neurological injury resulting in severe disability, which arises during pregnancy, child birth or in the eight week post natal period and is subject to a means and merits test. An ABL is unlikely in those circumstances to meet this criteria.

Education

Following an ABI your child may have life-changing injuries which mean that they have complex special educational needs, securing the right support will be essential to their ongoing development.

When a child's education is compromised, their whole future is too. So if you feel your child's educational needs are not being met, we can help.

Our education team specialises in this niche area of law and has a reputation for getting results quickly, efficiently and cost-effectively. You can be sure that we will listen and take time to understand your child's needs. We then work with you to assess the options, set goals and develop a strategy to achieve them.

Although we act only for parents and families, some of our team have previously represented public sector organisations. This means we have valuable insight into how such bodies reach decisions, and how best we can challenge them on your behalf.

Education, Health and Care Plans

In September 2014, the Children and Families Act was introduced which has put in place a more streamlined assessment process that co-ordinates education, health and care for children and young people and their families.

A new 0-25 years Education, Health and Care Plan will replace the current system of Statements and Learning Difficulty Assessments and will reflect the child or young person's aspirations for the future, as well as their current needs.

This legislation will see Local Authorities and Clinical Commissioning Groups working together to commission services jointly across education, health and social care, in an attempt to secure a better integrated system for 0-25 year olds, which is focused on outcomes.

For those with Statements and Learning Difficulty Assessments already in place, a phased transition will see these replaced to Education, Health and Care Plan's over time.

Employment

Following a child's ABI, it will be inevitable that you or your partner may need time off work to look after your child and help in their rehabilitation. For many people they will want to know what their legal rights are before beginning discussions with their employer.

In most circumstances, employers will allow an employee time off work to deal with the immediate aftermath of any injury. If your employer is unwilling to provide you with this leave you are entitled to "a reasonable amount" of unpaid time to deal with an unexpected emergency and make necessary long term arrangements.

For anyone that has been with their employer for over a year, you will have a statutory entitlement to 18 weeks unpaid leave to care for your child up to 5 years old (increasing to 18 years in May 2015). If your child has suffered a disability, this entitlement will be available up to the age of 18.

For serious injuries like an ABI, it may be that 18 weeks is not a sufficient amount of time, as recovery from a brain injury can take years.

If you are unable to give up work, there may be a number of alternative employment arrangements that can be put in place which could allow you to work. You are entitled to make a flexible working request if you have worked for your employer for 26 weeks. You can ask them to agree a new flexible working pattern which might involve working from home, changing your hours or reducing your hours to work part-time.

Benefits advice

If you are unable to work following your child's ABI, you will require welfare benefits advice and it is important that you get appropriate and prompt advice.

Your local Citizens Advice Bureau is often a good place to start. The Community Legal Service (CLS) also provides free legal information on their web site at www.clsdirect.org.uk which includes a leaflet on your legal rights in relation to welfare benefits. In addition to the CLS web site, you may find it useful to contact the Department for Work and Pensions (DWP) advice line. The DWP advice line provides free confidential advice and help with regard to all benefits which are available to you. The telephone number is 0800 882200.

We also work closely with a specialist firm of welfare advisers, an organisation which specialises in this area. They can advise you about the types and amounts of benefits you should qualify for by undertaking a "benefits check". They will telephone you to obtain any necessary information and then advise you of your entitlement. In appropriate cases they can also undertake on-going casework and where necessary this can include an appeal against a decision to stop or reduce benefits.

There are a whole range of welfare benefits and other forms of assistance that are potentially available. No one case is the same and it is essential that you obtain detailed advice as to the benefits you may be entitled to.

Health and social care

Since 2012, there has been widespread reform of the legal framework governing the provision of health and social care.

The Health and Social Care Act 2012 which came into effect on 1st April 2013 has served to implement many of these reforms. The Act has been responsible for a complete restructuring of the NHS and the way in which services are provided. We now have Clinical Commissioning Groups that are responsible for directly commissioning services for local populations and Clinical Commissioning Boards.

It is said by many that the Act has served to remove unnecessary tiers of management and will ensure that NHS care is patient focused and there is greater choice.

What type of support is available?

Every child with a disability is entitled to have their needs for health and social care assessed and a person centred plan put in place to ensure that those needs are met.

Sometimes disputes arise between families and public bodies as to the correct level of services and support to be provided. In these circumstances it is essential for families to understand exactly what their rights are and to be able to enforce them. We routinely advise and assist families to obtain the care that they are entitled to.

NHS Continuing Care assessments

NHS Continuing Care is the name given to a package of care that is arranged and funded solely by the NHS for individuals, including children, that are not in hospital but who have complex ongoing health needs.

Personal Health Budgets

Since 1 April 2014 anyone in receipt of NHS Continuing Care has had the right to request a Personal Health Budget. This is an amount of money to support identified healthcare needs which can be paid to families direct or a third party and be used to purchase all necessary care and support on behalf of their child.

The Care Act 2014

In many families, following an ABI to a child, one parent will often choose to become the child's main carer.

Under the Care Act 2014, Local Authorities now have a responsibility to assess a carer's needs and they are also eligible for support of their physical and mental health. The impact of supporting a disabled child on a carer will now be assessed and what they want to achieve in their own life will also be taken into account.

Housing – Disabled Facilities Grants

Frequently accommodation does not meet a child's needs after a serious accident or injury and as a result of disability either alternative accommodation or adaptations may be required. Disabled facilities grants can be made available in certain cases. Frequently disputes arise between families and Local Authorities. There may be disagreement as to whether the proposed works to your home are 'necessary and appropriate' and 'reasonable and practical' in relation to your property. As well as this there can be disputes as to the level of adaptations needed, with families often needing our support through this process.

Disability Discrimination

The Equality Act 2010 provides the legal framework designed to ensure that disabled people, including children are treated fairly. Disabled people are afforded particular rights in the areas of education in the workplace, in relation to the provision of goods, facilities or services, when renting or buying property and in the functions of public bodies. Under the Equality Act it is unlawful to discriminate against someone who has a disability.



Making a clinical negligence claim

If a mistake has been made by a doctor, nurse or other healthcare professional and they have failed in their duty to provide an appropriate level of care or skill, which has resulted in your child suffering an ABI, loss and damage – you may be entitled to pursue a claim on your child's behalf.

Clinical negligence covers both “acts” and “omissions” – this includes situations where something wrong has been done (for example, a surgical error), but also situations where there has been a failure to do something that should have been done (for example, a delay in diagnosis of meningitis).

There can be situations where a hospital has been negligent but that negligence did not actually result in an injury - in these circumstances there is no claim.

A Court will ultimately determine whether there has been substandard care provided in your circumstances and will be guided by the opinion of independent, specialist medical experts.

Those experts will be asked to look at medical records and any other evidence available and determine whether or not in their opinion an acceptable standard of care was provided to you.

If it is decided that the care your child received was below what should have been accepted you will be entitled to compensation, which falls into two distinct parts:

General damages – this provides compensation for the actual injury (pain, suffering, loss of amenity).

Special damages – this represents actual financial losses from the date of injury and those likely to arise in the future.

Clinical negligence is a complex area of law which demands real expertise. We work closely with clients, providing proactive, robust advice to achieve the best outcomes.

Criminal injury claims

If your child has sustained a serious injury, such as an ABI, as a result of a crime, which can include an attack or assault, you can claim compensation on their behalf from the Criminal Injuries Compensation Authority (CICA).

This is a government body, which has been created to manage the Criminal Injuries Compensation Scheme and can award anything from £1,000 to £500,000 to anyone who is an innocent victim of crime.

We have helped clients to claim compensation following a range of criminal incidents including hit and runs, assaults as well as other crimes.

If you have sustained an injury as a result of a crime you will be entitled to compensation regardless of whether the accused has been identified, charged or convicted.

We work closely with clients to ensure that they receive the maximum compensation available under the scheme and in a number of claims have secured the highest amount available.

As with any other claim if your child requires medical care and rehabilitation, we will work with you to identify the best support available for your circumstance.



Court of Protection

Once your child has sustained an ABI, it is likely that you will be responsible for looking after their best interests, with the severity of the injury determining how long you will be required to provide this support.

For many parents it will not be unusual to take on such a role until children have reached the age of 18, but for some this support may need to continue even after your child is considered an adult.

A person who has been mentally incapacitated through an injury or accident may need someone to control and manage their financial affairs. Similarly, the family of a child left severely injured and perhaps awarded compensation will need help with the organisation of their child's day-to-day needs such as care, living arrangements and general welfare.

Our specialist court of protection team has helped to protect vulnerable people who may not be capable of making their own decisions.

The Mental Capacity Act 2005 sets out a framework to facilitate the decision making process for anyone suffering from a disability and provides mechanisms to ensure that decisions can be made on their behalf with the protection of the Court. Everyone working with or caring for a vulnerable adult must comply with the provisions of this Act.

There are two different bodies that deal with vulnerable people, the Court of Protection and the Office of the Public Guardian.

The Court of Protection is responsible for making decisions and appointing deputies to make decisions in the best interest of a vulnerable person.

A Deputy is an individual appointed by the Court, who has authority to deal with an individual's property, finances, or health and welfare. Powers granted by the Court may apply to any aspect of a person's life. All Deputies are required to carry out their duties sensitively, responsibly and rigorously.

The Office of the Public Guardian is responsible for supervising Deputies and registering important documents that impact vulnerable people.

Anyone making decisions for another person must make them in that person's best interest by;

- Carrying out those decisions authorised by the Court Order;
- Having regard to all relevant guidance in the code of practice;
- Adhering to The Mental Capacity Act's principles; and
- Applying a high standard of care when making decisions.

Wills, tax and trusts

We also have specialist tax planning and trusts team that can advise you of the right structures to put in place, so that you can plan for the future with confidence, ensuring that you pass assets onto your family in the most tax efficient manner.

We can provide advice on wills, tax and trusts as well as the following services:

- Advising on and resolving tax planning issues
- Providing advice about inheritance, income and capital gains tax
- Completing inheritance tax returns
- Creating, managing and administering trusts

If you have been awarded compensation through a claim you may wish to invest some or all of the money you have received in a trust. These types of trusts are designed to help recipients that are young or disabled and also protect those receiving means-tested state benefits.

We are experienced in setting up and administering these types of trusts and can help to protect you and provide for your future.

IFA's / future planning

Once a settlement has been secured on your child's behalf, we would recommend that you obtain independent financial advice to ensure the best investment route for your settlement.

ABI claims require specialist financial advice, which cannot be obtained through routine means. Decisions frequently need to be made regarding pensions, investments, protection of the award, other financial needs and periodical payments. This can often be difficult and confusing and you will need specialist advice to help you decide what is most suitable for you and your child.

We work closely with a number of specialist financial advisers and can recommend someone for you to speak with.

Case studies

Moore Blatch provides advice and support following an accident involving a young boy

M was seven-years-old and travelling as a passenger in a car driven by his father:

As M's father pulled out of a junction, the car they were travelling in was struck on the passenger side by a motorcyclist, with M taking the full impact of the collision and sustaining an ABI.

With the help of Moore Blatch the family are successfully pursuing a claim for compensation. During the legal process, a support worker has been assigned to M and has assisted the family following M's injury, helping him to return to school.

Even though M's father was found to be at fault for the accident, a claim could still be pursued on behalf of M against his father's insurance.

During the claim, Moore Blatch has also worked closely with the Child Brain Injury Trust to support the whole family. M's brother had witnessed the accident and the injuries sustained by him. M and his family were provided with information and advice about ABI's and how to deal with their new circumstances. M also had another younger brother that did not understand the change in M's behaviour following the ABI and the Child Brain Injury Trust provided specialist literature designed to help younger children cope with and understand ABI's.

An unborn child sustains a brain injury after his mother is involved in an accident

B, an unborn child and his mother were travelling as passengers in a car with her then husband, the first Defendant.

As they were travelling the vehicle collided with the rear of an HGV lorry and B's mother suffered injuries.

The first Defendant was not insured at the time of the collision and so the claim is also proceeding against the second Defendant in the claim which is the Motor Insurers' Bureau under the Motor Insurer's Bureau (Compensation of Victims of Uninsured Drivers) Agreement 1988.

At the date of the collision, B's mother was approximately 29 weeks pregnant with B and it is believed that the collision caused the injuries which she sustained and the fact that B, subsequently developed cerebral palsy.

Key individuals



Personal Injury

Damian Horan – Senior Partner and Head of Personal Injury

Damian specialises in cases of maximum severity, including severe head injuries, spinal cord injury and fatalities. Many of his cases over the last 20 years have involved children with acquired brain injuries. He has particular expertise in road traffic accidents but his experience covers the full range of liability circumstances.

Damian is recognised by Chambers UK and Legal 500 as a leading catastrophic injury practitioner and is known for his “excellent judgement” and his “sympathetic and effective” approach to claims, particularly those involving children.

Damian has vast experience in conducting litigation and has handled a large number of brain injury cases resulting in settlements in excess of £1 million. Damian has particular experience and expertise in assisting families manage the ongoing financial aspects and is approved by the Court of Protection as a Professional Deputy.

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Clinical Negligence

Vicky Hydon – Partner

Vicky is a partner in the firm's clinical negligence team, specialising in complex, high value claims relating to cases of negligence in medicine and surgery. She has specialised in clinical negligence for over 20 years and has concluded a large number of claims, including serious ABI cases of catastrophic consequence involving children.

Vicky's detailed knowledge of medical procedure and legal process enables her to maintain a very strong track record in pursuing claims successfully and ensures that she provides client's with the guidance, support and reassurance during what can be a very challenging time.

As a highly skilled advocate, Vicky also undertakes a range of advocacy work at inquests, representing clients in front of both juries and coroners.

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Community Care

Paula Barnes – Partner and Head of Community Care and Public Law

Paula leads the firm's community care law department and is a member of the clinical negligence team. Paula has undertaken clinical negligence for more than 20 years and has more recently developed a particular expertise in the field of community care law.

Paula has been recognised by Chambers as a 'leader in her field' with sources quick to draw attention to her 'forceful yet effective style'. She is widely praised for her detailed knowledge and the good outcomes she has achieved for clients. Paula is also an assessor for the Law Society Clinical Negligence Panel.

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Education

Leena Hurloll – Associate Solicitor and Head of Education

Leena has over 11 years experience in the niche area of education law. Leena has successfully dealt with a range of issues on behalf of children and parents and is praised in the Legal 500 for her expertise.

Leena works closely with members of the personal injury and clinical negligence teams to ensure that children who have sustained an injury undergo an education audit and are able to access their education needs now and in the future.

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Court of Protection

Fiona Heald – Senior Solicitor and Head of Court of Protection

With over 20 year's experience, Fiona heads up the firm's court of protection team. She specialises in wills, tax and trusts, estate administration as well as Powers of Attorney and Court of Protection work actively safeguarding the interests of those clients, who may not be able to speak up for themselves.

Fiona works closely with the personal injury and clinical negligence teams to ensure that clients awarded settlements have the right structure in place to successfully manage their finances and health needs moving forward.

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