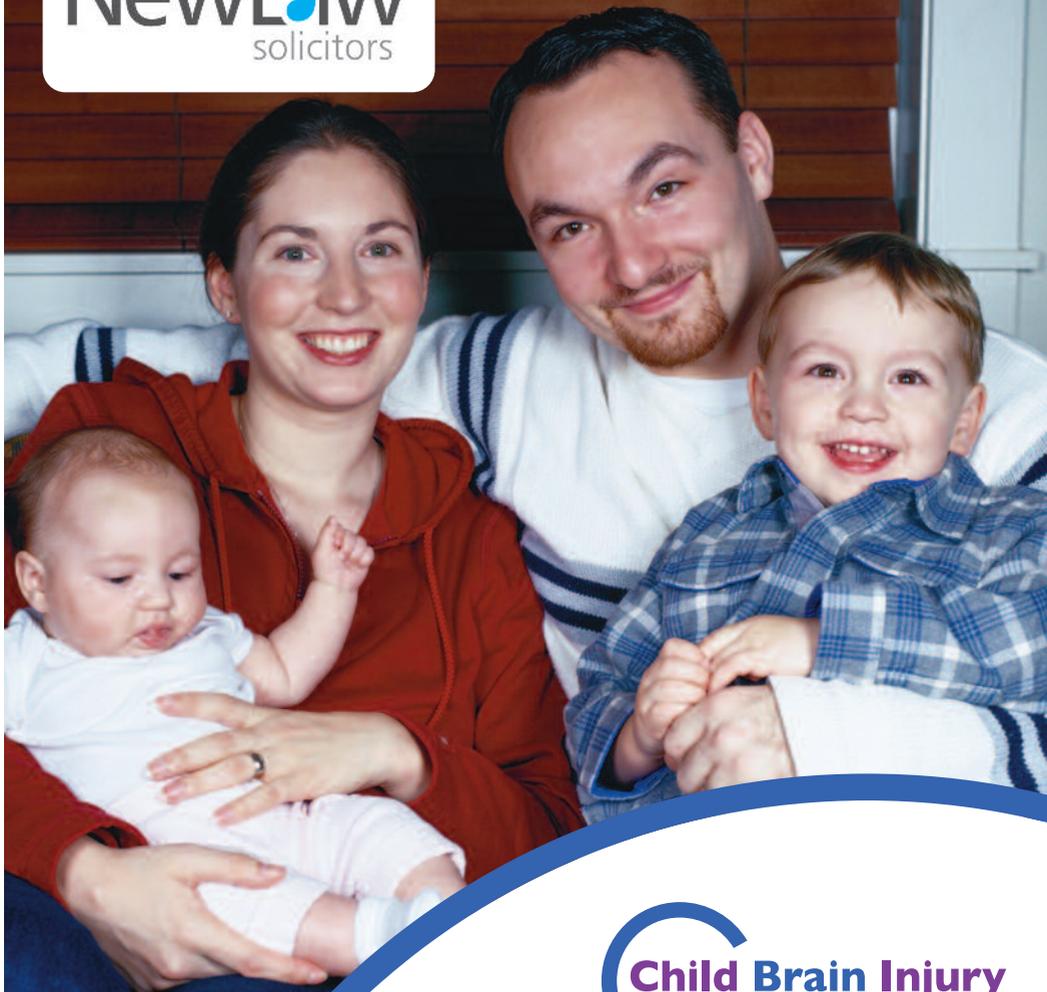


NewLaw  
solicitors



## Legal Support Service Wales

Support for life after childhood brain  
and other serious injuries

[www.childbraininjurytrust.org.uk](http://www.childbraininjurytrust.org.uk)

# Hello and welcome to the Legal Support Services booklet for Wales

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.

The impact of an acquired brain injury on a child's life cannot be measured. Whatever the circumstances, the whole family feels the consequences. It is an incredibly difficult time, particularly in the immediate aftermath when parents, siblings, family and friends are trying to come to terms with what has happened.

NewLaw Solicitors is proud to be the Child Brain Injury Trust's Legal Support Service provider in Wales. As specialists in representing victims of brain injury, NewLaw understands the need to secure appropriate support in terms of education, development, care and treatment, to name just a few areas, in addition to the compensation required for the child to live as normal a life as possible. Similarly the needs of the family are never forgotten or overlooked. Advice on employment rights, wills & trusts and welfare (benefits) entitlement is also available. Importantly, this support does not depend upon the ability to claim compensation – NewLaw Solicitors is available to provide this assistance in all cases.

Coming to terms with having a child with a brain injury is never going to be easy, but the Child Brain Injury Trust is there to offer practical support for as long as there is a need.

The rest of this booklet provides further detail on how NewLaw Solicitors are able to assist families with advice and representation, amongst other things.

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# Why and when should I talk to a solicitor?

Instructing a solicitor is never going to be the priority when a child sustains a brain injury, as there are so many other things to deal with immediately following an accident. However, it's important to involve a solicitor at the earliest possible opportunity.

Although the ultimate goal is usually compensation, this is something that cannot be contemplated for some time and on occasion for many years. This is due to a number of factors, including the need to first assess the impact the brain injury has had on the child's life and the difficulty of establishing liability. Because of the amount of time the legal process requires, it's important to get it started as early as possible. Investigations into who is at fault could take many months and the sooner that process commences the sooner a decision will be forthcoming.

While the initial stages of treatment and rehabilitation will be provided by the NHS, those services are already stretched and funding is limited. Through the litigation process, a medically qualified case manager can perform an Immediate Needs Assessment to consider the needs of the child and the family, even while in hospital. This is of vital importance when discharge is considered and community based rehabilitation is found wanting. Issues of treatment, care, support, education, accommodation and transport can all be taken into account.

Providing early enquiries have been made and liability accepted by the insurer, your solicitor can then make applications for interim payments to be received while your child is awaiting full compensation. Funds for rehabilitation, treatment or simply daily living expenses where support for the child is causing an on-going loss (perhaps through a decision not to return to work) can be obtained. More substantially there may be a need for new or adapted accommodation. These are just a few of the areas that NewLaw Solicitors will be able to help with.



# Funding your claim

Pursuing a claim for compensation arising out of a wrongful act can be an expensive process. As cases involving child brain injury can take many years they can be even more costly. However, there are a number of funding options available to ensure that the child's family does not have to shoulder this cost.

## No win, no fee

'No win, no fee' claims have been widely publicised over the past few years. The technical name for this way of funding a claim is a conditional fee agreement – the condition being that only if a claim is successful will the claimant's solicitors receive payment. If the claim is unsuccessful, the solicitors will receive nothing. To offset the loss made by solicitors on unsuccessful claims, they were previously allowed to claim an 'uplift' (i.e. a percentage increase often called a success fee) on their costs which were paid for by the defendant. In April 2013 the Government changed the rules so that claimants, even children, were to pay their own success fee.

As the provider of legal services for the Child Brain Injury Trust, NewLaw Solicitors will NOT charge a success fee to any client making a claim for personal injury. You will receive the same benefits as with a traditional 'no win, no fee' arrangement, but there will be no charge for making a claim. This will apply whether the claim is based upon an act of negligence by an individual, for example a road traffic collision, or on clinical negligence.

## BTE insurance

There still remains the issue of expert and court fees, as well as the defendant's costs if the claim is unsuccessful, as these costs must be paid by the claimant (being the child via their parent as an appropriate representative). In order to protect the claimant, legal expenses insurance can be sourced which will cover any adverse costs incurred. This may be available as part of an existing policy of insurance, usually motor insurance or buildings and contents. This is known as 'before the event' insurance. However, where this is not available then a specific policy of insurance must be obtained to protect a claimant, known as 'after the event' (ATE) insurance.

## ATE insurance

This ATE insurance must be purchased and the cost would previously have been borne by the defendant. Since April 2013, when the law changed, the claimant now has to pay for this insurance if their claim succeeds. In those circumstances the premium for insurance cover will be deducted from compensation at the conclusion of the claim. The cost of ATE insurance is usually bespoke and enquiries are made to find the best deal available. If the claim fails, then the policy of insurance will pay for itself, and there will be no charge.

The financial aspects of making a claim are complicated but NewLaw is there to help guide you through this process and secure the appropriate insurance, where necessary.

## Additional legal assistance

While the ultimate goal of any claim for compensation is to secure a financial award that will help the claimant live the life they would have had if the event not occurred, particularly with regard to long term financial security, there are a number of other considerations. Support and rehabilitation for a child with an acquired brain injury must consider a multitude of issues, not only in terms of their care but also support for the wider family. At NewLaw Solicitors these considerations are of paramount importance.



## Employment

Having a child diagnosed with a brain injury is an extremely difficult and worrying event for any parent. As well as the obvious concern for your child's welfare, many parents have to consider the effect the diagnosis will have on their own employment. Here are some of the most frequently asked questions and their answers.

### **I am concerned that my employer may start treating me less favourably – what do I do if this happens?**

It is well known that it is unlawful for an employer to discriminate against an employee who has a disability. It is less well known, however, that it is also unlawful for an employer to directly discriminate against an employee who is associated with (i.e. is a parent or carer of) a disabled person.

If you are directly discriminated against as a result of having a child with a disability, you may be able to take your case to an employment tribunal.

### **My child is cared for while I am in work but what happens if an emergency arises and I need to step in?**

If this is the case you may want to consider what is known as 'time off for dependants'. This time is unpaid and usually only allows you one day but it can be helpful when it comes to emergency situations. This may include having to pick your child up from school early if they become ill suddenly or arranging childcare if you are let down at the last minute.

### **I would like to continue to work but my working hours make it difficult for me to look after my child. What can I do?**

If you have worked for your employer for more than 26 weeks and provided you have not made a similar request within a 12 month period, you can make a Flexible Working Request. This could be a reduction in the number of days you work each week or simply an alteration to your starting and finishing times. Any request must be made in writing and should be clearly labelled as a Flexible Working Request.

Your employers have three months in which to consider your request but most will do so sooner. While they are obliged to consider it, they do not have to agree to it if it will have a negative impact on the business. Any refusal must be reasonable however and has to be based on business considerations only. You will have the right to appeal any refusal.

This is always a sensitive area for both employer and employee. The Employment team at NewLaw Solicitors is available to offer support and an initial free discussion regarding your options.

## Welfare

There are also questions over the availability of state funded benefits, both for the parents in terms of income support and carers allowance but also for the child, for example regarding mobility payments. The Welfare team at NewLaw Solicitors is able to provide both practical and emotional support to families. This ranges from Department of Work and Pension queries to supporting families applying for Child Tax Credits, charitable funds and holiday provisions, as well as assisting with access to Local Authority Services such as Child Health and Disability Services.

NewLaw's experienced Welfare Managers are trained in support services and accessing state funded benefits. They can provide practical support and guidance at the earliest stages after a child brain injury, when it is most needed.

## Education

There will be a time when the treatment and rehabilitation via the NHS or in-patient care is exhausted and a return to education is being considered. Regrettably the education services are equally stretched so a return to a 'normal' school environment for a child with a brain injury can be difficult.

There is always a challenging decision to be made by parents between specialist education (for children whose brain injury results in long-term impairment) and returning the child to their old school. The availability of funding through the litigation process can secure the involvement of specialist education psychologists to establish an educational pathway. Private one-to-one support workers qualified in supporting children can accompany them to classes and continue that support at home. A return to 'normality' can often have a therapeutic benefit upon a child with an acquired brain injury but it is a long and difficult process. NewLaw Solicitors has assisted many children with an acquired brain injury back to education with appropriate support.

## IFA's & future planning

Once a claim has concluded, the compensation awarded/agreed can range from several thousand to millions of pounds. This entirely depends upon the extent of the injuries a child sustains and their reasonable needs for the future. When that award is substantial then consideration will need to be given to future financial planning and investment to ensure the sum will last as long as it needs to.

NewLaw Solicitors has a panel of Independent Financial Advisors who work closely with the firm and have been approved by NewLaw. It is important that the family/parents meet with an advisor who will cover all considerations including your long term objectives, current position and the choices available to you. An advisor will be able to provide a clear picture of your current financial position and how this will impact you both now and in the future.

# Making a clinical negligence claim

One of the ways in which a child can acquire a brain injury is through medical treatment provided during pregnancy, birth or later in a life.

To prove a claim for clinical negligence your solicitor, with the assistance of medical experts, will have to establish that the medical treatment provided to your child fell below an acceptable standard and your child suffered a brain injury as a result.

There are many different reasons why parents of a brain injured child might seek legal redress, and as time goes by your reasons may change with the range of emotions you experience. Some of the main reasons parents give include:

- wanting answers to questions such as how this was able to happen to their child.
- making sure what happened to their child does not happen to another child.
- being angry and seeking to be able to draw a line under what has happened.
- wanting to be financially independent so their child is not reliant on the state for services such as medical and nursing care, therapy, education and play support.

Your child cannot be refused treatment by their GP or hospital because a claim is being made. However, you may feel your child's treatment should be provided by someone not connected to the incident or at a different hospital and this can be discussed with your solicitor.

It is important you involve a solicitor who is not only a specialist in clinical negligence but also experienced in dealing with children who have suffered a brain injury. A local solicitor or a solicitor you have dealt with previously may not have the knowledge or resources to act for your child in this most important of claims.

Not only do NewLaw's solicitors have the experience you need, but more importantly they will take the time to visit and get to know your child so that they understand their unique situation and personal needs.

Funding for clinical negligence cases can be slightly different to other scenarios. Legal aid may be available in very limited circumstances, these being where the neurological injury is caused during pregnancy, child birth or within eight weeks of birth. Other funding options are available to you and NewLaw will discuss all funding options with you without charge before the claim proceeds and help identify the route most suitable for you and your child.

# Criminal injuries compensation

If the injury sustained was a result of a criminal act then you may be able to recover compensation from the Criminal Injuries Compensation Board. This type of claim is often referred to as a CICA claim.

Unlike a personal injury claim against a defendant/insurer, it is not possible to recover any costs from the CICA. Costs are therefore based upon a percentage of the sum you recover and solicitors will charge up to 25% of the sum you recover in compensation, plus VAT and disbursements (experts fees). Disbursements would not be incurred without prior approval and are likely to be minimal as the CICA usually incurs these costs on behalf of the claimant. It is important to note that these costs are a maximum charge. Costs will be incurred on an hourly rate basis where each hour (or part thereof) will be charged at an agreed hourly rate. Regardless of how much time is spent, NewLaw Solicitors will not charge more than the 25% 'cap'.

On cases that are of a significant value, NewLaw is happy to discuss alternative funding arrangements.

The first step in making a claim is to complete an online form, which you are able to do yourself although it is always recommend that you instruct a solicitor. NewLaw's experienced team will be able to ensure your compensation covers everything your child might need. This is of particular importance where the claim involves a child who has sustained a brain injury, potentially requiring life-long treatment, care and financial support.

NewLaw is also able to help with appeals if you have run a claim yourself but are not satisfied with the decision of the CICA board.

Strictly speaking you have two years from the event within which to make a claim and it is recommended that you contact a solicitor as soon as possible to ensure you are safely within this two year period. However there are exceptions to the rule, for example cases when the victim was a child. If you have any queries about whether you are still able to make a claim you can always contact NewLaw for advice.

# Court of Protection

A brain injury can affect an individual's ability to manage their affairs, and this applies to both adults and children. The Court of Protection was set up by the Mental Capacity Act 2005 to protect the financial interests of people who have lost the capacity to make these decisions for themselves.

Anyone over the age of 18 can make an application to the Court of Protection for the authority to make decisions about another person's property and financial affairs and, in certain circumstances, health and welfare issues. An individual awarded this authority by the Court of Protection is known as the Deputy.

If there is no one suitable to take on this authority, or the brain injury is as a result of an accident or medical negligence, the Court of Protection may appoint a professional Deputy such as a solicitor. At NewLaw we can provide this service if and when appropriate and can discuss this with you in detail.

We appreciate that it is difficult to allow someone else to make decisions on behalf of a loved one and that it is an extremely significant responsibility. All decisions must be made in the best interests of the protected person. A Deputy, whether lay or professional, will be supervised by the Office of the Public Guardian.



# Personal Injury Trusts

A Personal Injury Trust will hold assets that have been received as a result of a personal injury. If a claimant is in receipt of means-tested benefits, or may need to access means-tested benefits in the long term future, and will probably receive a payment from a personal injury, it is important to consider setting up a Personal Injury Trust to protect that money.

If a claimant has more than £6,000 savings or has received interim payments of compensation of this amount or more, then this can reduce or even prevent their entitlement to means tested benefits. However if your compensation money is held in a Personal Injury Trust it will be disregarded when an assessment is made for means-tested benefits.

Private Client team at NewLaw Solicitors is available to talk to you, about any of these issues.



## Case studies

It is not always clear whether it is possible to bring a claim for compensation. The circumstances are difficult when the victim is a child who may not be able to explain what has happened and why. It is possible that it will be suggested that there is no blame, or that the child was at fault. Below are some examples of cases that NewLaw Solicitors has pursued despite blame not being accepted, either in whole or in part, and what the firm has been able to achieve for its clients.

- A 14-year-old girl sustained a brain injury as a rear seat passenger in a friend's parents' car. It was alleged and established in all likelihood that she was not wearing her seatbelt. It was also suggested that if it had been worn she would not have sustained the brain injury at all. As the age of responsibility for a child to wear a seatbelt is 14 years, it was accepted she had to accept some blame, but the defendant was looking to reduce her damages by as much as 25%. Through extensive enquiries with several experts NewLaw was able to secure a significant award of compensation with only a 15% reduction.
- A young boy aged 13 years was playing at a friend's house when they were allowed to use an air rifle in the rear of the property. Due to a lack of adequate supervision the claimant was shot in the head sustaining a catastrophic brain injury. Several years later he has graduated from university with honours after extensive support and determination, although it is accepted there will always be some impairment. NewLaw Solicitors is continuing to secure compensation to provide financial security for his future.
- A 9 year old boy was hit by a car as he crossed a zebra crossing. Fault for causing the accident was accepted by the defendant. The client suffered a severe brain injury and some other orthopaedic injuries. However the defendant argued that any ongoing problems beyond 6 months after the accident were caused by a pre-accident mild learning disability. Expert evidence was obtained along with medical records, education records and statements from teachers and tutors from his various schools and colleges. Eventually the defendant accepted that the cause of the client's ongoing problems was the brain injury and settled the claim for in excess of £500,000.
- A young boy was hit by a car as he ran out from between parked cars in a residential street. Fault for the accident was denied by the defendant stating that the driver could not have avoided the accident. Reports were obtained from accident reconstruction experts who agreed that the speed of the car was just under 30 mph at the time of impact. Although this was under the speed limit for the road it was argued that 30 mph is a maximum allowed and the driver had a duty to travel at a speed which was suitable for the road he was travelling on. Evidence showed that had the driver been travelling at less than 20mph he would have been able to avoid hitting the child. Eventually the defendant accepted that the driver had been going too fast for the road he was travelling on and agreed to pay substantial compensation to the child for the brain injuries suffered in the accident.

## Key individuals



**Neil Davies**  
**Solicitor, Head of Brain Injury**

Neil is Head of the Brain Injuries Team at NewLaw Solicitors. While his area of specialism is brain injury claims Neil has many years' experience in multiple forms of injury. He has represented a variety of clients with serious brain, spinal and orthopaedic injuries, securing several £million in compensation for his clients since joining NewLaw. These individuals have ranged from children, students, and parents with young children who suffered a complex mix of brain and orthopaedic injuries, as well as fatalities.

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**Katie Edwards**  
**Solicitor, Head of Private Client**

Katie Edwards is a Director of NewLaw Trustees Limited and heads up the Private Client Team. She is also head of the Court of Protection team, which specialises in brain injury cases where a person lacks capacity to manage their affairs. Katie has many years' experience of dealing with catastrophic brain and other serious injuries both from a personal injury perspective as well as providing advice regarding the management of compensation in the medium to long term. Katie acts on behalf of clients, providing advice on tax and estate planning, preparing Wills and Lasting Powers of Attorney. Katie is a registered practitioner of the Society of Trust and Estate Practitioners.

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**Emma Scourfield**  
**Solicitor, Head of Medical Negligence**

During her career Emma has dealt with the most serious personal injury, as well as clinical negligence cases. She has settled a number of very high value personal injury and clinical negligence claims including £million plus brain injury cases. Whilst specializing in clinical negligence claims she dealt with one of the first settled cases concerning the contraction of the hospital bug MRSA. Emma also dealt with a group action involving over 40 claimants suing a hospital over negligent joint replacement surgery.

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This booklet is available in Welsh upon request.  
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