



Abney Garsden
McDonald
Solicitors

Child Abuse – A Legal Overview

We have at Abney Garsden McDonald a dedicated team of experienced solicitors, many of whom have been specialising in this type of work for many years.

1. What should I do if I want my abuser prosecuted?

If you have been abused sexually or physically, even though it was many years ago, a crime has been committed which you can **report to the police**. If your abuser is still alive a criminal prosecution which will involve you giving evidence, can take place. Even if the case never gets to court, there are **good legal reasons for reporting the crime anyway**

Generally speaking only the police can bring criminal prosecutions. **Solicitors** usually take a back seat, and do not get involved. Whilst we need to know what you are doing, we **do not take part in the process**. Often we take a watching brief of the evidence, but that is all. If we get too involved, and the abuser's legal team find out, you can be accused in court of "only being in it for the money."

When you make your first report to the police, always ask for the "**Child Protection Unit**" or "Public Protection Unit". They are dedicated and experienced officers in the field, who will support you fully through the process.

Police Investigation

First of all the police will want to speak to you in a setting which makes you feel most comfortable. When you are ready they will **take a statement from you**. Usually this is written down or tape recorded, but sometimes they video the interview.

Once they are confident that you want to go through with the case they will start their investigation. They usually **interview anyone else that can help** as well. Frequently there is some evidence in addition to what you say. The police need to find this in order to help prove your case. They may need your help to find witnesses so they can take statements **Forensic evidence** may also be involved. If the abuse took place fairly recently then samples may need to be taken from you. The police can help you more with the details. This investigation process can take some time to complete.

As long as they think it appropriate the police will usually **interview your abuser** last. They must ask for his/her version of events. Ideally this takes place once they have seen all the other witnesses. Only then can they put the strongest possible case to him/her. He/she has **the right to remain silent**.

The police should keep you fully up to date with what is going on. If you are anxious to know the details however you can always contact them and they should respond quickly.

The Crown Prosecution Service

Eventually the police pass their file to the Crown Prosecution Service ("CPS"). Only **if the case is strong enough** will **criminal charges** be pressed against your abuser. The last thing you want is to go to court, face your abuser, and lose. Before the case can go to court, the CPS need to be convinced that they will be able to prove the case "**beyond reasonable doubt**". This is the legal test, and is quite a high threshold to overcome.

Often, at this stage, the case goes no further, and it is very disappointing. As solicitors, we are sometimes asked to help, because the Police will not bring a case against the abuser. Sadly, however, it is rare for us to be able to do anything about it. Sometimes solicitors bring “private prosecutions”, but they cost a lot of money and seldom succeed. Additionally, in fairly exceptional cases we can take the CPS to court to request a “Judicial Review” of their decision. This is a process where we have to say that no reasonable person in the position of the CPS would have taken the decision not to prosecute. In order to succeed the case has to be highly exceptional. Legal Aid is rarely available.

Going to the Criminal Court

The next stage is court. You will not have to go to most of the hearings, unless you particularly want to. The court is a public area, and anyone can go to it, unless the judge places restrictions upon access for reasons of national security or protection of a witness. There are, however very severe restrictions placed upon the reporting of cases, in order to protect the **anonymity of survivors** and children in particular.

Your abuser has the right to plead guilty or not guilty. Only if he/she pleads “not guilty” will you have to give evidence in court. In certain circumstances (usually if you are a child) this can take place without you being there, by video link or from behind a screen. In most cases you will have to be present to give evidence in court. You are, however, asked questions by your abuser’s legal team, when it is usually suggested that what you are saying is untrue. This is called “cross examination”. Your abuser can change his/her plea to guilty or vica versa at any time.

It is the job of the judge to make sure the procedure is fair to all involved including you and any witnesses. Although the process is difficult and quite stressful, you will receive a lot of help and support from the police liaison officer and investigation team.

In rare cases, and only if the abuser pleads guilty, the case can be disposed of quickly in the Magistrates Court. The hearing will probably take place in the **Crown Court before a judge and a jury**. The judge advises on points of law, and directs the jury on the evidence given. It is for the jury to decide on guilt and innocence but for the judge to decide **on punishment**.

Therapy and Support

Whatever the outcome the whole process could be stressful for you, and **you may need support** during the run up, whilst the case is proceeding, and afterwards. If you feel you need any help it is very important that you consult with the police investigation team, as any therapy you decide to have before the case can have an impact on your evidence. When you go to court, you don’t want the abuser’s legal team to start suggesting that your therapist has put ideas into your head, or even coached you what to say by discussing what happened with you. Thus you should always be open with what you are doing, and tell the police what outside assistance you are having. Family friends can often be a valuable form of help and support.

Any therapy or support you get must be **specialised** and from someone who is experienced in the area of child abuse. Your local **GP** is not a bad starting point, but the availability of good quality support is not uniform throughout the country. **Support groups** are another source of help for some, but not others.

2. Why should I claim compensation?

Most survivors of abuse are not interested in money. They want to be able to tell their story and be believed, rather than be told they are making up lies to get their abuser into trouble, which is what all too frequently happened in childhood. Or, more commonly the survivor never told anyone what happened because either they were too ashamed to do so, or they were **intimated into silence** by their abuser **through threats** of several types.

Sometimes, the criminal prosecution having fallen apart for technical reasons or not proceeded at all due to lack of evidence, **the survivor feels frustrated** and wants to seek

justice by other means. Once the story has started to come out it is very difficult to put away again.

Some say that any process, which serves to release feelings from within, is **part of the healing process**. Males particularly are more likely to have kept everything inside and told nobody about their past. To be able to tell someone what has happened and be believed is often a painful but enormously cathartic experience. Civil proceedings can help this process.

Unfortunately the survivor does not always get his/her "day in court", because cases frequently settle before going to court. Their desire to tell their story can be frustrated.

3. What do I do if I want compensation?

There are 2 obvious civil routes to getting compensation

- i) The High Court or County Court
- ii) The Criminal Injuries Compensation Authority ("CICA")

Solicitors usually go through the courts in historical abuse cases because

- a. The chances of success are better
- b. The compensation is usually higher.

Civil Law

The compensation part of the process comes under the heading of **civil law** (as opposed to criminal law), which means that **one person** (the survivor) **brings legal proceedings against another** (the abuser or more usually his/her employers), the end result of which, if successful, is the **payment of compensation** to the survivor. This is different to criminal law where the state (through the police) bring proceedings against an individual for the purposes of punishing him/her for what they have done wrong. Whereas the police to prosecute the abuser, solicitors deal with civil law and compensation.

The civil courts can only award **money** (often called "damages") for injuries to the survivor, which are a result of the abuse. Usually injuries are psychological/psychiatric rather than physical, but not always. The courts can also award compensation under other headings such as **loss of earnings, medical treatment, therapy costs both past and future, cost of care** from a friend or relative, or a professional carer. We also often argue that because of the abuse the survivor is less able to hold down a job due to lack of trust of those in a position of authority. Abuse survivors commonly have a chequered work record punctuated by explosions of anger and consequent loss of employment. Thus we ask for an award for loss of status on the open labour market.

Proof

In the same way as the police, your solicitor will need to prove that the abuse took place. The important thing to remember, however, is that the burden of proof is lower for civil cases. Instead of "beyond reasonable doubt", it is "**on the balance of probabilities**". Thus the abuse is easier to prove. Usually we start with the survivor's testimony and build on that. If you have been through a criminal prosecution, then we often want as much of the evidence as we can find. The conviction of your abuser can be used a form of proof for the civil case. The police, however, are often bound by rules which prevent them from voluntarily handing over their entire file. We often have to go to court to get an order for the release of their file.

Witnesses

Your solicitor will often want to try and contact anyone you have told about the abuse since it happened, or anyone you were in care, at school, or in an institution with. Sex offenders rarely target only one person. It is not unusual for there to be a string of children who were

abused. We need to contact them as it helps prove that you were abused. It is not uncommon for abuse to be **reported to a person** in a position of authority at the time, and for the survivor to be disbelieved. Solicitors will need to trace not only **other children** who were at the care home or school, but also **care workers, teachers, volunteers, or other employees**.

Legal Basis for the Claim

In civil cases we always have to show that **someone or some organisation was to blame** for what happened. We are allowed to bring proceedings in **assault**, which is straightforward, or **negligence**, which requires some explanation.

In order to win a negligence case we have to show

- i) Someone or some organisation owed you a **duty of care** (carers, parents, teachers, and indeed local authorities with care orders, always owe a duty of care to children in their care).
- ii) They were in **breach of their duty** of care to you, by exposing you to risk of injury/harm when they should have foreseen that injury/harm might happen.

Sometimes we might want to allege that there was a **defective system of management/complaint reporting** at the home/school, which permitted the abuse to take place. In cases where children have been abused at home, we sometimes allege that Social Services have not removed a child in circumstances where it is obvious that abuse is continuing unchecked. We may need to involve experts who can give us an opinion on the subject.

Records

In all cases we will need copies of all records which exist from **doctors, social services, hospitals, police, prisons, schools, probation** going back, sometimes many years. The records often contain proof that you were at the home or school at the time. In very rare cases we find corroborative evidence of abuse reported at the time. If the abuse happened many years ago records have usually been destroyed.

Medical Evidence

Most importantly solicitors need a **psychiatric/psychological report**. This is not cheap and can cost over £1000. Thus legal aid assistance is vital, unless you have the funds to pay for expenses yourself. The medical report will describe **what happened, how the abuse has affected you, whether you need any therapy, and what the prognosis is for the future**. Where there have been many different incidents of abuse by different abusers (sadly this is not uncommon) the medical expert will differentiate between the effects of each type of abuse and assess what influence each one has had on you. The experts we choose are carefully picked, and will be very experienced in talking to survivors of abuse. You will be treated empathetically and listened to.

Time Limits

It is more common than not for a survivor of abuse to bury the unpleasant memories, only to be triggered into remembering events of the past later in life. Events such as television programmes, becoming a parent etc. are common triggers. If the abuse happened a long time ago we often have enormous difficulty persuading a court to allow a case to proceed after a gap of say 30 to 40 years. Sometimes the abuser is dead, and usually the documents we want to rely upon have been destroyed. The law in this area is complicated and fraught with difficulty. **The courts now recognise that survivors of abuse bury memories of what happened until much later in life**. As long as you take steps to claim compensation fairly soon after you realise what is possible, and are in a fit mental state to do so, the courts are fairly sympathetic.

It is, however, a balancing exercise. The interests of both parties will be taken into account. The desirability of bringing an old claim, where the survivor for example has been prevented

from proceeding for psychological reasons, has to be weighed against the lack of witnesses and documents. The question is, can the court have a fair trial after all this time?

Recent changes in the Law

At the end of January 2008 the House of Lords handed down judgment in a number of important cases, which have revolutionised the law on child abuse compensation.

The law has tipped in favour of survivors in the following ways:-

- The case against Lowther Hoare, the lottery winning millionaire rapist, has established the principle that **time does not automatically run out at the age of 24 for the victims of assault and rape.**
- It is a lot easier for survivors of rape/assault to bring civil claims for compensation against their abuser many years after the event.
- It is a lot easier for the survivors of abuse by sex offenders in employment to claim compensation. Under the new law all a survivor has to show is that the abuse took place. The employer, in the majority of cases, will then become automatically to blame for what took place.
- The law has introduced a **time limit test, which is much wider**, so as to take into account more sympathetically the individual circumstances of the survivor. The court has a wide discretion to do what is fair and just in each case rather than the narrow system we had previously.

How will the changes affect cases?

Previously our case had to be based on the failures of management. **Cases will still be stronger if large group of Claimants acts together**, but we will be more interested in proving the abuse happened by getting supportive testimony.

Who might be dealing with my case?

- Your solicitor
- Lead/Group Solicitor if your case is part of a group action and his staff
- Paralegal/trainee solicitor
- Other legal and non-legal assistants
- Secretary
- Medical Expert
- Social Care Expert
- Barrister (usually one, sometimes two)

Please remember that all the above are bound by **strict rules of confidentiality enshrined in the rules of our profession**, and are not allowed to disclose details of your case to a third party without your consent.

Sometimes we use the press to further your case or look for witnesses. Naturally, before we do so we will take your detailed instructions upon what information you want to disclose and how anonymous you want to keep your identity.

How long will it take?

Before we are ready to issue legal proceedings we have to prepare your case, set up funding, obtain evidence, and get a medical report. This stage can easily take 1 year. If the other side are not prepared to settle we are then forced to issue court proceedings.

Stage in Case	From Start of case
<ul style="list-style-type: none"> • Investigation Stage - taking your instructions, preparing a statement, applying for Legal Aid (this in itself can take 6 – 12 months if we have to appeal), getting medical evidence and records 	6 months to 1 year
<ul style="list-style-type: none"> • Commencement of Court Proceedings – both sides have to file in court and serve on each other a summary of their cases. We must include the medical report and a list of any monetary claims you want to make. This stage usually lasts about 2 to 3 months 	9 to 15 months
<ul style="list-style-type: none"> • Disclosure of Documents – both sides have to prepare a list of documents, and send a copy of the documents to the other. This stage takes longer and can last about 6 months 	18 to 24 months
<ul style="list-style-type: none"> • Further Evidence – it is now necessary to conduct any investigations into evidence revealed in the other side’s documents. Sometimes further expert evidence is needed. Witnesses are traced and interviewed. A final statement of your evidence is prepared and served on the other side. This is important as often it forms the basis of your evidence in court. This stage can take from 3 to 6 months depending how complex the case is. 	24 to 30 months
<ul style="list-style-type: none"> • Trial or Court Hearing - this stage is usually reached after about 2 years into the case. Trial can come up sooner but this is unlikely - so complex are child abuse cases. Some cases can take even longer to get to trial particularly if they form part of a Group Action. 	30 to 48 months or more

Are Court Proceedings Necessary?

We always approach the opponent with a list of allegations at an early stage – usually at the beginning of the investigation stage, as long as we are able to forecast accurately in which direction the case will proceed. If not we may wait until after the evidential investigation.

We assess the attitude of the opponent. It is usually easy to work out whether court proceedings are necessary at an early stage. If the opponent wants to offer a **settlement without going to court** we will advise you accordingly. Often in these circumstances the opponent will seek some sort of **discount**. It is necessary for us to assess the risk of going to court and possibly getting more – or indeed less.

- It is possible for us to make a **“Part 36” offer of settlement**. We can tell the opponent what we want to settle our case. This puts the opponent under pressure and at risk on legal costs and interest. We will give you more detailed advice about this during the case.

The Trial or Final Hearing

Once all the evidence has been collected we always take stock again of the strength and weaknesses of your case. Often the merits of a case can change from beginning to end largely because we see the opponent's documents and witness statements towards the end of the case. More often than not we arrange for a barrister to give us an independent opinion. We may arrange a meeting with the Barrister. If your case is Legally Aided, the Legal Services Commission will usually require a barrister's favourable opinion before they will risk funding the cost of a trial. In any case most of the expense is incurred immediately before and during the final hearing.

Preparing for trial is an intensive period of work for us. We must make sure that all the evidence we need is to hand, and that any witnesses or professionals who need to attend court are available. Taking a case to court is like organising a large event with many

participants all of whom need to attend at different times and for different purposes. We will need to ask you which dates are inconvenient for you to attend court.

Most cases do not reach the trial stage either because the opponent has made an offer to settle the case beforehand, or because your case is not strong enough. Assuming however that trial is reached it is common for both parties to start making offers to settle the case. There are various ways this can be done

- **A Written Offer** with penalties attached if the person receiving the offer does not accept.
- A **“Part 36 offer”** of settlement by the claimant – see above

The Hearing

Assuming that all attempts to settle the case fail and the case comes to court we will advise you how long the case will last. You must make arrangements to be available throughout the hearing. You will be well **prepared by our barrister** who will usually have taken you through your evidence beforehand. It is important however that you **re-read your witness statement** to prepare yourself for the hearing.

You may not be allowed the expenses of attending court to fight your own case. **Witnesses** however are entitled to be compensated for their **reasonable expenses** by you (or your funders e.g. the Legal Services Commission)

These days the court often allows you to use your written statement in place of telling your story in evidence. The opponent’s barrister however will be allowed to ask you some questions about your evidence. This is called cross-examination. He/she will test the truth of what you say. Any other witnesses are called to give evidence by both sides.

The experts may give evidence about their reports. The barristers will then summarise their side of the case to the judge. In most civil cases the **judge sits alone without a jury**. At the end of the case therefore the judge delivers a judgment in which reasons for the decision are given. If you have won the judge will announce how much **compensation** you are entitled to. He/she will make rulings on **legal costs**.

When the case is over we will advise you about the effects of the decision upon you. We must then resolve the **costs of the legal proceedings** separately. This process can often continue for many months. Inevitably the paying party will try to obtain as large a reduction as possible from the receiving party. Separate assessment proceedings may have to take place through the courts. Often this can delay the payment of any compensation to you, particularly if you are funded by the Legal Services Commission.

In summary **the whole process is demanding and stressful** on all parties. It is important that you understand what happens before you start so that you can prepare yourself appropriately. It is for this reason that we have prepared this guide to help you.

Costs :-

- **Win** - if you win the loser pays a reasonable proportion, but not all, of your costs. It is very unusual for you to recover all your costs even if you win.
- **Lose** - if you lose the usual rule is that you have to pay the opponent’s costs and your own. Legal Aid or Insurance policies can sometimes pay your opponent’s costs if appropriate. If we agree to a No Win No Fee Agreement, then if you lose, you will not have to pay our costs. However you are still liable to pay the other side’s costs and your own expenses such as court fees, medical report fees.
- **Expenses** - there will be a court fee to pay when you start the proceedings and further fees as you get further into the case. There are other expenses such as the cost of medical reports etc. We are unable to fund expenses and require them to be paid as the case proceeds. They can be funded in a number of ways including **Legal**

Aid, Insurance, or a bank loan, which we can arrange for you.

The Criminal Injuries Compensation Authority Scheme

This is a government run scheme, which compensates **victims of violent crime**.

You can claim for compensation through the CICA even if you are pursuing a civil claim through the courts (as above). The compensation given through the CICA scheme is often much less than may be awarded for the same case in the civil courts, and if you receive CICA compensation before a court awards you damages, you will have to **pay the CICA back**. However, it is sometimes easier to obtain compensation through the CICA.

The scheme is not really designed for cases of historical abuse, and is meant to follow closely from a police prosecution, where there has been a conviction. It is important that you have **reported the abuse to the police**, and co-operated in any criminal investigation against the abuser, but it doesn't matter whether the abuser was convicted, or even that a criminal prosecution was taken against him/ her. The CICA will not deal with a claim if no statement has been given to the police. You also have to **submit an application within 2 years** of the abuse, but the CICA does have discretion to extend this time limit and often does so in abuse (particularly child abuse) cases.

You don't have to have a solicitor to represent you, and can download the application form (and guidance on how to fill it in and where to send it) from www.cica.gov.uk. Alternatively a copy of the application can usually be provided by Victim Support (a charity set up to support victims of crime, check your Yellow Pages for your local branch), your local Law Centre, Citizens Advice Bureau, or your solicitor. **Costs are not paid**, and must come out of any award you get.

Compensation is assessed using a fixed **Tariff Scheme** predetermined by the Government. The minimum award is £1000 and the maximum £500,000. Injuries are grouped into different categories including sexual offences. For example £33,000 is the figure for intercourse "resulting in serious internal bodily injury with permanent disabling mental illness confirmed by psychiatric prognosis."

The scheme does not usually award compensation for those with a **Criminal Record**. A penalty points systems operates to disqualify most of those who have had custodial sentences in the past, even though, to some extent their behaviour has been influenced by the abuse in care. Whilst discretion can be used there are issues surrounding this rule.

No claim can be brought to the CICA if the crime took place **before 1964**, or the abuse took place in the family before 1979.

If you have any questions about the above, or want to contact me, my details are below.

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