Abney Garsden McDonald Solicitors

Child Abuse

A Guide

This guide has been created to help survivors of abuse learn what they may expect from us. A trip to see a solicitor can be apprehensive for anyone. The team here at Abney Garsden McDonald are committed to making the relationship between you and us as comfortable as possible. Commitment to clients, together with a willingness to acquire knowledge and listen empathetically, are important to us.

Who are we and what do we do?

We have the largest dedicated department of specialised lawyers in the field in the country.

We are a **specialist team of solicitors** and ancillary staff who are committed to helping the victims of abuse claim their legal rights, and find whatever legal remedies are available. We offer Legal Aid (subject to a financial means test), as well as "No Win No Fee Agreements" where appropriate.

If you want to find out about the availability of Legal Aid you can go to their web site http://www.legalservices.gov.uk/, if you are on the Internet. If not you can read our Legal Aid Leaflet which is attached.

No Win No Fee agreements are not always available but are explained in the attached guide.

The department is led by Peter Garsden. For a full list of members go to the "Team" page on our website http://www.abneys.co.uk/. We are all members of ACAL (Association of Child Abuse Lawyers). Indeed Peter Garsden is a founder member and designer of the Web Site. If you want to visit the site go to http://www.childabuselawyers.com.

What should I do before I go?

Initially a solicitor will want to get a basic grasp of what has happened to you. Sometimes they ask you to fill in documents or legal aid forms before you go. If you do this it saves an enormous amount of time, and helps your solicitor to concentrate upon the main issues

It helps a great deal to put the main points down on paper or a small card. You no doubt have many questions you want to ask. Write them down and make sure you ask them.

We have created a questionnaire to help us get the main facts of the case. It may be included with this guide. If it is please fill it in and send it to us.

Remember - a solicitor is there to help you but time is always precious. Try to get across the basic points, and do not expect to tell your whole story at the first visit. That will come later when the two of you have developed trust in each other, and you feel ready to talk.

Remember - we are all bound by a strict duty of confidentiality. **Whatever you say will remain completely confidential and will not be revealed to anyone without your authority.**

Remember - We are committed to treating you with understanding

What can a solicitor not do for you?

A solicitor's job is to advise you upon the law, and help you through any legal proceedings that you want to start. He/she must remain objective if he/she is to help you properly.

Your solicitor is not qualified to counsel you or give you any psychological help. There are many organisations who can help you to recover, if you wish it. We can refer you to an appropriate person or organisation.

Whilst a solicitor will fight your case for you he/she will join not with you in the battle. If he/she did this he/she would lose his/her objectivity.

A solicitor does not usually get involved in the criminal prosecution of an abuser. That is the job of the police. They normally have a witness liaison officer who helps through the traumatic process. At the moment legal aid is not available to provide you with an advocate at court. Your solicitor however may want to sit in at the trial to take notes of evidence

What legal remedies are available to you?

Remember

- The law is never easy to use and there are bound to be **frustrations** along the way. **Do not** be tempted to **contact the opponent** yourself. This is why we are here. There are all sorts of reasons why you could cause **damage** to **your** own **case** if you do so.
- Despite recent changes the law will **not** move as **quickly** as you want it to.
- If you are now an adult and the abuse happened many years ago, your case may be **out of time**. Your solicitor can advise you about this. It can be a difficult hurdle to jump.

Civil Action - You may be entitled to sue someone or an organisation for the **personal injuries** you have suffered as a result of the abuse. This includes **mental injury**.

- You have to show someone is to **blame**. You have to show **negligence**, or sue your abuser for the assault. You have to show that the negligence caused the injury.
- There are time limits for starting a court case, so do not delay. You must get advice as soon as you can.
- The case is started in either the County Court or the High Court.
- You may never have to go to court and give evidence. It depends if the case settles.
- All you can receive from the court is **compensation**. The court has no power to punish the abuser. That is the job of the Police in the Criminal Court
- The case can take a long time - 2 - 5 Years
- Legal Aid is available.
- Your solicitor will have to get a **medical report** on you. You will have to visit a specialist (usually a psychiatrist or psychologist)

- Your solicitor will have to get hold of a lot of records on you from the past, such as care and GP records. Sometimes the records have been destroyed or are extremely difficult to find. The whole process obviously takes a long time.

- A solicitor at some stage will usually involve a **barrister** for help with documents. Often a barrister will represent you at a Court hearing

Criminal Injuries Compensation - is available for abuse committed after 1964 where it can be regarded as an **act of violence**.

- It is available for **abuse in the family** with some exceptions.

- There are time limits for bringing a claim to the authority, which can be waived in certain circumstances. It is important to get advice as soon as possible.

- The compensation is calculated upon a **tariff scheme** basis and is not generous

- The Board which is based in Glasgow, can and usually do reduce or refuse compensation if you have a **criminal record**

- Legal Aid is very limited

- The compensation is **assessed on paper** without you having to go to a hearing, unless you want to appeal against an award

- Normally there has to be a criminal case and a **conviction of the abuser** - but not always

Public Enquiry - You will no doubt remember the North Wales Tribunal, which lasted over a year. The survivors were entitled to free representation by a solicitor. Your solicitor may be able to help along this path.

Local Enquiry - The difference between local enquiry and a public enquiry is that a local enquiry is organised by a local authority, and a public enquiry by central government. Once again your solicitor may be able to help.

Records - According to the law you have a right to see your personal social services file. We may be able to help. Your records are usually vital evidence in your case.

Tribunals - Sometimes a solicitor can advise you or represent you at Tribunals of Enquiry, where there is a hearing to clarify an issue. Legal Aid may be available.

What will happen?

The Investigation stage – First of all we have to find out whether you have a case or not. To do this we must look for evidence. This may take some considerable time depending upon what type of case we are investigating, and particularly how long ago the abuse took place. Witnesses can die/go missing. Records often get lost or are difficult to find.

- **Your evidence –** we must at some stage take a full statement from you. Usually we take basic details from you in the early stages (the questionnaire is an important part of this process) and then a much longer statement once we have found all your records. **You are our most important witness.**

- **Medical Report** – in order to get compensation you must prove that you have been damaged and suffered **personal injury**. In abuse cases the damage is usually **mental** rather than physical. Thus we use psychiatric or psychological experts to prepare a report upon you. They will need to see you for several hours and ask you a lot of questions about what happened but more importantly **how the abuse has affected you.**

If physical damage has occurred as well we will send you separately to other types of medical expert to suit the type of damage suffered.
The medical report can take **several months** to obtain. When we get it we must take your instructions upon it. This can be an **emotional experience** which we will handle with care. It is not always advisable to send you the report because it is so sensitive and confidential. We usually suggest that you read it at our offices in the company of a **close friend or relative**.

- **Records** – we must obtain many types of records upon you from different sources. We will ask you to sign several forms of authority to enable us to obtain the records on your behalf. The following types are common in abuse cases
    - **Social Care Records** – held by the local authority if you were put in care.
    - **Care Home Records** - these records will be vital if you were abuse in a care home or other type of institution. We may not be able to obtain them without issuing legal proceedings.
    - **GP Records** – it is important to obtain a full set of records going back to your date of birth if possible.
    - **Criminal Records** – these records can be important if the abuse led to a life of crime
    - **Educational Records**
    - **Prison Records –** sometimes there is helpful evidence of the effects of the abuse where therapy was obtained in prison or a confidential disclosure made to a chaplain or probation officer
    - **Probation Records**
    - **Hospital Records** – particularly important where you have undergone psychiatric care subsequent to or even before the abuse.

- **Other types of Evidence** - in this category are included:-
    - **Police Statement** - if you have taken part in a police investigation into the prosecution of your abuser we will want to see a copy of your **witness statement**. Usually the police will not release it to us until after the police case is over. Even then some police forces prevent us from sending a copy of it to you. We will ask you to sign a **form of authority** to enable us to obtain a copy on your behalf.
    - **Witnesses** - it is sometimes necessary for us to search for/take a statement from witnesses. They may have been to the same care home/institution as you. They may have heard you talk about the abuse in the past. Indeed they may have witnessed the abuse taking place. Each case is different.
    - **Tribunals/Enquiries** - if you have taken part in any enquiries such as police prosecutions, local enquiries or public enquiries we will need to see a copy of any evidence given by you or others as there may be useful evidence of assistance to your case. The North Wales Tribunal is a good example of this.
    - **Miscellaneous** – it may be necessary to obtain old photographs or a sketch plan/video of the layout of the institution where you were abused. For instance it may be useful to be able to prove that the place of abuse was so public that someone must have seen the abuse arriving or leaving. There are infinite categories of evidence which may be relevant in individual cases.

The **investigation stage** usually takes between **6 and 12 months**. In some cases it can take even longer depending upon the circumstances.

The Evidential Assessment

Only at this stage will we be able to decide whether you have a case worth pursuing. To assist us make this decision we often ask a barrister to give an opinion. If the case is legally aided the Legal Services Commission may insist upon a barrister's opinion.

Sometimes a case which looks promising in the beginning can become poor after investigation. Conversely an initially weak case can improve with investigation. Unfortunately there is no way to avoid this happening. It is a common occurrence with legal cases.

There is no point subjecting you to the stresses and financial risks of a court case unless the evidence seems strong enough.

Assuming your case passes the evidential assessment we go onto the next stage.

Court Proceedings?

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 ascertain 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 thus necessary to assess the risk of going to court and possibly getting more – or indeed less.

It is now possible due to a change in the rules for us to make a **"Part 36" offer of settlement**. In other words 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.

If we are of the view that court proceedings are necessary, we make a **costs & time assessment**. Inevitably court proceedings will take longer and cost more.

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.

- **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 Stages in Court Proceedings - *please note that all times below are approximations and can vary widely depending upon the evidence in the particular case*

Stage in Case	From Start of case
• **Filing of Papers –** 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	**3 months**
• **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	**9 months**
• **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.	**6 months**
• **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 for all sorts of reasons too complex to note here	**2 to 3 Years or more**

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 conference at his chambers. 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 time 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 busy 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

- **Payment into Court** of a sum of money to settle the case – there are various court rules, which put the person being offered the money at risk. We will advise you.

- **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 drag on for **many months**. Inevitably the paying party will try to obtain as large a discount as possible from the receiving party. Separate assessment proceedings may have to take place through the courts. Often this **delays 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.

Remember

- We are here to **help** you.
- Legal Advice may be **free** for a **first short interview**. You must ask us to clarify the position before you start

If you want to make an anonymous enquiry about a problem, please feel free to email us at peter@abneys.co.uk, fax us on 0161 482 8833, or telephone the office on +44 0161 482 8822.

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Encs. Legal Aid Leaflet
No Win No Fee Guide.