

# A CLIENT GUIDE TO CLAIMS OF ABUSE

In England and Wales, the civil courts operate in a different way to the criminal courts. The civil courts cannot punish someone who has abused or neglected another; it can only mean a sum of compensation is paid out if successful. There are clear advantages to reporting your abuse to the police and this should be your first consideration. The police will have the best access to evidence available to support either a criminal prosecution, or a civil claim. Furthermore, if an individual is convicted of a criminal offence, the civil process is often more straightforward, and quicker. However, if you do not feel able to report the matter to the police, a civil claim is still possible.

## CIVIL CLAIM PROCESS

The types of claims that we can investigate include:

- Abuse by an individual such as rape or sexual assault;
- Abuse in an institutional setting such as through the church, in a school or a club such as the scouts or a music group;
- Abuse or neglect in a family or foster care setting where there might have been a failing in the child's social services provision.

In order for a civil claim to be successful, we must first prove the abuse or neglect has in fact occurred and been the cause of your injuries or psychiatric condition. This may involve examining a large number of documents (such as police files, social services files, your education records and health records), interviewing witnesses and obtaining specialist expert reports. If our initial investigations identify that there is merit in your claim, we will enter into early discussions, *before* court proceedings are issued, with the proposed defendant by way of sending a letter of claim and awaiting a letter of response.

If the defendant makes admissions in your claim, we will set about calculating the value of your claim. However, if the defendant denies your claim, it must set out its reasons for denying the allegations made. It usually takes around twelve to eighteen months to reach this point.

If the defendant denies your claim, it is likely that we will need to formally issue your claim at court to begin court proceedings. Once your claim is issued, a set of particulars of claim are drafted which sets out your allegations in a formal document and the defendant is obliged to prepare a defence setting out its formal position. Once this

is done, the court will lay down a set of court directions, a sort of timetable, by when certain things are to be filed at court, such as witness evidence and expert evidence, leading to a trial. It can take up to around three to four years for a claim to conclude if the defendant denies the claim and formal court proceedings are required.

## CONFIDENTIALITY

We keep your details and the details of your claim confidential and treat all documents in connection with your case as confidential. We will always ask your permission to contact others about your case, including social services and the police. If you wish, we can apply to the court to make your details confidential on court documents in connection with your claim. However, the facts that form the basis of your claim will need to be disclosed at some point to the defendant, their insurers, solicitors, court, medical experts and organisations funding your case (such as the Legal Aid Agency). We are happy to discuss any concerns you may have about confidentiality at any point during the case.

## FUNDING OPTIONS

There are a number of different funding options available for your potential claim as follows:

### Legal Aid

Legal Aid is a financial means-tested and merits-based funding system paid for by the Government. Eligibility is assessed by the Legal Aid Agency which decides whether or not Legal Aid should be granted.

The financial means tests apply to both your capital and income. If you qualify on your financial means the Legal Aid Agency will then consider whether your case has any merit. They will look to see whether there is an arguable case, and whether or not the matter that is in dispute (if it has a monetary value) is proportionate to the legal costs likely to be incurred. If Legal Aid is granted, it is regularly reviewed, and the Legal Aid Agency will require updated information in respect of your finances. The Legal Aid Agency may limit the scope of your Legal Aid Certificate, for example to initial enquiries to establish whether or not there is sufficient evidence to support your case. If you are earning a low income, whilst you may be entitled to Legal Aid, you might also be asked to pay monthly contributions towards your Legal Aid Certificate.

### Insurance Funding - 'Before the Event' Policies

These are legal expenses insurance policies which provide cover for legal problems arising in the future. Even if you do not have a specific Legal Expenses Policy, you may well have one as an "add-on" to home contents or car insurance policy or a credit card, or as part of your membership of a club or association. Such policies are

sometimes very limited in what they cover, and may restrict your freedom to choose your own lawyer. If you think that you may have any such policy, please let us see the policy schedule as soon as possible.

### **Conditional Fee Agreements**

If neither of the first two options are available, we are likely to be able to offer you a 'no win, no fee' funding arrangement. Such an arrangement means that your solicitor will make no charge to you if your case is lost, but will deduct a maximum of 25% from your damages if successful, meaning you would keep at least 75% of your damages. This maximum 25% deduction covers the following:

- A success fee limited to a maximum of 25% of your damages for your pain suffering and damages for past financial losses;
- Any shortfall between our costs and what we are able to recover for our costs from your opponent;
- A proportion of the ATE insurance premium which will be subject to how you intend to pay for your disbursements such as medical records fees and medical expert report fees;
- Interest accrued on any disbursement funding arrangement which is not recovered from your Opponent.

### **GROUP ACTION/GROUP LITIGATION**

Group Litigations are where a number of individuals with similar claims, arising from similar circumstances (and usually against the same Defendant(s), come together to proceed as a single group.

A group action can be run by a single firm of solicitors acting on behalf of all the individuals, or those individuals could be represented by a number of different firms. If they are represented by different firms, then it is usual to apply to the Court for a Group Litigation Order. The Court will then appoint one firm to act as 'Lead Solicitor'. It is the Lead Solicitor who takes responsibility for coordinating the group and for negotiations with the Defendant(s) and their legal team(s).

The major benefit of a group litigation is that the more individuals that are involved, the greater the investigative and negotiating power that the group has. Due to the detailed nature of many group actions, any solicitor working on such a case is usually highly specialised in that particular area of law. This means that the individuals have the additional benefit of knowing that the solicitor representing them is experienced in both the specific area of law and in group actions.

 **CONTACT US – 0800 044 8488**

# FREQUENTLY ASKED QUESTIONS

## **Will my claim be successful?**

To succeed in a claim, you have to prove the abuse or neglect has in fact occurred and been the cause of your injuries or psychiatric condition. If your claim is against a local authority, you have to prove that your injuries or psychiatric condition was caused by some form of negligence. In the majority of cases, expert evidence will be required to support any allegations made – whether that be evidence of negligence on the part of a local authority proved with evidence of an expert in social care, or evidence of your injury proved with evidence of experts in such things as psychiatry or psychology.

We carry out a detailed risk assessment at the very beginning of your claim to ensure there are reasonable prospects of succeeding in the claim. If we do not consider there are reasonable prospects, we will advise you of this and explain the reasons why. If we can represent you, we will continue to risk assess your claim at various stages; for example, upon receipt of your records, the expert evidence and any response from the defendant. We will keep you fully updated throughout your claim as to what we consider to be the strengths and weaknesses of your claim. We will always act in your best interests and explore all aspects of your claim to ensure the best possible result for you. However, as with any claim, there can never be any guarantees that your claim will succeed.

## **How much compensation will I get?**

Every individual's circumstances are different depending on the type of injury they have sustained and how his or her life has been affected. The law seeks to compensate based on the severity and impact of the injury. The amount claimed must relate to the harm caused directly by the defendant. There are two types of damages that you are entitled to claim:

General damages are awarded for the injury itself and the pain and suffering caused. It is often difficult to quantify how much injuries are worth financially and of course, no amount of money can change what happened. The court will consider guidance available together with previous cases concerning similar injuries to assess the value of your general damages.

Special damages are awarded for expenses you have already incurred as a direct result of your injury. For example, travel costs in attending hospital or treatment you might have already paid out for. The court can also assess costs you are likely to incur in the future, for example, you may be unable to work due to your injury and therefore this is deemed a future loss.

### **Will I have to talk about what happened to me?**

We understand and appreciate that you are probably not going to want to repeat what happened to you to a series of professionals. Whilst we do not need you to tell us in detail what happened to you initially, of course, we need to have some information as to what happened so that we can advise you as to whether you are likely to have a claim or not. As investigations continue, we are likely to have to prepare a witness statement for you and so we will need you to be as open as you feel you can be about what happened so that the court understands what happened. You will also probably need to meet with a medical expert, perhaps a psychiatrist or a psychologist, and you will need to be open with them about what happened so that they can properly assess how you have been affected, although they are likely to have a copy of your statement if already prepared so this will help limit the number of times you need to repeat yourself. On some occasions, the defendant might also instruct its own medical expert to assess how you have been affected.

### **Will the press or media know about the claim?**

As above, we keep your details and the details of your claim confidential and treat all documents in connection with your case as confidential. However, if it becomes necessary to pursue your claim through the court, documents submitted on your behalf can be viewed by the public and the public may attend any hearing; the public includes the media. However, if you wish, we can apply to the court for anonymity for you to make your details confidential on court documents in connection with your claim and for hearings to be made private.

### **How long do I have to bring a claim?**

There is a three year period (known as the limitation period) within which you have to start legal proceedings by issuing your claim at court. This period begins from the date of the abuse, or the date on which you were first aware of your claim if, for example, your claim is against the local authority for matters which happened when you were a child. There are exceptions to these rules. If you are under 18 when the abuse or neglect occurred, then the three year period does not start until your 18<sup>th</sup> birthday (and so you will have until your 21<sup>st</sup> birthday to start court proceedings).

We know that many people find it difficult to come to terms with what happened and often it can take many years to seek legal advice. In situations where you can ask the court to allow a case to be heard *out of time* in exceptional circumstances. After talking to you, I do think you would have an argument to say that any delay in bringing your claim has not prejudiced the ability to have a *fair trial*. I would expect the Council would argue that your claim is out of time as they may no longer be able to obtain evidence from social workers perhaps. However, I do think you can counter that given that it is clear the Council has retained a full set of records.

### **Why should I choose Enable Law?**

Friendly and approachable, straightforward and constructive in our advice, our clients can rely on us in good times and bad. We aim to be carrying and supportive in the service we provide to you. We have extensive experience in a wide range of claims against local authorities, private institutions, the church and individuals. We work with many local and national charities to help support you through the legal process. We are members of the Association of Child Abuse Lawyers.

### **Do I have to choose a solicitor near to where I live?**

You do not need to choose a solicitor near to you, although in some circumstances it may be helpful. There will be occasions during the course of the claim when we will need to meet you. We do have offices in London, Bristol and throughout the West Country so often there will be a convenient office where we can meet. If you live at a distance from one of our offices or are unable to travel, we can normally offer a home visit.

### **How long will the case last?**

It very much depends on a number of factors including whether liability is admitted, the level of cooperation on the part of the Defendant in settling your claim, the extent and complexity of your injury and rehabilitation needs. It is rare for a case to take less than a year to conclude, and is more likely to take several years. However, we will endeavour to see your case through to conclusion as quickly and effectively as possible.

### **What will I need to do?**

You will be at the heart of the process. We need you to be open and truthful in all your communications with us and keep in contact with us. We will need information from you about your claim such as your financial losses and the impact the injury has had on you and your family. You will need to:

- Sign consent forms so that we can apply for your records outlined above;
- Listen to our advice about the strengths and weaknesses of your claim and work with us to make decisions about how to proceed with your claim;
- Help us identify any witnesses that might support your claim;
- Meet with medical experts, as above;
- Help us to put together your financial losses by giving us as much information as you can.