

Legal advice for survivors of abuse

Reporting child abuse: How the law works and what it can do for you

Jonathan Wheeler discusses how survivors of abuse can use the law to get help, recognition and compensation for their experiences, and what to expect when they do so.

The criminal law

If you have been abused, sexually, physically or emotionally in the past, especially as a child, a crime has been committed against you. The criminal law can help by punishing the abuser(s) (if they are still alive) through a successful criminal prosecution which may lead to the abuser receiving a prison sentence.

To start this process, you should speak to the police about what happened to you. Any police station will help, but it is recommended that you approach the child protection unit of your local police force to discuss matters with them, as the officers who work in the unit will have up to date and relevant experience of dealing with these cases, and are likely to be especially sympathetic. To find out where the child protection team operates in your area, ask at any police station, or contact NAPAC who will be able to find this information for you.

In order for the police to investigate an allegation of abuse, they will need to take a **statement** from you. They will write down what you tell them and ask you to sign the statement. They may need to come back to you on different occasions to complete the statement, ask you questions, or take further statements as their investigations continue.

If the police feel there is merit in investigating what you say, the police will interview relevant witnesses (if any, which may include tracing and interviewing other people who may also have been abused by the same abuser). They will also trace and interview the abuser who may admit the abuse, or may deny it. If they **admit** it, then they will be punished, often through the criminal courts. The case is taken up by the Crown Prosecution Service, lawyers employed by the Government to bring criminals to justice through the criminal courts. The abuser will be entitled to their own lawyer to argue in their favour about the severity of the sentence which the Judge needs to decide.

If the abuser **denies** abusing you, and the police (and the Crown Prosecution Service) think that the evidence is strong enough, then they may **prosecute** him/ her by preparing for and holding a criminal trial (with a Judge and a jury) to decide whether the abuse can be proved beyond doubt, and if so what punishment the abuser should receive. The abuser is likely to receive a more severe sentence if they plead 'not guilty', and are subsequently found by the jury to have committed the abuse.

The abuser can change his/her plea of 'not guilty' to 'guilty' at any time, but if they insist on a 'not guilty' plea, then you are likely to have to **give evidence** in court, which will involve standing up in court and being questioned on your witness statement given to the police and other relevant issues. Sometimes you can give evidence from behind a screen, or through a video link without you having to be in court. In court, there will be lawyers for the prosecution (the Crown Prosecution Service) and the defence (for the abuser) and they will present their arguments to the jury. The Judge is there to run the court, advise the jury on any legal points and to sentence the abuser if the jury convicts him/ her.

The prosecution process can be a long one and may be difficult or even impossible if the events happened long ago and there are no witnesses. It can also be a very stressful experience if you are giving evidence, but the police and the prosecution lawyers will be able to help as much as they can.

The civil law

This is a different area of the law from the criminal law above. This part of the law can award you money (**damages or compensation**) for your 'injuries' as a result of the abuse, both physical and psychological, as well as for financial losses such as lost earnings, medical treatment and therapy, travel expenses, cost of care from a friend/ relative or a professional carer. There does not have to be a successful prosecution of your abuser in the criminal courts for you to pursue a civil claim for compensation.

If you believe you may be entitled to compensation, **the first thing you need to do is contact a solicitor**. Because claiming compensation for abuse is complex, it is recommended that you ensure that the solicitor you contact is a specialist who knows what he or she is talking about. **ACAL (the Association of Child Abuse Lawyers)** is one organisation that can point you in the direction of a local solicitor who has the necessary training and experience to help you. Their members are sympathetic and approachable and have all received training not only on the law but also from survivors of abuse about how best to support clients who disclose their abusive pasts. ACAL's contact details appear at the end of this page.

All solicitors should be able to offer a **free interview** either on the phone or at a meeting, so you can talk a bit about what happened to you and you can assess whether you are comfortable with them and their expertise. A civil claim for damages is often a long and drawn out process and you will need to be sure that you can work closely with them throughout. If a solicitor refuses to offer to discuss your case for free then you should go to another solicitor who will.

In order to successfully claim compensation your solicitor has to **prove** that the abuse occurred and this has led to your injuries. This may involve interviewing witnesses and examining a large number of documents (such as social services files). The claims are often defended and the defendant may often try and restrict access to relevant evidence that your lawyer needs. This is why these cases can take a year or two (and sometimes longer) to conclude.

It is important to note that the civil law cannot punish the abuser. This is the job of the criminal law. If compensation is awarded, it is often paid by insurance companies. Because abusers (even if they are alive) are often unlikely to have any assets (cash) to pay out if they are found liable, cases are often taken against their employers (for example a local authority who employed the abuser in a children's home or school, or a religious organisation which employed them as a priest, or to run a youth club etc.)

At the first meeting or in the initial telephone call, the solicitor should listen to what happened to you, and ask relevant questions. They should then **advise you** how the law works in your particular case, whether you are 'in time' for bringing proceedings and whether they feel they can take the case forward on your behalf. If so, they should also discuss how the case is to be funded: **Legal aid** (sometimes called public funding) is available for these cases if you qualify on financial grounds. Some solicitors also offer '**no win, no fee**' arrangements (sometimes called conditional fees) which do not cost you anything up front. The solicitor should be able to advise you of all the options open to you.

If the solicitor agrees to take on your case, once the funding is in place they will need to **investigate** by obtaining confidential documents (such as medical records, social services records, police statements), and interviewing anyone who can help your case. This often takes some time. They will also write a letter to the defendant (which may be the abuser, or his/her employers) setting out your case in detail. You will have to make a detailed statement of what happened to you at some point (often not right at the beginning of the case) to assist the solicitor prepare your case and investigate properly. It will also be necessary for you to be examined by a doctor (such as a psychiatrist) who will prepare a report on how the abuse has affected you. At a later stage, your solicitor may ask a barrister to advise on your case and represent you in court if necessary, as another member of your legal team.

Court proceedings are issued in the civil courts, with your case being set out legally in a document called the 'Particulars of Claim'. The Defendant will have to respond to that in a formal document called the 'Defence'. The Defendant may **admit** the abuse and agree to compensate you. If so, then the court is only concerned with how much the abuse has affected you, and therefore how much compensation you should receive.

If the Defendant **denies** it should pay you compensation, then the case proceeds with both parties disclosing relevant documents and exchanging statements and expert's reports. A trial will be listed and if the case cannot be agreed, you and your witnesses (including any experts, such as the doctor who examined you for the case) may have to give evidence in court from the witness box. Your legal team will be with you in court, as will the legal team for the defence, who will each question the witnesses and put their legal arguments to the Judge, who has to decide (without a jury) whether your case can be proved on balance, and if so, how much compensation you can receive.

The CICA scheme

There is another way you may be able to receive compensation and this is through the **Criminal Injuries Compensation Authority** (the CICA). This is a Government run scheme which compensates victims of violent and sexual 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.

It is a condition before any application is accepted 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. 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 **ACAL solicitor**. You can always talk over the merits of pursuing a CICA claim with an ACAL lawyer free of charge, without necessarily asking them to take a civil claim for compensation through the courts.

Therapy and support

Dealing with solicitors and court cases is stressful. Whilst ACAL lawyers will do all we can to ease the burden, taking legal proceedings is never easy, involving an invasion of your privacy, and often the need to take difficult decisions on sensitive matters. Litigation is not to be entered into lightly, but it is often the only way for survivors of abuse to get the help, recognition and compensation to which they are entitled and deserve. I believe that it is vital that my clients have access to therapy and support throughout their case; this can be provided by family and friends as well as groups such as NAPAC, and others which you will find listed in the 'therapy and counselling' section of your local Yellow pages. Your solicitor should be able to advise you if you require further information.

Further guidance

For further guidance and a list of our members who regularly represent survivors of abuse in compensation claims, ACAL can be contacted on **0208 390 4701** or at info@childabuselawyers.com, or through its website: www.childabuselawyers.com

Jonathan Wheeler is an Executive Officer and the current treasurer of ACAL (the Association of Child Abuse Lawyers), and a partner with Bolt Burdon Kemp Solicitors in London. © Jonathan Wheeler & Bolt Burdon Kemp, May 2005