



## A Short Guide To A Court Case

*Taking your case to court and what to expect*

kindly written by



**Abney Garsden McDonald Solicitors**

## An Introduction From Survivors Manchester

A trip to see a solicitor can really be an overwhelming experience for anyone. Then add into the mix the thought of having to talk about something really difficult, something that probably hasn't been talked about much, if ever, and instantly you've got a recipe for high anxiety and apprehension.

So in order to help try and lower the intensity of those feelings, we have asked our friends at Abney Garsden McDonald to create a guide especially for survivors of childhood sexual abuse who are worried about going through the legal process or want to know how it all works.

We hope that this guide will help you understand the legal process of a court case and assist you in understanding what to expect from your solicitor. The fantastic team at Abney Garsden McDonald is 100% committed to making the relationship between you and them as comfortable as possible. We know that a commitment to their clients, together with a willingness to acquire knowledge and listen empathetically, is really important to the team and the firm.

## Who are Abney Garsden McDonald and what do they do?

Abney Garsden McDonald has the largest dedicated department of specialised lawyers, in the field of child abuse, in the UK.

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

To find out about the availability of Legal Aid go to [www.legalservices.gov.uk](http://www.legalservices.gov.uk). "No Win No Fee" agreements are not always necessary available, but the team can discuss this with you if you wish to proceed with your case.

The specialist department is led by Peter Garsden, a founder member of the Association of Child Abuse Lawyers, and designer and webmaster of [www.childabuselawyers.com](http://www.childabuselawyers.com). He is supported by a dedicated team of over 10 staff, all of whom have their profile on <http://www.abneys.co.uk/AbuseLaw/team.asp>.

## 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 will ask you to fill in documents or legal aid forms before your first appointment. Doing this can save an enormous amount of time and will help your solicitor to concentrate upon the main issue.

This can be anxiety inducing so one good tip is to write down all the main points on paper first, that way you won't forget anything. You'll no doubt also have many questions you want to ask. Again, write them down which will prompt you to ask them. The team have also created a questionnaire especially to help them obtain the main facts of the case and help you cover all the points necessary to begin with.

**Remember** - a solicitor is there to help you but time is always precious. Try to get across the basic points but don't expect to tell your whole story on 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** - your solicitor is 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** - Abney Garsden McDonald 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 a qualified counsellor and is not there to give you any psychological help, that's what Survivors Manchester is for and why we feel it's important for the two organisations to work in partnership.

Whilst a solicitor will fight your case for you he/she will not join 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. The Police have Witness Liaison Officers who can offer support, along with Survivors Manchester. We can put you in touch with other kinds of support, such as Victim Support and the Independent Sexual Violence Advisor (or ISVA) based at St Mary's SARC. Together, this can create a fantastic support network for you at this traumatic and often painful process. Unfortunately, legal aid is not available to provide you with an advocate at court, however, 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 you have a solicitor. 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, but not impossible. Don't give up hope now, ask.

## **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 psychological injury as well as physical. In order to do this:

- 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, from 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**

For abuse committed after 1964 where it can be regarded as an act of violence, CIC is available.

- 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 or the cases involving Operation Cleopatra in Manchester. 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. Your solicitor 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 your solicitor will have to find out whether you have a case or not. To do this they must look for evidence. This may take some considerable time depending upon what type of case they 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 – Your solicitor must at some stage take a full statement from you. Usually the solicitor will 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 they have found all your records. You are the 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 the solicitor uses 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, you will be sent separately to other types of medical expert to suit the type of damage suffered. The medical report can take several months to obtain. When your solicitor receives it they must take your instructions upon it. This can be an emotional experience, which your solicitor will handle with the best of care. It is not always advisable to send you the report because it is so sensitive and confidential. Abney Garsden McDonald usually suggests that you read it at their offices in the company of a close friend or relative. Survivors Manchester can support you through this stage should you wish.
- Records – your solicitor must obtain many types of records upon you from different sources. They will ask you to sign several forms of authority to enable them 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. They 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 your solicitor will want to see a copy of your witness statement. Usually the police will not release it to them until after the police case is over. Even then some police forces prevent solicitors from sending a copy of it to you. They will ask you to sign a form of authority to enable your solicitor to obtain a copy on your behalf.
  - Witnesses - it is sometimes necessary 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 your solicitor 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 abuser arriving or leaving. There are infinite categories of evidence that 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 your solicitor be able to decide whether you have a case worth pursuing. To assist them make this decision they 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 that 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?**

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

They 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 your solicitor 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 your solicitor to make a “Part 36” offer of settlement. In other words they can tell the opponent what you want in order to settle your case. This puts the opponent under pressure and at risk of legal costs and interest. Your solicitor will give you more detailed advice about this during the case.

If it's agreed that court proceedings are necessary, your solicitor will 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 you agree to a No Win No Fee Agreement, then if you lose, you will not have to pay your solicitors 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. Your solicitor will be 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 they can arrange for you.

## **The Stages in Court Proceedings**

*Please note: all times below are approximations and can vary widely depending upon the evidence in the particular case.*



Stage in Case	From Start of case
<ul style="list-style-type: none"> <li>• <b>Filing of Papers</b> – 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</li> </ul>	<b>3 months</b>
<ul style="list-style-type: none"> <li>• <b>Disclosure of Documents</b> – 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</li> </ul>	<b>9 months</b>
<ul style="list-style-type: none"> <li>• <b>Further Evidence</b> – 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.</li> </ul>	<b>6 months</b>
<ul style="list-style-type: none"> <li>• <b>Trial or Court Hearing</b> - 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</li> </ul>	<b>2 to 3 Years or more</b>

### The Trial or Final Hearing

Once all the evidence has been collected the solicitor will 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 they see the opponent's documents and witness statements towards the end of the case. More often than not they arrange for a barrister to give them an independent opinion. They 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 your solicitor. They must make sure that all the evidence they 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. They 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, your solicitor 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 their 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 your solicitor will advise you about the effects of the decision upon you. They 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.

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.

### Remember

- Your solicitor is 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 contact Abney Garsden McDonald by:

Email: [peter@abneys.co.uk](mailto:peter@abneys.co.uk)

Tel: 0161 482 8822.

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