

## The abuse survivor's guide to making a claim for compensation



# Introduction



Speaking out for the first time about your abuse is hard enough, but when you feel compelled to do something about it, it can be difficult to know where to start. Considering taking legal action is daunting for many people. You will want to know what your options are and what they might involve.

The aim of this eBook is to give you all the key information you need to help you decide how best to take things forward.

Having good support from loved ones or professionals through this process can be invaluable.

Compensation claims are civil court matters and, in most cases, they follow a criminal trial of the perpetrator of your abuse.

A good lawyer that specialises in helping survivors of abuse get compensation will be able to advise you in making contact with the police and support you through any criminal proceedings against your abuser.

# Pursuing a civil claim

## Why pursue a civil claim

**Recovery:** The nature of abuse is that it often remains suppressed for many years. Victims of abuse are often silenced by threats from their abuser or by the guilt and shame associated with what happened. The civil process is a way of 'speaking out'. Many people who embrace the civil process see it as a form of catharsis and an important step in their recovery.

Pursuing a civil compensation claim is about making the transition from 'victim' to 'survivor'. It also can be about taking control of the effects of abuse and over the abuser, which may be empowering.

**Compensation:** Successful sexual abuse claims result in the award of 'damages' or compensation. While this can never put back the clock, it is an important validation that you have been wronged.

Many clients see the civil process as one in which they get formal recognition for what has happened to them. Payment of compensation can be seen as a form of an admission of guilt.

Compensation can be used for expensive counselling treatment not readily available on the NHS.

Compensation claims can also be preventive. Civil claims against organisations such as schools and churches can lead to greater vigilance and improved social work standards and practices.

Ultimately your claim could lead to better safeguarding and protection of children today and in the future.

**An Apology:** It is not unusual for survivors of abuse to want a formal apology from their abuser or the abuser's employer. Alongside seeking proper compensation for you, your lawyer will make every effort to secure an apology if you want one.

## Are there time limits for making a claim?

The basic rule in English law is that a legal claim must be brought by the time a person turns 21. An adult who is harmed must bring their claim within three years from the date of the abuse or injury. This legal principle is known as 'limitation'.

These time limits can be seen as difficult and unfair to those who have suffered abuse as a child, because childhood sexual can inhibit a person from talking about their abuse until they are well into adulthood.

Judges do have discretion to allow a claim to go forward if brought at a later time. The court will consider the injured person's reasons for not coming forward sooner, the length of the delay, and whether or not a fair trial is possible. The time limit obstacle is particularly difficult (although not impossible) in cases where the abuser is dead and where there have been no successful criminal proceedings against the abuser.

The issue of time limits is usually the biggest hurdle to overcome when bringing a civil compensation claim. The law is continuously changing and developing in this area, so it is essential that you seek the advice of a lawyer who is experienced and skilled in this area.

# The nature of abuse

Sexual violation of children and adults has been described as being 'endemic' within our society (Survivors' Trust). Research has consistently shown that one in four children will experience sexual abuse in some form before the age of 18. Childhood sexual abuse is not limited to any single community, class or culture.

Abuse can often remain buried for many years. It can surface when triggered by a life event like the death of a parent, a survivor's child reaching the age they were when they were abused, or a marriage breakdown.

The nature of sexual abuse is such that it happens in secret, usually with no witnesses. This presents difficulties in both criminal and civil proceedings, because there is rarely any eye witness evidence available. It is usually a question of one person's word against another.

If it is possible to find others who have also been abused by the same person then that will often assist your case.

## Types of abuse

**Childhood sexual abuse:** Many survivors may not feel ready to disclose their abuse until well into their adult life. The perpetrator may have been someone close to them, someone in their family, or someone with some authority over them such as a religious leader, a teacher, a Scout leader or a sports coach.

An abuser may also have groomed their victim to such an extent that to speak out against them, even some years later, is very difficult. Feelings of guilt, shame and fear can inhibit people from coming forward. Often their abuse will have left them with lifelong scars. They may find it hard to sustain meaningful relationships and to hold down jobs and may be left with mental health issues, because of their abuse.

**Abuse of vulnerable adults:** Elderly people and adults with learning, mental or physical health difficulties can also become prey to sexual assaults and abuse. Such abuse can happen in hospitals, day care centres, therapy, or their homes.

Due to the victims' specific vulnerabilities, such abuse can easily go undetected for a long time. Perpetrators can be carers, health care workers, therapists or doctors.



# Understanding compensation

## What is compensation?

If you win your case, you will be awarded compensation. This can include a lump sum ('general damages') to represent your pain and suffering and 'loss of amenity' (the extent to which the abuse has affected your capacity to do the things you used to do, or should have been able to do had you not been abused).

In addition, you can recover any out-of-pocket expenses directly related to your abuse ('special damages').

Some of these financial losses can be easily valued, such as travelling expenses to medical appointments and the cost of treatment.

Others are more complicated. For example, you may be able to claim for lost earnings if you can prove that your abuse has resulted in your not being able to work.

## Who can I claim compensation from?

You can bring a legal action against the person who abused you personally, their employer, or the organisation for which they were working at the time. The choice of 'defendant' in your case will be determined by a number of factors which your lawyer can fully advise you on.

**The person who abused you:** You can pursue a claim for compensation against the perpetrator of the abuse as an individual, whether it be a family member or friend.

It will be essential to first establish whether they have any assets (e.g. a property with substantial equity in it) before deciding whether to take action against them.

Often an individual will not have the assets to be able to sufficiently compensate you for the suffering they have caused you, so a claim against them in their individual capacity may be difficult. Depending on the evidence, if they have recently died it is possible that their estate can be pursued instead.

## The abuser's employer/responsible

**organisation:** It may be possible to bring a legal claim against the perpetrator's employers at the time of the abuse, even if the perpetrator is not working for them anymore. Even if your abuser was a volunteer, such as a Scout leader or sports referee or coach, the organisation they volunteered for can generally be held responsible.

The perpetrator's employers can only be held accountable for the employee's abuse if their actions were closely connected to the duties of their employment. The definition of 'employee' is wide and includes volunteers, so long as it can be said that the volunteer is carrying out the purpose of their employer's enterprise.

## Examples of organisations that can be pursued include:

- Religious organisations
- Charitable organisations
- Local authorities
- Care homes
- Schools
- Community groups
- Ministry of Defence

Most employers and organisations have insurance, which means if you are successful compensation will be paid by their insurance company.

A good lawyer that specialises in helping survivors of abuse will be able to advise you in making contact with the police and will support you throughout.



# What to look for in an abuse lawyer



*Trust is the basis for any good relationship. The lawyer/client relationship is no different. Choosing the right abuse lawyer for you is probably one of the most important decisions you will make during this process. You may want to consider the following:*

- Will they handle your claim with sensitivity? Will they listen to you and explain the process. The right lawyer will understand that you don't have legal training and will tailor their language and explanation accordingly.
- Are they patient? Will he or she afford you the time that you need?
- Does your lawyer have the skill and expertise in this complex area of law to give you the best chance of succeeding in your claim? Is this a significant area of focus for them? How many years of experience do they have?
- Do they have a proven track record in abuse claims? What do their previous clients say about them? Can they produce original written testimonials?
- Are they open and honest about costs that may be involved in bringing your claim?
- Do they exclusively represent claimants (survivors of abuse)? Or do they or any member of the firm represent defendants (perpetrators) too?
- Is your lawyer willing to travel to meet with you?
- Are they accredited and members of the Association of Personal Injury Lawyers (APIL), the Association of Child Abuse Lawyers (ACAL), and/or the Law Society Personal Injury Accreditation Panel?
- Are they committed to keeping up to date with recent developments in this area of law? Do they attend conferences and training events?
- Have they been involved in landmark cases?
- Do they have strong relationships with other experts associated with this area of law, such as barristers, psychiatrists and outside agencies?



## What should i do before i make contact?

You may feel hesitant or embarrassed to discuss your claim with a lawyer. But if you speak to a specialist firm, you can be assured that your case will be dealt with great sensitivity and the highest levels of care, attention and confidentiality.

If possible, give your lawyer as much background as possible. For example, the name of the perpetrator, whether he/she is still alive, when and where the abuse happened and, (if your abuser has been convicted) details of the offences for which they were convicted and their prison sentence. It is not uncommon for a lawyer to ask you to complete a questionnaire which will enable them to advise you further.

Reporting a case of abuse can be difficult, especially if your accusation is against a well-known individual or organisation. If it is possible to get family and professional support to help you around this time, do so.

If your abuser is still alive, it is likely that your lawyer will advise you to contact the police to make a statement. A good lawyer will guide you on how to report and support you in this process.

## What can/will a lawyer do for me?

- Your lawyer can advise you on the law and progress your legal claim for compensation, hopefully to a successful conclusion. They will 'fight your corner' and maximise your possible claim whilst also advising you on balancing any risks in your case
- They can support you during the criminal proceedings of your abuser and may attend those proceedings to obtain evidence for your civil claim.

## What can't/won't my lawyer do?

- Your civil lawyer will not have any influence in the criminal proceedings, and will not be representing you in criminal proceedings – that is the job of the Crown Prosecution lawyer.
- Your lawyer is not qualified to counsel you or provide you with psychological help but will signpost you to appropriate counselling / support organisations if required.





# What legal options are available?

*There are two ways of proceeding to obtain compensation - a civil compensation claim or a criminal injuries compensation claim. Your lawyer will advise you on which option/s are viable, depending on the circumstances of your case.*

## 1. Civil compensation claim

**The process:** No two claims are the same, so the following is simply an overview of the process. Please be assured that a good abuse lawyer understands how overwhelmed you may feel at the thought of embarking on this process and that you will be fully supported and informed throughout.

**First contact:** During your first contact with a lawyer, which is usually by telephone, they will take essential details from you to enable them to form a view on whether they think they can help.

If they believe they can help they will usually arrange to meet with you. This meeting can be at their offices or at a mutually convenient place nearer your home. At this meeting they would hope to take a little more detail from you and discuss appropriate funding for your case.

If a criminal investigation is ongoing, your lawyer will wait until the outcome is known so as not to prejudice the criminal proceedings. If you have not reported your abuse to the police they likely will advise you to do so and should be able to support you with this.

**Gathering evidence:** Your lawyer will begin gathering all the evidence they believe is needed to further assess and progress your claim. If there have been criminal proceedings, they will ask the police for copies of your statements and any other documents that may be available. If relevant to your particular claim, social services records may be obtained.

This document gathering process can take many months as it is dependent on the provider of the records, who often have request backlogs. Once the records have been gathered, they will be scrutinised for any and all useful evidence. Your medical records will also be obtained at this stage. These will include your GP records, hospital notes and any other organisations you have visited (such as counsellors or other like advisors).

**Letter of claim:** Once your lawyers have obtained all the appropriate evidence they will draft a 'letter of claim' and send it to the person or organisation being pursued. This entity now becomes known as '**the defendant**'.

**Defendant's response:** The defendant is then allowed a 3 – 4 month period to investigate your claim and return with their response as to whether they accept or deny blame. Unfortunately, many defendants will argue that they are not to blame, which can delay progress.

If the defendant denies blame, your lawyers will examine their reasoning, any points of law and cases on which they may rely, and any documents they send to support their position.

**Expert reports:** If, after reviewing the defendant's position, your lawyers continue to believe there are reasonable prospects of a successful outcome, they will likely need to get a medical report from a consultant psychiatrist, which will become key medical evidence in your case.

They will arrange for you to meet with a psychiatrist, who will prepare a report. This meeting usually takes place at the psychiatrist's clinic, but can be arranged at an outside venue, your lawyers' offices, or at your home.

In some cases, where it is apparent that your education has been affected, it may be necessary to instruct an educational psychologist, to support a 'lost earnings' component of your claim.

In claims which are based on a local authority's alleged failure to intervene, a social care expert's report will be required.

These experts' reports are important as they allow your lawyers, a barrister, and the court to assess how much compensation you should receive.

**Meeting with a barrister:** Once the experts' reports are received, they will be sent to you for consideration and comment. A meeting may then be arranged for you to meet with a barrister who specialises in child abuse claims. The barrister will assess all the evidence obtained and the defendant's response to your claim. They will advise you on matters such as the strength of your claim, and how much compensation you are likely to receive if your claim is successful. You will also be advised on appropriate next steps.

The medical report and a Schedule of the compensation you are seeking will be sent to the defendant. If the defendant is open to negotiations, then a 'settlement' sum can be agreed.

**Issue of Proceedings:** If the defendant continues to maintain they are not blame or you are not able to reach agreement on the level of compensation you should be awarded, it may be necessary for your lawyer to register your claim at court. This is known as '**the issue of proceedings**'.

Following an issue of proceedings, all the papers in your case must be formally served on the defendant or their legal representatives. The defendant will then have a timescale in which they must serve a document which outlines their defence, known as the '**defence**'.

**Trial:** A procedural hearing will then be listed by the court, during which a judge will timetable steps to be taken towards the end date of your claim, which is a trial.

Please note that, just because your claim has been registered at court, this does not mean your case will inevitably go all the way to trial. Very few civil claims go all the way to trial, probably less than 2%. A claim can be concluded at any time up to the trial by way of an out of court settlement.

In the unlikely event that your claim is not settled before trial, your lawyers will instruct your barrister to represent you at the trial. A single judge (without a jury) would decide on your claim.



A good abuse lawyer understands how overwhelmed you may feel at the thought of embarking on the compensation process.



## How will I pay for my civil compensation claim?

The prospect of incurring legal fees is often an inhibiting factor when thinking about contacting a lawyer to help you. There are essentially four ways of funding your case:

**Conditional Fee Agreement ("no win, no fee"):** Most cases are funded by way of a Conditional Fee Agreement. This is usually the preferred way of funding a case because it means you do not have to pay anything if you lose your case (so long as you comply with your obligations under agreement). Upfront 'out of pocket expenses' (such as experts' and records' fees) will need to be covered through the life of your case, but you may be able to reach an agreement with your lawyer about this.

If you win your claim you will be awarded compensation ("damages") from the defendant, who will also be ordered to pay some of your legal costs. To reflect the risk your lawyers take on for acting for you on a 'no win, no fee basis', they will charge you a 'success fee'. This is a percentage deduction from your compensation. While the amount can vary depending on the complexity of your claim, it can never be more than 25% of the compensation that you receive for 'general damages' (ie pain, suffering, loss of amenity) and your past losses.

**Insurance Premium:** Your lawyer will usually advise you to take out an insurance premium at the outset of your case to protect you in case a costs order is made against you to pay your opponent's costs. The insurance policy will also usually indemnify your 'out of pocket' expenses which have been incurred to progress your claim.

Insurance premiums are only payable at the end of your claim, and can be deducted from your compensation. If you lose your claim you would not have to pay the premium as it is 'self-funding'.

If an insurance policy is not in place your lawyer would probably ask you to fund the disbursements as your case progresses. Many clients find that the insurance premium offers them peace of mind.

**Existing Legal Expenses Insurance:** It is possible you may find you have 'legal expenses' insurance in an existing personal insurance policy, such as your buildings and contents policy. The relevant policy would be the one in place during the period you were abused. In non-recent abuse cases, existing legal expenses insurance is unlikely to be available as most older policies did not offer indemnity for sexual assault claims.

If you do find that you have existing legal expenses insurance, you will be directed to a firm of lawyers on your insurer's 'panel'. Though you would not be obliged to use a firm which did not have the requisite specialist expertise in child abuse claims.

Your lawyers can help you investigate whether any existing policy will assist you in your legal claim.

**Paying privately:** You also have the option of paying privately for your legal representation, which would mean that your lawyer would send you monthly or quarterly invoices. This can prove an expensive way of funding your claim. And, if you needed to register your claim at court, you would need to look into insurance to protect you from any potential order to pay your opponent's costs.

**Legal aid:** Cuts to legal aid in England and Wales have made this form of funding an increasingly difficult option. Accessing legal aid is only possible if your financial circumstances are very difficult. You will also need to approach a firm of lawyers which holds a contract to conduct civil claims.

## 2. Criminal injuries compensation claim

**What will happen - the process:** The Criminal Injuries Compensation Authority (CICA) is a body set up by the government to compensate victims of any crime of violence, including those who have suffered physical and sexual assaults. It makes financial awards to those who have suffered physical and psychological injury caused by a criminal offence committed against them. In some instances, CICA will also take into account past and future lost earnings or financial losses suffered and compensate the victim accordingly.

There are some special considerations about CICA claims:

**Time limits:** Applications to the Criminal Injuries Compensation Authority have different rules regarding time limits, depending on which category of applicant you fall into. It is preferable to seek expert advice on this.

The general rule is that if the abuse you suffered was reported to the police before you turned 18 you have until your 20th birthday to make your application to CICA. If the abuse took place before you turned 18 and you reported to the police after you turned 18, you have two years from your first report to the police to make your application to CICA.

If you are outside of the time limits it is possible to ask the CICA to allow your application. However, this can be difficult and should be supported by evidence. You will need to show that there were exceptional circumstances that prevented you from making your application sooner.

**Reporting and cooperation with the police:** You will need to demonstrate that you have reported your abuse to the police and cooperated with all police investigations.

It is not essential that your abuser is convicted, so long as their conduct can be shown, on a balance of probabilities, to have occurred.

**Your own criminal history:** If you have criminal convictions it is likely that any award made to you will be reduced.

**Your award:** The sum you are awarded is based on a tariff systems and depends on the number of abusers / attackers, the length of time the abuse went on for, and its effect on your physical and mental health.

**Paying back CICA if you win your civil compensation claim:** If you are awarded compensation from CICA and subsequently succeed in a civil claim, you will have to reimburse CICA for any monies received.

### How will I pay for my Criminal Injuries Compensation Authority claim?

Many specialist abuse lawyers are able to represent you in a CICA application under a Contingency Fee Agreement. This is a 'no win, no fee' agreement, such that if you are successful, their fees are an agreed percentage of your compensation. If you are not successful you are not charged at all.

# Conclusion

Deciding to pursue a civil claim against your abuser is a big step, which can be filled with complexities and unknowns. Hopefully, this guide has given you insight into what is involved and what to expect if you go ahead. Having support from loved ones through the process is invaluable. As is having the right experts in your corner.

Our experience is that the civil legal process can facilitate recovery, restitution, and some closure. While no amount of money will make things right, compensation can serve as important validation for injustices committed against you. We are proud to represent clients who have taken the brave step to embrace their past by initiating the legal process and to support them as they do so. We will be pleased to advise you wherever you are in the world.

If having read this guide you would like to have a conversation with us, please feel free to contact us in whichever way you feel comfortable. You can book a telephone chat with one of our team through our website to give them an outline of what happened to you, or email Tracey Emmott directly at **[te@emmottsnell.co.uk](mailto:te@emmottsnell.co.uk)**. We assure you of our approachability, sensitive approach, and complete confidentiality.

We will offer you a bespoke and holistic service, the highest level of client care, referral to appropriate support agencies, and the best possible legal outcome.

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