

Finding and Appraising Sources of Legal Help

A Guide for Parents

CEREBRA

Working wonders for children with brain conditions

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Families where a child has a brain condition face challenges every day. Just to learn, play, make friends and experience the world can feel difficult, even impossible. But we don't believe there's any challenge that can't be overcome.

So we listen to families, we learn from them. We carry out research, we design and innovate, we make and share. From new equipment to new learning resources, to new ways to play and support each other, everything we find out together makes life better. It opens doors to discovering the world.

It's an incredibly rewarding journey for everyone involved. Why not be a part of it? You never know what we'll discover together.

www.cerebra.org.uk

Our guides for parents help you find the answers you need. You can view and download the full series of our guides and factsheets completely free from our website www.cerebra.org.uk.

If you would like to make a donation to help cover the cost of producing our guides please just text CERE12 and the amount you want to give to 70070 or give us a call on 01267 244216. You can also donate online.

Thank you.

Introduction

As a parent or carer of a child with a brain condition you might well need to seek legal advice at some stage in your lives for a whole host of reasons. Your child may have been injured, may not be getting the educational support to which they are entitled, or they may even need representation at a police station. There will also likely be a need to consider making a will and other financial arrangements for your child.

Identifying and approaching a solicitor for legal help can be one of the more daunting prospects for families and carers of children with a disability. The choice of your solicitor is critically important. Choosing the wrong solicitor could have significant consequences.

This guide is intended to make that approach as straightforward as possible. Remember – the law and the lawyers are there to help you. Solicitors are trained to bring help to those people who need it.

All solicitors have the same general qualification, but most specialise in one area of the law. When starting your search, it will quickly become obvious that there are countless solicitors offering representation in the field you need. However, not all of them will specialise in the field to the degree that you will require.

Quite understandably, you will want to make sure that you choose a true expert in the field, and someone who you can work with. You need to be able to communicate with your solicitor. Solicitors are all individuals and they each have their own way of working. The key is to identify someone who you are comfortable with, but who also has a high level of specialist expertise. In reality, this will narrow your search considerably.

We have included a number of hyperlinks, in blue, to enable you to have easy access to the information and resources referred to on other websites. If you are reading this in hardcopy you can download the electronic version from our website (www.cerebra.org.uk) to take advantage of these hyperlinks. You will also find a list of the websites of all the organisations we refer to at the back of this guide.

What Are the Most Common Circumstances in Which You Might Need Legal Advice?

Education, Healthcare & Disability Rights

With public funds more scarce than ever, it is likely that an increasing number of parents and families will feel that their child is not receiving the support, care or treatment to which they are legally entitled. There are specialist solicitors in this field who will advise you on your rights, entitlements and options. We have produced a series of guides that aim to give parents of children with disabilities information on how to get the help and support they need. The guides cover a number of areas including education, health and social care. Details of how to access these guides can be found at the end of this guide.

Employment

There are extensive protections available for disabled adults and children. Some families also employ someone to help look after their child, which creates an employer/employee relationship. Employment law in the UK is complex. Solicitors practising in the field will be able to help you through it.

Family/Matrimonial

The breakdown of any relationship is a difficult time, and obtaining legal advice can often be essential. Specialist family solicitors are available to advise you.

Personal Injury and Clinical Negligence

Many children will have acquired their brain condition through a traumatic accident or birth injury. Specialist solicitors will be able to offer advice on what the law can do to help you and your child.

Criminal Law

Specialist advice may be needed at a police station or elsewhere, in particular where neurological issues are present.

Wills and Probate

Parents will understandably be concerned that their child is properly provided for in the future. There is specialist advice available to help you understand what your options are, and to put your wishes into effect. When looking for a solicitor to draw up a will or set up a trust fund it is important to check that they are STEP (Society of Trust and Estate Practitioners) qualified. Also see Mencap on page 6.

Some Initial Points to Consider

It is recommended that you choose a solicitor with the right expertise rather than simply someone closer to home. If you were choosing the right medical specialist for treatment, you probably wouldn't hesitate to look further afield. Choosing a non-specialist solicitor can have significant consequences.

In litigation, some legal cases can take many years to conclude. You therefore need to be very comfortable when communicating with your solicitor on a personal level, because you may be working with them for several years. Do not hesitate to 'shop around' before making a choice.

You can and should expect high standards of service from a specialist solicitor. Calls should be returned promptly, advice should be clear and in substantial cases they should be coming to see you, not the other way around. If they are not happy to commit to this, then that should tell you something. That said, be very wary of solicitors who are 'pushy' for you to instruct them. Be guided by who you are most comfortable with.

Using the Internet to Help Your Search

The Internet is a valuable source of information about the legal profession and is an excellent place to start your search for the right solicitor. However, there is a vast range and quality of information available. Much of it is not impartial. As well as our own information, this guide will give examples of several sites which are well-known to provide reliable, impartial guidance.

Association for Victims of Medical Accidents

An independent national charity which promotes better patient safety and justice for people who have been affected by a medical accident. They operate an accredited solicitors list which is searchable in a similar way to the Law Society.

www.avma.org.uk

Association of Personal Injury Lawyers

A leading organisation in this field, working to promote and develop expertise in the practise of personal injury law, for the benefit of injured people. The Association operates a lawyers' accreditation scheme, details of which can be found on their website at www.apil.org.uk

Chambers UK

An international firm offering 'ratings' for solicitors practising in all the major disciplines of the law. Ratings are based on interviewing previous clients, competitors and other professionals who have worked with them. The database is searchable by specialism and by geographical region.

chambers.com

Child Brain Injury Trust (CBIT)

CBIT offers information, support and training to anyone affected by childhood acquired brain injury. The Trust's website is at childbraininjurytrust.org.uk

Citizens Advice Bureau (CAB)

CAB is a charity offering free, confidential advice and guidance on a broad range of legal, money and other problems.

www.citizensadvice.org.uk

Disability Law Service

Disability Law Service (DLS) is a charity that has existed since 1975 and which provides free legal advice to disabled people and their carers. DLS provides advice over the telephone and in writing and will, in certain instances, provide free legal support in court cases. Specialist advice is available in community care, welfare benefits, employment law and discrimination in the workplace. The DLS website also includes a wealth of written information in all the aforementioned areas as well as in goods and services discrimination: www.dls.org.uk

Headway

A national charity working to improve life after brain injury. In addition to support, guidance and training, the charity operates an extensive and searchable accredited solicitors list.
Their website is www.headway.org.uk

Law Centres

Law Centres offer legal advice, casework and representation to individuals and groups. They are independent and operate on a not-for-profit basis. They usually have teams of qualified advisors who provide support and advice, as well as solicitors who will take on Legal Aid cases or even work for free. You can look for your nearest Law Centre on the Law Centre Network's website: www.lawcentres.org.uk

LawWorks

LawWorks is a charity working in England and Wales to connect volunteer lawyers with people in need of legal advice who are not eligible for legal aid and cannot afford to pay. If you are being helped by a not-for-profit organisation they can also support them: ww.lawworks.org.uk

Mencap

Mencap describes itself as "the leading voice of learning disability" providing support to people with a learning disability, and their families and carers. It has produced a comprehensive series of guides on wills and trusts as well as a list of specialist solicitors.

National Autistic Society (NAS)

The NAS, a leading national charity supporting people with autism and their families, maintains a list of solicitors in the Advocacy (legal) section of its comprehensive Autism Services Directory.

The Law Society

The professional body for solicitors in England and Wales, the Law Society operates an accreditation scheme for specialist areas of law. Solicitors who apply to join one of the specialist panels are subject to careful vetting. Specialist solicitors can be found using the Society's Pro search resource. This will generate a list of solicitors' firms operating within 25 miles of your chosen location, complete with the number of solicitors practising there with an accreditation in your selected speciality.

Some More Points to Consider

We would like to emphasise that an internet search should not be the end of the process. Once you've identified a number of possible solicitors, call them up directly, ask them some direct questions and if you feel comfortable, arrange a 'no obligation' meeting with them where you can discuss your case and get a quote for costs without committing yourself to using their services.

You can find more advice on how to choose and work with a solicitor on the Law Society's website where you will find advice on the types of questions you should ask and how to engage with a solicitor.

Getting legal advice and help from a solicitor can be expensive. Most solicitors charge an hourly rate for their services. At your initial meeting, your solicitor should give you an estimate of how much it will cost for them to help with your case, and let you make a decision about whether you can afford it. You should remember that if a case needs to go to court, the costs will be a lot higher than if it is settled out of court.

Some solicitors may be willing to take on your case on a 'no win no fee' arrangement. Simply put, if you lose the case then there are no bills to pay. The solicitor will arrange for you to take out an insurance policy to cover all the costs that need to be paid (including the cost of buying the insurance). Most solicitors will pay for the insurance policy up front for you – beware firms that require you to pay it from your own funds. If you win your case, most of the solicitor's fees will be paid by the other side in addition to the compensation. However there will always be some costs that cannot be recovered from the other side, including the cost of the insurance policy, and a 'success fee' (which is a percentage of the value of the work that the solicitor has done).

In a case involving a child, any deductions from compensation have to be approved by a judge, so there is an additional layer of protection. Your solicitor should be advising you carefully and clearly about how legal fees operate. If the explanation is not to your satisfaction, then it is recommended that you seek an alternative.

Please remember, if at all possible you should speak to and/or meet with at least 2 or 3 different solicitors' firms before making your choice.

Can I get free legal aid?

As previously discussed, getting legal support can be very expensive but you might be entitled to free legal aid to help meet the costs of legal advice, family mediation and representation in court. Whether or not you are eligible for legal aid depends on your personal circumstances and you can check your eligibility on the government's website.

If you are eligible for legal aid you may be able to get free and confidential advice from Civil Legal Advice (CLA). Problems they can help with include special educational needs and discrimination.

Do some solicitors work for free?

Yes, if you can't get legal aid it is sometimes possible to find a solicitor who will work for free (this is often called 'pro bono' work). Please see the Law Centres and LawWorks entries on page 6 for more information.

Can I get help from anywhere else?

Many organisations offer advice and support which may help you avoid or, at least reduce, your legal fees.

Some, such as Contact can offer help in a number of areas while others work in specialist areas, for instance IPSEA, which offers expert advice and support in special educational needs.

You may find that disability-specific organisations may offer help more tailored to your family's circumstances. The Down's Syndrome Association, the National Autistic Society and SHINE UK all offer support in areas such as accessing health, education and social services as well as benefits.

If you don't know of a support organisation for your child's particular disability you could try Contact's A-Z of conditions which gives information about a wide range of medical conditions including the contact details of any known support groups.

Finally, you may find it useful to read our Accessing Public Services Toolkit.

We are grateful for the financial support given by the following solicitors, who specialise in accident or clinical negligence cases relating to brain conditions or Court of Protection Deputyships and Personal Injury Trusts. To see our Corporate Legal Supporters please click here: https://cerebra.org.uk/get-advice-support/legal-and-financial/finding-legal-advice/corporate-supporters/



Bolt Burdon Kemp

https://www.boltburdonkemp.co.uk/



Fieldfisher

https://www.fieldfisher.com/en

While Cerebra cannot make recommendations, and is not responsible for the work of these firms, the firms listed are supporters of Cerebra insofar as they have shown an understanding of our ethos and have been financially generous to the charity in donating to us to support our work.

Further information and guidance

For information on other topics, please refer to the Parent Guides available on our website.

Websites of organisations referred to in the guide

Association of Personal Injury Lawyers: www.apil.org.uk

Association for Victims of Medical Accidents: www.avma.org.uk

Chambers UK: https://chambers.com/

Child Brain Injury Trust: childbraininjurytrust.org.uk

Citizens Advice Bureau: www.citizensadvice.org.uk

Disability Law Service: http://dls.org.uk/

Down's Syndrome Association: www.downs-syndrome.org.uk

Contact: https://contact.org.uk/

Headway: www.headway.org.uk

IPSEA: www.ipsea.org.uk

Law Centres Network: www.lawcentres.org.uk

Law Society: www.lawsociety.org.uk

LawWorks: www.lawworks.org.uk

Mencap: www.mencap.org.uk

National Autistic Society: www.autism.org.uk

SHINE UK: www.shinecharity.org.uk

Society of Trust and Estate Practitioners: www.step.org

UK Government: www.gov.uk

Author

James Davies is a Partner at Irwin Mitchell solicitors and Head of the Serious Injuries Team at the Bristol office.

James specialises in representing children and adults who have suffered brain and / or spinal cord injuries, amputations or multiple trauma. James has extensive experience in representing those who lack the ability to manage their own affairs, obtaining substantial interim payments to fund treatment, rehabilitation and other professional support for my clients, as well as securing adapted accommodation and specialist equipment where this is needed.

James has been identified as a 'Leader in the Field' for many years. Chambers UK describes him as "extremely efficient", "wiser than his years" and "a real star...he's a very bright and absolutely delightful chap who gets on brilliantly with the clients."

Reviewer

Derek Tilley is currently working as part of the Cerebra Research Team and is the father of a young lady who happens to have Down's syndrome. As a result of his dealings with public services he has had a long interest in supporting parents with disabled children access their legal entitlements through working for third sector organisations. This is the area he is exploring in his PHD under the supervison of Professor Luke Clements of Leeds University.

The findings of this report are those of the author, not necessarily those of Cerebra.

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