

# Brain injury care guide





## Thomson Snell & Passmore

When a person suffers a brain injury it is always a traumatic and uncertain time. Not only must they and their loved ones face the challenges of physical, emotional and behavioural symptoms, but there are invariably financial difficulties creating additional strain.

Thomson Snell & Passmore has been supporting clients living with a brain injury for over 20 years. Based on client feedback, knowledge and experience we have produced this practical guide on what to do and where to seek help and guidance.

### **How to get the best care and help in the community** ..... 5

A breakdown of residential and non-residential care options available and how to get in touch with relevant services.

### **Rehabilitation services** ..... 7

A comprehensive list of specialist rehabilitation services and how they can assist recovery.

### **Funding care and state benefits** ..... 10

Practical information on the types of funding and benefits available to someone with a brain injury and/or carers.

### **How to manage a personal injury claim** ..... 12

All the lawyers in our personal injury team are accredited by the Association of Personal Injury Lawyers and we have a long history of successful compensation claims on behalf of clients whose accidents have resulted in brain injury.

We promise to provide clear, supportive and practical advice, working around the needs of the individual client (which can include meeting at home, in a residential facility or in hospital).

We will not charge our clients until they have received their compensation and can work on a "no win no fee" basis.



Graham Bell  
Partner  
01892 701358

# Thomson Snell & Passmore

## How to manage a compensation award ..... 14

Information on Personal Injury Trusts and how they can be used to protect a significant award of compensation.

Thomson Snell & Passmore has a dedicated trust management team able to advise on the benefits of putting compensation into a Personal Injury Trust.



Rachel Braithwaite  
Solicitor  
01892 701325



Sue Currie  
Legal Executive Senior Associate  
01892 701295

## Deputyship and the Court of Protection ..... 16

Information on the benefits of appointing a deputy when a brain injured person lacks capacity to manage their finances and affairs.

Our Court of Protection team is known nationally for their specialist knowledge, experience and care for clients with varying degrees of brain injury and is available to offer practical advice and a personal service, tailored to their needs.



Brian Bacon  
Partner  
01892 701275



Catherine Fuller  
Partner  
01892 701134



Rosie Hamlyn  
Partner  
01892 701156

## An inspiring story of a young woman living with brain injury ..... 17

Finally, we share the story of a young girl who suffered a brain injury after being hit by a car on her way home from school. Despite her life changing injuries, she went on to train as a nurse and is now pursuing a career as a support worker at a respite unit for children with severe learning difficulties.

# Brain injury care guide

## How to get the best care and help in the community

Thomson Snell & Passmore understands that ensuring a brain injured person receives the best care possible is the first concern for loved ones. Following an accident, many patients are hospitalised but are left worrying about what happens once they are discharged.

Some brain injured clients are able to return home with varying degrees of support, whilst others require 24 hour care in a residential/rehabilitation home. We explain the two types of care here:

### Residential/rehabilitation care

If someone has sustained a very serious brain injury, medical professionals may advise that they are unable to return home and require specialist care in a residential/rehabilitation unit. In our experience it is important for families to have input in making these decisions in conjunction with the medical professionals. This helps to ensure the brain injured person is settled into a facility which best suits their current and ongoing needs.

After years of working with brain injured clients we have encountered a number of leading residential/rehabilitation providers and have suggested some below. We recommend that time is spent researching and visiting the units to ensure that their approach to care is best suited for the brain injured person.

**The Royal Buckinghamshire Hospital** – offers inpatient services for patients who have suffered an acquired brain injury, as well as stroke, spinal cord injury, Parkinson's disease, multiple sclerosis and other neurological conditions. They provide a comprehensive, specialised, interdisciplinary rehabilitation service that equips patients with the skills, knowledge and information required to enable them to return to their role in society with the highest feasible level of function.

The Royal Buckinghamshire Hospital, Buckingham Road, Aylesbury, Bucks, HP19 9AB.

T 01296 678800

W [www.royalbucks.co.uk](http://www.royalbucks.co.uk)

**Brain Injury Rehabilitation Trust (BIRT)** – offers inpatient residential services up and down the country. We are involved with our local BIRT centre at Kerwin Court in West Sussex. Kerwin Court specialises in the assessment and rehabilitation of people with an acquired brain injury and complex needs including physical, cognitive, behavioural and/or emotional difficulties, including physical or verbal aggression, impaired social functioning and disinhibited behaviour. Specialist rehabilitation is based on a neurobehavioural approach and focused on enabling service users to function more independently, develop their lives as they choose and participate in as many of their previous roles and activities as possible.

Brain Injury Rehabilitation Trust, Kerwin Court, Five Oaks Road, West Sussex, RH13 0TP.

T 01403 799160

E [kc@birt.co.uk](mailto:kc@birt.co.uk)

W [www.thedtgroup.org/brain-injury/our-services/kerwin-court/](http://www.thedtgroup.org/brain-injury/our-services/kerwin-court/)

**The Raphael Medical Centre** – is a unique, independent hospital, specialising in neuro-rehabilitation for adults. The Centre believes in an integrated, holistic, mind/body/spirit approach to support people with complex neurological disabilities with cognitive and behavioural impairment. We are involved with their main centre which is based in Hildenborough, Kent. The hospital provides inpatient residential services for those who

# Brain injury care guide

require complex and intensive care, acute neuro-rehabilitation, neuro-psychiatry and continuing care.

Raphael Medical Centre, Hollenden Park,  
Coldharbour Lane, Hildenborough, Tonbridge,  
Kent, TN11 9LE.

T 01732 833924  
E [info@raphaelmedicalcentre.co.uk](mailto:info@raphaelmedicalcentre.co.uk)  
W [www.raphaelmedicalcentre.co.uk](http://www.raphaelmedicalcentre.co.uk)

**Titleworth Neuro** – offers specialist complex nursing and rehabilitation services for people suffering from acquired brain injury, locked-in syndrome, stroke and multiple sclerosis. They pride themselves on focusing on every aspect of rebuilding lives, where residents learn to adapt to and make the most of their new capabilities. They aim to provide care in a family and community atmosphere where residents, family, carers and staff are all part of the team on the road to rehabilitation. Their units are based in St Leonards-on-Sea, East Sussex and Thames Ditton, Surrey.

Titleworth House, Alexandra Place, Guildford,  
Surrey, GU1 3QH.

T 01483 790070  
E [info@titleworthneuro.com](mailto:info@titleworthneuro.com)  
W [www.titleworthneuro.com](http://www.titleworthneuro.com)

**QEF Neuro Rehabilitation Services** – is a leader in acquired brain injury rehabilitation offering residential and community based programmes. They have particular expertise in supporting younger adults and specialise in combining therapy with vocational programmes.

Neuro Rehabilitation Services, Brain Injury Centre,  
Banstead Place, Park Road, Banstead,  
Surrey, SM7 3EE.

T 01737 356222

E [neurorehab@qef.org.uk](mailto:neurorehab@qef.org.uk)  
W [www.qef.org.uk](http://www.qef.org.uk)

**The Children's Trust** – offers both residential and community based rehabilitation services for children and young people with acquired brain injury.

The Children's Trust, Tadworth Court, Tadworth,  
Surrey, KT20 5RU.

T 01737 365 000  
E [enquiries@thechildrenstrust.org.uk](mailto:enquiries@thechildrenstrust.org.uk)  
W [www.thechildrenstrust.org.uk](http://www.thechildrenstrust.org.uk)

## Care at home

Following a brain injury some people are well enough to return home but may require nursing or support. There are numerous services providing care. A GP should be the first port of call. If there are physical injuries, they can arrange district nurse visits who can help with medications, bathing, changing dressings, etc. They can also arrange for specialist equipment to be provided to help in the home, including commodes and bed pans.

We also suggest contacting local social services as they may be able to arrange for additional assistance including:

- Help with shopping or housework
- Respite care
- Meals on wheels
- Sitting-in schemes to give loved ones a break from the caring regime.

However, in situations where the nursing/care needs are more complex and likely to be ongoing, it could be worth considering the help of a specialist healthcare provider.

## Support in the community

Adapting to life in the community after a brain injury can be daunting for both the injured person and their family. Below we have listed the details of

# Brain injury care guide

two charities who offer support and advice.

**Headway** – is a UK-wide charity that works to improve life after brain injury. Through a range of frontline services run from its Nottingham base and via a network of more than 100 groups and branches across the UK, it provides free support, services and information to brain injury survivors, their families and carers.

To find your local branch please use the following contact details.

T 0808 800 2244  
E [helpline@headway.org.uk](mailto:helpline@headway.org.uk)  
W [www.headway.org.uk/home.aspx](http://www.headway.org.uk/home.aspx)

**The Child Brain Injury Trust** – is a charity that supports children, young people and their families to help them come to terms with what has happened and how to deal with the uncertainty that the future may hold. They are a leading voluntary sector organisation providing non-medical services to families affected by childhood acquired brain injury across the UK.

T 0303 303 2248  
E [info@cbituk.org](mailto:info@cbituk.org)  
W [www.childbraininjurytrust.org.uk/](http://www.childbraininjurytrust.org.uk/)

---

## Rehabilitation services

Choosing an appropriate rehabilitation care package can have a big impact on recovery. We help clients find the right rehabilitation package and work alongside many service providers.

---

Here is a comprehensive guide to the types of rehabilitation available.

### Case management

If someone has suffered a severe brain injury and needs ongoing care and treatment, appointing a case manager can be vital.

A case manager will assess and plan care needs, creating an individual programme which co-ordinates health, rehabilitation, social services and voluntary agencies. This can be in the home or in a residential setting. The case manager will liaise with external agencies to help obtain the funding necessary to meet these needs.

They will continue to facilitate and coordinate care with ongoing evaluations of the brain injured

person's changing needs. The aim is to encourage independence. By having a case manager, families are able to focus on spending quality time with each other without the worry of arranging care or funding.

Recommended case management companies include:

**Bush & Co Rehabilitation** – for over 25 years Bush & Co have been specialist providers of rehabilitation and case management for adults, children and young people who have sustained moderate, severe and catastrophic injuries. Bush & Co has over 135 consultants across the UK who are specialists in their fields. All of their consultants have more than ten years' front line experience.

# Brain injury care guide

# Information

Bush & Co Rehabilitation  
March House, Long March, Daventry,  
Northamptonshire, NN11 4NR.

T 01327 876210  
E [info@bushco.co.uk](mailto:info@bushco.co.uk)  
W [www.bushco.co.uk](http://www.bushco.co.uk)

**Head First (Assessment, Rehabilitation and Case Management) LLP** – Head First was established in 1994 and provides specialist assessment and case management services to over 90 brain injured individuals and their families, including coordination of home-based rehabilitation and training of support staff.

Head First, Grove Mills, Cranbrook Road,  
Hawkhurst, Kent, TN18 4AS.

T 01580 752275  
E [info@head-first.org](mailto:info@head-first.org)  
W [www.head-first.org/](http://www.head-first.org/)

**British Association of Brain Injury Case Managers (BABICM)** – BABICM represents the professional interests and concerns of case managers who work with those who have suffered a brain injury or other complex conditions which requires coordinated rehabilitation, care and support. They are able to assist in finding a case manager to suit your individual needs.

BABICM, 318 Warth Business Centre, Warth  
Industrial Park, Warth Road, Bury, BL9 9TB

T 0161 762 6440  
E [secretary@babicm.org](mailto:secretary@babicm.org)  
W [www.babicm.org](http://www.babicm.org)

## Physiotherapy

Physiotherapy works towards regaining mobility and function through movement. Physiotherapists will assess the level of mobility currently held by the brain injured person; this can be done with the assistance of scans and or electrodiagnostic testing (such as nerve conduction studies) or based on physical examination and testing.

Treatment can include specific physical exercises, manual therapy, manipulation posture awareness, strengthening, stretching, sitting balance, standing balance, walking practice, and other interventions aimed at improving weaknesses. Common impairments following a brain injury include impairments of vision, balance, movement, muscle strength and loss of functional independence.

It may be that specialist neurophysiotherapy is required which is aimed specifically at treating deficits arising from pathology in the nervous system. Neurophysiotherapy treatment can include use of functional electrical stimulation (FES) machines, massage therapy, neuro pilates and/or personal training.

## Occupational therapy

Occupational therapists help to identify strengths and weaknesses in performing everyday activities. The therapist works one-on-one with the brain injured person to discuss and focus on areas in which improvement or assistance is needed in order to try and regain or improve independence.

Once a weakness has been identified the occupational therapist can help the brain injured person to practice an activity in stages, or show different ways of undertaking an activity which may be easier. They can also provide equipment to make activities simpler. Occupational therapists can help families, friends, teachers and employers to support greater participation in day-to-day activities, at home and in the community.

People living with a brain injury can be confused and have memory problems resulting in frustration and difficulty in controlling emotions. An occupational therapist can help in adapting the environment and use equipment, such as a memory notebook, to make things less of a problem.

## Psychological therapy

A common problem faced by brain injured people is a change in their behaviour and personality. This can mean that the individual becomes aggressive or disinhibited and have difficulties relating to others. These changes can be incredibly confusing and



# Brain injury care guide

upsetting for the brain injured person and those around them.

Whilst a total reversal in behaviour is usually not possible, modification of behaviour can often be helped through psychological therapy. A psychologist will develop a trusting relationship with each individual through honest, caring, and consistent interactions. They can help individuals to recognise what may be contributing to their behavioural issues by highlighting trigger points. Once the trigger points have been pinpointed the psychologist will work with individuals and families to help with early interventions when it is clear that behaviour is escalating.

Psychological therapy can include insight orientated therapy, cognitive behavioural therapy and/or behavioural therapy depending on each individuals needs. It can also include relaxation training, social skills training and anger management.

## Speech and language therapy

People living with a brain injury may have difficulty organising their thoughts, processing information and finding the right words to allow them to communicate with those around them. In those circumstances a speech and language therapist (or SALT) can coordinate a programme to help the brain injured person to improve communication skills related to speech and language problems.

SALTs are involved in evaluating and teaching speech, writing, reading, and expression skills

aimed at both comprehension and communication. The SALT can work on attention, organisation, planning, and sequencing. They also specialise in teaching memory strategies as memory problems can be a common issue following a brain injury.

They can also help to treat problems with swallowing (dysphagia).

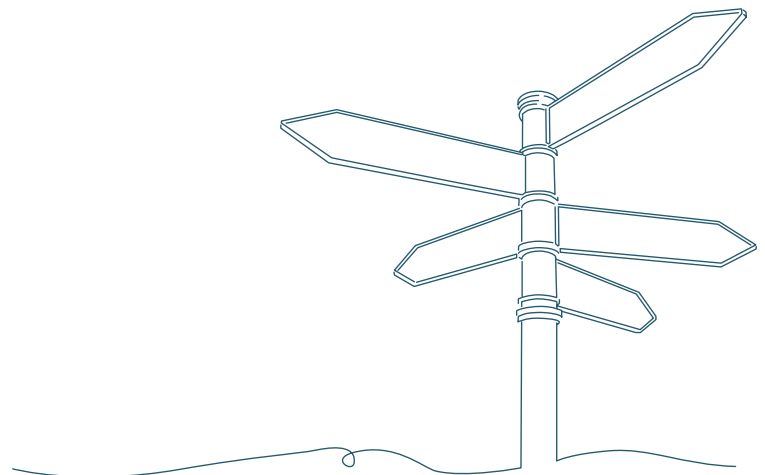
## Vocational rehabilitation

Vocational therapy can help individuals to overcome barriers to accessing, maintaining or returning to work following a brain injury. There are a number of factors which can prevent the brain injured person returning to work including:

- The complexities and characteristics of the injury itself
- Lack of appropriate services
- Restraints within the community and society
- Potential loss of benefits associated with vocational placement.

Vocational therapists can assess the ongoing level of ability and assist in finding employment which suits their physical and mental capabilities.

The therapist will run through tests to assess general intelligence levels, aptitudes, interests, and work skills. If appropriate they may also consider eye, hand, and foot coordination, dexterity, and size discrimination abilities. If additional training is required the vocational therapist can arrange this.



# Brain injury care guide

## Funding care and state benefits

Financial difficulties are a common problem for people living with a brain injury. There are likely to be a number of substantial additional expenses (such as the cost of care and additional therapies) and the injured person may not be able to work. The situation can be compounded if a family member has to leave work to become a full time carer.

### Funding by the local authority

In circumstances where a brain injured person does not have a personal injury claim or the claim has not commenced, funding for care and rehabilitation is likely to be provided by the local authority or Clinical Commissioning Group (CCG).

The transition from the hospital to a residential rehabilitation unit or care home will be organised by a representative from the CCG sometimes called a case manager (N.B. this is different from the private case manager role mentioned in the rehabilitation section of this guide as here the case manager is employed by the NHS/local authority). It is advisable to identify this person at an early stage by asking the hospital where the brain injured person is an inpatient.

### Funding by the compensator

Where a brain injured person has a compensation claim it may be possible to request funding from the defendant's insurance company at an early stage of the case.

Where the defendant has admitted liability for an accident it is possible to request money from the insurance company to assist in funding rehabilitation and other expenses incurred as a direct result of the accident. Indeed some insurance companies may agree to fund rehabilitation for a brain injured person even where liability for the accident has not been resolved (there is a rehabilitation code which was set up to promote the use of rehabilitation at an early stage in the compensation process). This can help

to ensure that the brain injured person makes the best and quickest possible medical, social and psychological recovery.

### Benefits

There is a wide range of disability-related financial support, including benefits, tax credits, payments, grants and concessions.

The main disability and sickness benefits are:

- Disability Living Allowance or Personal Independence Payment
- Attendance Allowance
- Employment and Support Allowance.

Depending on the circumstances of the injury, there is also:

- Industrial Injuries Benefit (when the injury occurs at work)
- Constant Attendance Allowance (if daily care is needed because of a disability).

Where a person is caring for a brain injured person they could be entitled to a carer's allowance if the following criteria are met. The person must:

- Be 16 or over
- Spend at least 35 hours a week caring for someone
- Have been in England, Scotland or Wales for at least 2 of the last 3 years
- Normally live in England, Scotland or Wales, or they live abroad as a member of the armed forces
- Not be in full time education or studying for 21 hours a week or more

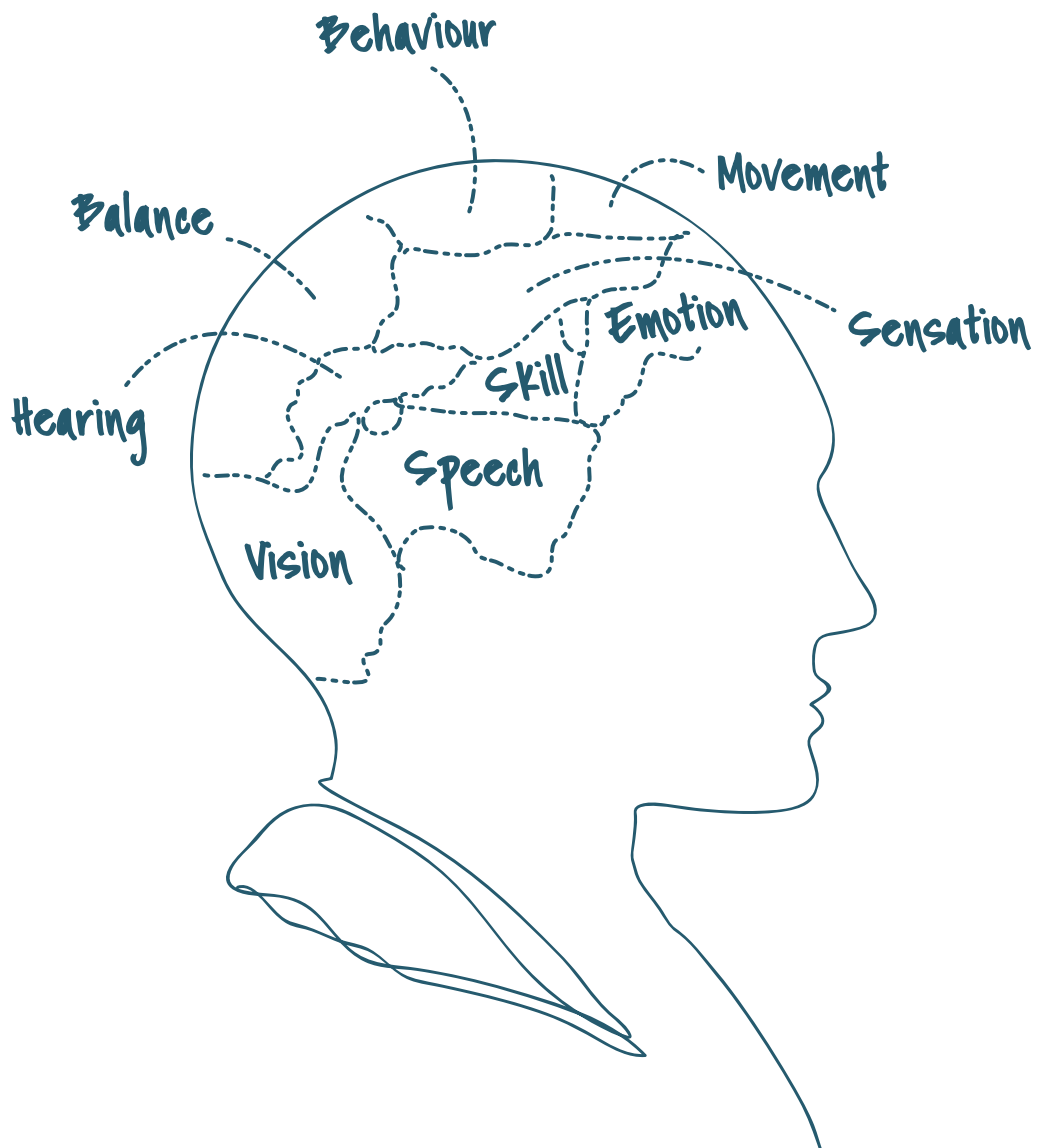
# Brain injury care guide

# Information

- Earn less than £120 a week after tax and some expenses which will be assessed when applying
- Not to be subject to immigration control.

Our experienced personal injury lawyers can identify at an early stage where a brain injured person or loved one could be eligible for state benefits. We can assist clients by indicating who best to approach in relation to funding of care and

state benefits. We recommend consulting the government's website giving information about benefits at: [www.gov.uk/browse/benefits](http://www.gov.uk/browse/benefits) or contacting a local Citizens Advice Bureau (CAB) as soon as possible. The CAB will be able to advise on the necessary steps to take in claiming state benefits. If you are still unsure on who to talk to please do not hesitate to contact our personal injury team on 01892 510000.



# Brain injury care guide

## How to manage a personal injury claim

Where it is possible that the brain injured person may have a personal injury claim it is important to get legal advice as soon as possible. At Thomson Snell & Passmore we guide clients through the legal process and provide vital support at a difficult time. Once a claim is up and running it may be possible to get the benefit of payments from the compensator and to access rehabilitation services.

### Funding

The main concern for most clients is how they will pay for their legal representation. Following the initial enquiry we offer a free initial consultation to explain the process and fully explore and explain the funding options in more detail. There are two main options for funding a personal injury claim:

- **Legal expenses insurance**  
Clients may have the benefit of a legal expenses insurance policy, for example under a car or home contents insurance policy. In claims involving a brain injured client a legal expenses insurer will usually allow the client to select their own legal representative rather than use a panel firm of the insurer's choice. This is because it is generally recognised that claims involving a brain injury can be complex and need specialist legal representation.

It is vitally important to choose a firm that has experience of dealing with these cases to ensure that the right level of compensation is recovered from the party at fault.

- **Conditional fee agreements (also known as no win no fee)**  
A no win no fee agreement means that if a client loses a case and no damages are recovered then the client will not have to pay his or her legal representatives. At Thomson Snell & Passmore we will only take on a case if we believe there is a good chance of recovering compensation and we will give all clients an honest assessment from the start. As leading lawyers in this field we

continue to maintain a high success rate in brain injury cases.

### Procedure

#### How long will the claim take?

A personal injury claim can often take a number of years to reach a conclusion. Where an individual has sustained a brain injury it is vitally important to ensure that the case is fully investigated; all the right evidence is obtained and the medical experts are able to provide a prognosis so that the claim can be valued correctly.

#### The personal injury protocol

A personal injury case will be conducted in accordance with the court rules which include the Personal Injury Protocol. The Protocol sets out a number of steps the parties to the claim must take before they consider starting court proceedings. The aim of the Protocol is to encourage settlement of claims without having to issue court proceedings.

Settlement is encouraged by promoting openness between the parties and co-operation in the process of obtaining the evidence necessary to value the claim.

#### Involvement of medical and other experts

Medical evidence is required to explain the injuries suffered, the treatment received and the extent or chances of recovery (the prognosis).

The client will need to be examined by medical experts. Invariably each party will have its own

# Brain injury care guide

expert from each discipline. The experts usually involved in brain injury cases are neurologists, neuropsychologists and neuropsychiatrists.

In addition to medical experts, experts in other fields may also be involved. These include experts in care, occupational therapy or accommodation. These experts help us to assess the past and future costs incurred as a direct result of the injuries sustained in the accident.

## Issuing court proceedings

Legal claims involving brain injury usually result in court proceedings being issued. There are a number of reasons for this, including where:

- The parties cannot agree liability (fault for the accident) and the Court must decide
- It is not possible to value the claim within the limitation period, court proceedings must be issued so that the claim is not time barred. Your lawyer will advise you about limitation at the beginning of the claim
- The claimant needs to make an application to the Court for interim funding from the compensator.

If it becomes necessary to issue court proceedings, our team is able to guide and support clients through the process providing clear and concise advice.

## How much is my claim likely to be worth?

Compensation for injuries is awarded for the pain suffering and loss of amenity of the injury itself (general damages), the financial losses suffered as a result of the accident (special damages) and also future losses for ongoing losses such as care and case management and loss of earnings.

General damages are valued on the basis of the medical experts' reports. We then consider comparable court awards/approved settlements and a set of guidelines (the Judicial College Guidelines) to value the injury. General damages for injuries can vary widely depending on the extent of the cognitive and executive impairments and also any physical disabilities, but in many cases it can be a six figure sum.

Special damages are any financial losses suffered as a direct result of the injuries sustained in the accident. In other words if there had been no injury you would not have incurred the expense. Special damages can include loss of earnings, any gratuitous care provided by family members and treatment paid for on a private basis. **It is important to keep invoices, receipts and other evidence of expenditure as these documents will be used as evidence to prove the losses.**

Future losses include any ongoing expenses that will be incurred after the claim has settled. Future losses will depend on the prognosis set out in the expert evidence but commonly include case management and care costs, loss of earnings, therapy, equipment costs and adaptations to accommodation.

On settlement of a brain injury case, the Court may award a lump sum of compensation or, if the award is significant and the client has ongoing needs for life, the Court may award a lump sum of compensation and annual payments to the client for a specific loss for life. These are known as periodical payment orders (PPOs). Our legal team will advise on the best settlement options for each individual.

## Progress of your case

Our experienced team ensures that clients are kept updated on the progress of a case as it moves forward.

We aim to provide peace of mind and we will do our utmost to ensure that we investigate every aspect of a claim to achieve the right level of compensation for the life changing injuries suffered in the accident.



# Brain injury care guide

## How to manage a compensation award

In brain injury cases an award of compensation can often be a significant sum of money – commonly hundreds of thousands of pounds, and sometimes more than one million pounds. The compensation will often be required to pay for the brain injured person’s ongoing costs such as care and equipment which they will need to fund for the rest of their lives. In those circumstances it is important that the funds are protected and managed properly.

In addition, the award of compensation adds to the capital and income of the brain injured person and, because of this, it could have an impact on eligibility for means-tested benefits.

A trust set up with money received from a personal injury or clinical negligence claim is called a Personal Injury or PI Trust.

A trust is an arrangement by which a number of people, called trustees, hold and invest money on behalf of someone else, called the beneficiary. The trustees are required to act in the interests of the beneficiary and not themselves.

The main feature of a PI Trust is that the capital and accumulated income in the trust fund is ‘disregarded’ for the purposes of means-tested benefits. It is important that no other money is added to the trust from any other source, so that the trust fund consists purely of personal injury damages.

Although there are several different types of trust, the simplest is a ‘bare trust’. This is often the ideal form of trust for holding personal injury damages. Typically, there might be three trustees, namely the brain injured person, a solicitor and a member of the brain injured person’s family. These trustees will hold and invest the personal injury damages on behalf of the brain injured person.

The document setting up the trust is called a trust deed, and the powers of the trustees are set out in this. In general terms, most of the things a person

would want to do with their own money can be done by the trustees for the benefit of the brain injured person e.g. open a bank account, invest money or buy a property.

The trustees should seek professional advice regarding investment. Advice might well be sought from two or three independent financial advisors, depending on the size of the trust fund.

If a PI Trust is set up, the money in the trust can be used to pay for house goods and specialist equipment or even, depending on the amount available, a home adapted for the beneficiaries use. Money from the trust can also be paid over to the brain injured person to hold in a bank account (subject to their capital not exceeding £6,000). Income from the trust will supplement the brain injured person’s other income.

The key point about a bare trust is that the money still belongs only to the beneficiary. The brain injured person can, if they wish, bring the trust to an end at any time. The bare trust has no tax advantages or disadvantages (e.g. as regards capital gains tax or inheritance tax). For income tax purposes the trust income will be that of the brain injured person and should be included in their personal tax return.

Even if protecting means-tested benefits is not a major concern for the brain injured person, there can be other good reasons for a PI Trust, particularly when there is substantial compensation. The brain injured person may have no experience of handling a large sum of money, and a trust can provide

# Brain injury care guide

# Information

protection from the inappropriate claims of relatives or friends, or simply ill-advised decisions.

People with a brain injury can be particularly vulnerable. If they have a fluctuating mental/psychological condition, there may be occasions when they are less able to deal with things and a trust is likely to be helpful at such times. It may also be the case that the brain injured person does not want the burden of having to make investment and financial decisions on their own.

There are costs involved in setting up a trust and there are also annual running expenses. The amount of these will depend on what is in the trust fund

and how much administrative work is involved. Our trust management team will be able to provide an estimate if consideration is being given to setting up a PI Trust. These charges can be well worth incurring if the trust enables the brain injured person to retain a much larger income by way of ongoing benefits, or if the trust safeguards and assists the brain injured person for the reasons set out above.

It is important to consider whether a PI Trust is appropriate as soon as a brain injury case nears settlement. Our personal injury lawyers are able to refer clients to our trust management team at the appropriate time.



# Brain injury care guide

## Deputyship and the Court of Protection

A deputy is a person or a trust corporation appointed by the Court of Protection to make decisions on behalf of someone who lacks the capacity to make decisions themselves. The Court offers protection to individuals who are vulnerable and potentially open to financial exploitation. Our team of Court of Protection practitioners specialise in managing the property and financial affairs of people who lack capacity.

The Court of Protection has the authority to make decisions on behalf of a person who lacks capacity. They generally do this by appointing someone called a deputy to make these decisions on the Court's behalf. Decisions may relate to a person's property and affairs as well as welfare. It can be the case that where a person has suffered a brain injury, they no longer have capacity to manage their affairs. They need to be protected, particularly when there is a significant sum of compensation awarded.

Thomson Snell & Passmore has a dedicated Court of Protection team. The Thomson Snell & Passmore Trust Corporation is frequently appointed by the Court to act as deputy for people who lack capacity to make decisions relating to their property and finances. The overriding duty of the deputy is to act in the best interests of the injured party at all times.

Once appointed by the Court, the deputy has flexibility to deal with financial matters, and has to work closely and collaboratively with the injured party and those most closely connected with their care.

A deputy's responsibilities include:

- Acting in the person's best interests, having regard to the statutory requirements of the Mental Capacity Act and Code of Practice
- Acting only in respect of those matters which the person lacks capacity to determine and aim to involve the person as much as possible in the decision-making process
- Working with the person, relatives, carers, healthcare professionals and others providing support where there is a financial aspect

- Obtaining financial advice from a regulated advisor, arranging and monitoring investments and managing budgets
- Dealing with and ensuring that all appropriate benefits are claimed
- Taking out an insurance bond to protect the assets under the deputy's control
- Keeping accounts and reporting each year to the Public Guardian
- Completing tax returns.

Where capacity is an issue, it is important to get the deputy involved at an early stage and we are able to call on the expertise of our nationally recognised Court of Protection team straight away.

When a person suffers a brain injury there will often be a large team involved in their care and the management of their affairs. This inevitably includes a case manager, who will work closely with the deputy to ensure that the care and rehabilitation package is appropriate and cost effective.

Case managers often have a healthcare background so have the experience and knowledge required to put the package in place. The financial implications of these recommendations will be overseen and authorised by the deputy.

We have one of the largest, dedicated teams of specialists in the country, offering an efficient, personal and tailored service of a quality that few firms can match.

If you think you need the help of our Court of Protection team, please call 01892 510000.



# Brain injury care guide

## An inspiring story of a young woman living with a brain injury

Graham Bell acted for Susan (not the client's real name) in her personal injury claim following an accident in 2001. The claim was finally settled in 2014. During this time Susan overcame a number of challenges. Due to her own hard work and determination and supported by the funding we secured for her, she has become an accomplished young woman.

### The injury

Susan (aged 11) was struck by a car when walking home from school; she sustained life changing injuries. Susan had an injury to the left frontal and temporal lobes of her brain affecting intellectual activities (such as planning and organising), as well as her personality, the control of emotions and behaviour and the ability to understand and speak.

Susan's physical injuries were not serious enough for her to go into a residential rehabilitation unit and so she was discharged to the care of her parents. As part of the early rehabilitation process Susan started physiotherapy. This helped her to overcome frustrations and anger resulting from her mobility issues.

### Susan's life after injury

A few months after the accident Susan had recovered sufficiently from her physical injuries to return to mainstream school part time. However, by this point the impact of the brain injury was starting to become apparent. Susan developed anxiety and behavioural problems as she struggled with reading and writing at school (she had not had any issues at school before the accident). She had difficulty remembering things she had been taught. Her mother decided to move her into a hospital school, which was a better equipped educational environment for Susan and she went on to achieve seven GCSEs.

Susan had an ambition to become a nurse. To fulfil

this ambition she went to college to study for a qualification in health and social care. Struggling with the minimal structure and lack of guidance at college she felt a little out of her depth and changed to an administration course to get ready for university.

Susan passed the administration course and was successful in gaining a place at a university in London on a diploma in children's nursing. Susan had to move out of the family home to live independently whilst at university and her steely determination to succeed surpassed everyone's expectations.

There were difficulties through Susan's university years. Her memory problems made the coursework harder for her to complete and she also experienced very stressful situations when she was on a placement on a ward at Great Ormond Street Hospital. It was at this point that the importance of our role at Thomson Snell & Passmore came to the fore and we helped to secure funds from the compensator for a case manager.

The case manager was able to provide Susan with the vital support she needed to cope with the added pressures of university life. The case manager guided her through difficulties on work placement and helped with liaising with the university support services. The case manager was also able to organise therapy sessions with a psychologist to provide Susan with coping strategies.

# Brain injury care guide

Although Susan did have support from her family and the case manager to help her through her time at university, it is really as a result of her incredible determination to succeed that she completed the training and passed her nursing diploma. It was a fantastic achievement and it gave Susan a positive outlook for the future.

## How Thomson Snell & Passmore helped

Susan's mother approached Thomson Snell & Passmore shortly after the accident to investigate whether Susan had a personal injury claim. Our experienced advisors were able to establish at an early stage that there was a claim but that there was a potential issue with liability which meant that if the case were to be heard by a judge there was a significant risk of a finding of contributory negligence by Susan; that Susan was partly responsible for the accident.

We entered negotiations with the defendant's legal representatives and secured an appropriate apportionment of liability with each party sharing some responsibility for the accident. As the defendant accepted some of the blame, it guaranteed that the case would succeed and therefore removed uncertainty for Susan as she knew that she would be receiving compensation for her injuries. Although Susan did bear some responsibility for the accident, we were able to persuade the Defendant's insurance company to fund Susan's rehabilitation (including vital case management) on a 100% liability basis. Indeed throughout the progress of the case we worked collaboratively with the defendant's representatives in order to achieve the best outcome possible for Susan, ultimately allowing her to achieve her ambition to qualify as a nurse.

## How a case manager can help

As a result of the brain injury sustained in the accident, Susan suffers with significant fatigue. The medical professionals involved in Susan's claim advised, and Susan agreed, that she would be better suited to a part time nursing role. Susan's case manager therefore arranged for a specialist vocational case manager to advise Susan on part time roles. They also helped her to prepare a CV and gave her important interview techniques.

Susan was very happy to secure her first nursing role. However, she also found the 12 hour shifts difficult to cope with. It was very busy on the ward and staff were unable to provide Susan with the support she needed to allow her confidence to grow. Susan began to feel isolated and homesick. In order to help Susan cope, her case manager arranged for her to meet regularly with a buddy, someone her own age who she could meet for coffee and socialise with. This was a great help to Susan.

Susan later found a role working in a respite centre for children with severe learning difficulties which is closer to home. This is a very challenging role; the children in Susan's care can often be aggressive and even violent. However, this does not faze Susan. She is determined to put her nursing training into practice and enjoys working in a caring and supportive role with the children.

Susan is a great example of someone, who despite their difficulties brought about by a brain injury, has managed to succeed through her own personal ambition and determination.