



# Child sexual abuse claims with limited evidence or witnesses

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It is not uncommon for survivors of [child sexual abuse](#) to be unable to recall the name of the individual who abused them or specific details about dates, times, places etc. Many survivors were only young children, indeed often only in primary school when the abuse occurred. So, if a potential claimant can't recall very specific details about the abuse, are they able to bring a compensation claim due to the abuse?

The short answer is 'yes'. But like many things involving legal matters, careful thought needs to be given to how the case is to be run. Significant weight is placed on the types of evidence that can be gathered in support of an abuse survivor's compensation claim, alongside the credibility and reliability of any witnesses, including the survivor's own evidence.

## Gathering evidence for child sexual abuse claims

Courts usually like cases where the claimant's version of what happened to them can be 'corroborated'. In plain English, this means 'backed up' by some other evidence. The preference is for documented evidence (for example, reports to the institution where the abuse occurred, police reports, medical records etc) but it can be the evidence of someone else who witnessed the event in question.

Obviously, perpetrators of sexual abuse conduct their abhorrent acts where there are no witnesses. Even if the claimant is able to recall the perpetrator's name, the offender invariably denies the allegation completely. So, if the only evidence of what happened is that of the claimants themselves, how does the Court decide in favour of the survivor and award them the very significant compensation that they deserve?

## Use of circumstantial evidence in child sexual abuse cases

One method Courts use to make a determination as to what occurred is to carefully scrutinise what is usually 'circumstantial evidence' presented by both the claimant and the defendant. Circumstantial evidence is basically any evidence from any witnesses or any documentation which is not 'direct evidence' to prove specific and relevant facts about the event.

## Credibility and reliability of witnesses in child sexual abuse cases

Courts will always carefully assess the 'credibility and reliability' of witnesses in child abuse claims, including that of the survivors themselves and their account of what happened. Where the abuse survivor is the only witness, the Court will need to determine if it 'accepts' the claimant's evidence and thereby accepts the claim for compensation.

The terms 'credibility' and 'reliability' are often used interchangeably by the Court when determining whether to accept a version of events put forward by a witness, including evidence of the claimant themselves. But central to both of these terms is the concept of 'acceptability' of their evidence. Will the Court, on an expansive (thorough and detailed) assessment process, ultimately accept what it is hearing from the witness?

## What does the Court consider when determining credibility and reliability of witnesses?

When assessing the credibility and reliability of witnesses in a child sexual abuse compensation case, the Court will often consider the following:

Credibility involves more than just the demeanour of the witness in the witness box. Survivors of child sexual abuse are often vulnerable and very nervous. The Court will be assessing whether the witness appears to be telling the truth as he or she 'now believes it to be'.

Credibility involves assessing whether the person is, overall, a truthful or untruthful person. For example:

you can have a situation where a generally truthful person is telling something less than the whole truth on a particular matter; or

a generally untruthful person is, in fact, telling the truth on a particular matter; or

the evidence being given is the truth as that person recalls it to be and this can be through unconscious bias, or wishful thinking or by discussing things with others on a number of occasions in the past and potentially muddling the facts in

their memory. The substantial passage of time between the abuse and any Court proceedings can also lead to fading of the memory or mis-remembering certain facts.

## Documented evidence in support of a child sexual abuse claim

For cases involving historic child sexual abuse, it will be very rare that 'contemporaneous' documentation (that is, documents that were written at the time of the event) will be able to be presented by a claimant to support their version of what happened to them.

Survivors rarely report the abuse they suffered, even to their own parents/family members, let alone to the police or other third parties. In the absence of documented evidence, there are a number of things to consider, including the following:

The Judge who hears the case. Some Judges are more accepting in their assessments of the credibility and reliability of a claimant when giving their account of being abused as a child and of other witnesses.

The expert evidence called by the claimant. There are now many studies by reputable individuals (experts in their field) which go to explaining the reasons why survivors do not report the abuse to anyone and only do so after significant prompting. The [Royal Commission into Institutional Response to Child Sexual Abuse](#) brought the plight of abuse survivors to light and into the public eye. This allowed many survivors to summon the courage to take action to seek compensation for the terrible wrong perpetrated against them when they were very young children. Expert evidence (including from, for example, psychologists and psychiatrists) can significantly impact the success of a child sexual abuse claim.

Consistency in the version of events given to the survivor's lawyer, the other side, and the various doctors who are to provide their expert reports regarding the case. Survivors should simply note that 'I don't recall sorry' when asked about some aspect of a relevant event or events that they truly do not recall.

## Get help from an abuse compensation lawyer

If you're a survivor of child sexual abuse and you're considering pursuing compensation for the harm you suffered at the hands of an institution or individual, it's best not to delay. We can:

• speak with you about your experience;

• provide you with realistic advice about the type of claim to pursue and the prospects of success; and

• help you prepare for your case should it go to Court.

We will work with you every step of the way and support you through this difficult journey to ensure we maximise the compensation

payable to you.

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*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*