

Birth Injuries – Cerebral Palsy

Expertise and Understanding

Legal advice from Irwin Mitchell

This booklet provides some guidance about cerebral palsy and birth injury claims and the legal rights of those who have suffered as a result of poor healthcare management.

This information relates to the law and procedures in England and Wales. Please contact us if you need advice about the law and procedures in other legal jurisdictions.

Choosing to pursue a claim following a birth injury is an important decision. What you need is expert advice from professionals acting in yours and your family's best interests – from the initial enquiry right through to the successful outcome.

"Looking back over the years, you handled the whole issue sensitively and were there to support us through some of our darkest moments. Daniel's future is now secure, it's embedded in granite that he will have the best care and equipment forever and so his quality of life will be significantly enhanced thanks to you.

- Richard and Ingrid

It is often said that birth is the most dangerous journey most of us will ever make. It is fraught with potential difficulties. Fortunately, for the majority of us that journey involves nothing more than the pain and discomfort of our mothers. For some, however, what happens during birth will have far-reaching consequences for the rest of their life.

Irwin Mitchell has one of the UK's largest and most experienced medical negligence teams handling claims and recovering compensation for birth injuries.

We will fight fearlessly to achieve the best outcome for you, your family and your claim. Our specialist team is renowned for understanding all the issues surrounding birth injuries and we know what positive action to take to make a difference.

Our lawyers offer the highest level of professional advice and expertise combined with dedication and sensitivity.

Above all, we put you first.

Talk to a specialist advisor today

Freephone 0800 23 22 33 or visit
www.irwinmitchell.com

We understand that parents of children with birth injuries come to us for a variety of reasons and so we aim to ensure that whether a claim for compensation succeeds or not, you as parents achieve a greater understanding of exactly what happened during your child's birth and afterwards.

What is cerebral palsy?

Cerebral palsy is a disorder of movement and posture caused by damage to the part of the brain which controls our motor functions. It is the most common cause of motor impairment in children affecting 2 out of every 1,000 children born.

In addition to the difficulties of movement, children with cerebral palsy often have other difficulties caused by more widespread damage to the brain. This can include learning impairment, hearing and speech problems, visual impairments, behaviour problems and epilepsy.

What causes cerebral palsy?

There are many causes of cerebral palsy most of which occur before birth during pregnancy and conception. It is estimated that only 10% of children with cerebral palsy suffered damage to their brain during birth.

Duty of care

Medical professionals owe their patients what is known as a 'duty of care'. This means that they are responsible for providing an acceptable level of care and for protecting you and your baby from harm. As a patient you are entitled to expect reasonable standards and if these are not met, your doctor, midwife and other health professionals may have committed a breach of their duty of care.

If you have a child with cerebral palsy it may be possible to bring a claim for compensation. For example, if it can be shown that incompetent care during or after the labour may have caused or contributed towards your baby's brain damage. The most common example of this is where a baby has been deprived of oxygen before or during birth.

Oxygen deprivation in an unborn child can be caused by a number of factors. In an age where there is careful monitoring of the baby's heartbeat during labour any damaging lack of oxygen ought to be apparent to the midwives and doctors taking care of you and your baby.

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Text claim to **61993** and someone will call you back

Irwin Mitchell is one of the largest and most experienced personal injury firms in the country. Our reputation for recovering compensation following a birth injury is second to none and every year we recover millions of pounds for people who suffer this way.

Specialist team

Employing many of the country's finest personal injury lawyers, our highly specialised birth injuries team delivers expert, insightful and effective advice. Combining powerful legal arguments with care and consideration, we will handle your claim with strength and sensitivity to ensure the best possible outcome.

We recognise that in cases involving children the parents also need support and assistance which we provide through our specially trained lawyers, a team of medically qualified colleagues and our client liaison managers.

A complete service

Looking at all the circumstances of your care, we will review your options, discuss them, answer your questions and outline the help you may be able to expect from us. Providing effective and practical legal advice we will also assist with the practicalities for everyday life.

Our service includes:

- Immediate investigations to determine who was at fault
- Interim payments wherever possible to help fund private healthcare, rehabilitation and financial security
- Taking into account any worries you may have such as financial needs, state benefits, employment and other rights
- Expert support for you to access rehabilitation and therapy services
- Specialist in-house services such as personal injury trust advice, financial planning, wills, Powers of Attorney, education and social care needs advice.

The service we provide is about much more than securing compensation. We can help with all manner of health, social and financial issues from arranging and purchasing specialist equipment and accommodation, to education, employment and income provision through various types of investment.

The law makes provisions to help families in your position and it is vital that you take legal advice. Our initial consultation is free and will give you an informed platform upon which to make a decision.

Yours and your family's future wellbeing informs all our actions and are central to what we do.

Irwin Mitchell is committed to you and achieving the best outcome for your claim. We'll ensure that you are well cared for throughout the process and do everything we can to secure the compensation to which you and your family are entitled.

Campaign for improvements

At Irwin Mitchell we have a long history of campaigning with leading organisations active in all manner of personal injury and birth injuries. Together with these groups we seek improvements in birth management and care to prevent birth injuries wherever possible and to improve the quality of life and levels of compensation for those who have suffered.

Share the care

We know that it is important to recognise the huge commitment and sacrifice of family members and carers who help and support those with cerebral palsy. We have always taken care to offer our full assistance to those providing immediate support and seek to promote the value of this help through awareness and fundraising.

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Normally adults have 3 years, from the date they first knew or suspected that they were injured as a result of medical negligence.

Time Limits

The rules relating to children are different. The 3 year period applies but does not commence until the child's 18th birthday. This means that court proceedings can be commenced at any time before the child's 21st birthday. In addition, if the person with cerebral palsy suffers from any intellectual impairment it may be possible to argue that proceedings have been delayed because that individual does not have the mental capacity to bring proceedings.

The sooner you contact us the better we are able to prepare your claim, but in any case we will give you clear advice about the time limits that apply to your particular circumstances.

"Your advice, support, knowledge and listening ear have always been very much appreciated... needless to say the financial support you have achieved, for us as a family, gives us a more positive outlook for the future."

- Mike and Jane

If you are unsure whether you have claim, you must always call us to talk it over. We'll assess your case free of charge, tell you what we think and then you can decide if you want to go ahead.

Track Record

At Irwin Mitchell we have a long track record of winning compensation cases where the client initially thought they did not have a claim, or that the law did not protect them.

What are my chances of winning?

When you contact us we will give you realistic advice on the chances of winning based on the information you provide. It is not possible to give a definite answer from the outset on any case, however, the more information we have the more accurate an assessment we can make.

We will always give you an honest, straightforward opinion.

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If you are worried about legal costs, don't be. Contacting us for initial advice on your claim will cost you nothing.

Public Funding

Where the person with cerebral palsy is a child under the age of 18 it should be possible to obtain public funding to pursue their claim.

We will prepare a statement for the Legal Services Commission, which explains why legal funding should be granted.

It is important to note that only your child's means and resources are taken into account in assessing financial eligibility for public funding. Therefore, unless your child has any savings, items of value or investments totalling £3,000 or more, or is due to receive money from a trust fund or will, qualification should follow.

If funding is granted and the case then succeeds, all of your child's legal costs are likely to be recovered from those at fault, in addition to any compensation awarded. However, if the claim fails and no compensation is recovered, the legal costs incurred will be met by the Legal Services Commission.

Public funding is not retrospective and therefore legal costs are only covered from the date when the Public Funding Certificate is issued. You will be pleased to know that Irwin Mitchell offers an initial interview **free** of charge. At this initial consultation we will advise whether or not your child's claim is worth pursuing and if it is, we will make an application for public funding.

Your solicitor will discuss public funding and other methods of funding available with you in more detail.

The amount of compensation you and your family receive will depend on many factors, including the impact of the negligence and how it has affected your lives, how much money you are considered to have lost and will lose as a consequence and the extra support you will need in the future.

Individually assessed

From the outset, our team will advise you on how the courts approach the assessment of compensation and how this fits with your circumstances. The fact is though that we are all different and the consequences of a similar injury will vary from person to person. The courts will always assess your claim on an individual basis and award compensation according to its findings.

Compensation awards for cerebral palsy are usually very high. The level of compensation will depend upon the level of disability that the child has and the extent to which aids and equipment are capable of improving the child's or parents quality of life.

A large proportion of the 'million pound' compensation awards we see reported in the newspapers are to pay for the child's cost of care for the future.

It is intended that compensation will provide financial security for the child's future and will give parents the opportunity to relinquish their role as their child's 'around the clock' carer should they choose to do so.

Your solicitor will need to involve a whole team of experts to assess the value of your child's claim.

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Management of compensation

Any compensation awarded will need to be properly managed. How this happens depends on whether the child is likely to have the mental capacity to manage the compensation themselves when they reach the age of 18. A medical assessment may be needed to confirm this.

If they will have capacity, then the award will be paid into court and invested on their behalf until the age of 18. Written applications can be made to the court at any time by the 'Litigation Friend' to access the compensation. The court will consider whether it is reasonable to do so before releasing any money.

Consideration should also be given to setting up a Personal Injury Trust for when the child reaches 18 years of age. These trusts help protect entitlement to various means-tested benefits and also provide a convenient way of managing the money. In certain circumstances the court may also consider authorising a trust on the child's behalf before they reach the age of 18 but they would have to be satisfied that it is in the child's best interests before doing so.

If the child is unlikely to have the mental capacity to manage their own finances at the age of 18, then an application will need to be made to the Court of Protection for the appointment of a Deputy. The Court can appoint a Deputy even if the child is still under 18 years of age. The Deputy will be personally responsible for managing and investing the award on the child's behalf.

This is a specialist area and Irwin Mitchell is able to provide you with guidance and support in this area through our specialist Personal Injury Trusts or Court of Protection teams.

Keeping you informed

As we learn more about you and your injury, and obtain further evidence such as medical reports we will be able to provide a more accurate idea of what the court is likely to award you. You can be assured that we will do everything we can to recover the maximum amount of compensation available to you and your family and organise payment terms to suit your immediate and ongoing needs. It is more usual these days for compensation awards to be made in the form of periodical payments where an amount of money is paid every year for the rest of a person's life. This provides greater security against the possibility that the compensation might run out in the future.

We understand that parents of children with cerebral palsy come to us for a variety of reasons. We aim to ensure that whether a claim for compensation is successful or not, you as parents achieve a greater understanding of exactly what happened during your child's birth and afterwards. Sometimes another cause, other than damage at birth, is discovered during our investigations. Often no cause can be pinpointed.

Investigating the claim

When we first meet you we will take a detailed statement recording your recollections of the pregnancy and birth. We will also ask how your baby was in the first hours and days after birth and we will also require a clear picture of your child's physical and mental difficulties.

Should you decide after our first meeting to pursue a claim for compensation on behalf of your child, then all of the mother's and child's records will need to be obtained.

After that, independent expert doctors will be approached by us and those doctors will be asked to consider the medical records and answer two crucial questions:

1. Was there any incompetence in the way in which the labour, the birth or the care of the baby after the birth was handled?
2. If so, did that incompetence cause the disability this child suffers from?

It is the second question which often proves to be the most problematic in these cases. The reason for this is that there are many causes of cerebral palsy other than a lack of oxygen or injury occurring at the time of the birth. For example, genetic disorders, infection in the mother and other problems in pregnancy can all cause cerebral palsy.

If our medical experts can answer those two questions positively then we will advise you that court action should be started.

Litigation Friend

The law states that people under the age of 18 are not entitled to bring an action in their own right as they lack 'legal capacity'.

An adult will be appointed to act on behalf of the child if the action is commenced before the child's 18th birthday. The adult is usually a relative but may be any adult willing to act and is known throughout the proceedings as the 'Litigation Friend'.

The function of the 'Litigation Friend' is to make decisions on the child's behalf and generally protect the child's interests throughout the litigation. Your solicitor will explain the role of the 'Litigation Friend' to you in more detail.

Out of court

Many cases are settled before they go to court, however, some do proceed to court. It can take a lot of time to prepare a case for court so you need to be prepared for delays. Don't worry, this is normal and we will keep you informed all the way through.

We know that this is a lot to take in, but we will be with you every step of the way making your claim as easy and stress-free as possible.

Talk to a specialist advisor today

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Your child may require specialist education or have health/social care needs. Your local education authority or primary care trust has specific duties and responsibilities to ensure that your child's needs are being met.

Special Educational Needs

If your child's injury interferes with his or her ability to learn at school you should contact the Local Education Authority.

You should ask the Local Education Authority to consider whether additional support is required, for example, in the form of specialist teaching, therapy or one to-one assistance. The process of assessment is complex and parents often need guidance.

Pre-school support is also available for younger children in certain circumstances.

Often the Local Education Authority will readily agree to assess any special educational needs which your child may have. If they refuse to do so, or if having assessed those needs, they offer provision which you regard as insufficient, then you have a right to appeal at a tribunal.

Irwin Mitchell's Public Law team are experts in the area of education litigation and regularly fight on behalf of school pupils or for parents and guardians on behalf of children at school or in nursery. Our specialist team can explain your rights in this area and can help ensure that your child's needs are properly assessed and provided for.

We are approached by parents and guardians for many different reasons, but the focus is generally on the fact that the right to education has been denied, or access to education has been restricted. This may be because:

- Special educational needs are not being met
- An appeal needs to be made against an exclusion
- Admission may have been denied to a school or nursery.

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Community and Healthcare

If your child has health or social care needs which require additional support or services then your local authority or primary care trust have specific duties to ensure that your child's needs are being met.

Our Public Law team has extensive experience providing advice and assistance in relation to community and healthcare law to service users, carers and family members who use or need access to health or social services. The team regularly fight for clients in a number of community and healthcare areas including:

- Obtaining assessments of needs and securing care plans;
- Liaising with Primary Care Trusts regarding NHS Continuing Healthcare Funding
- Obtaining respite care services
- Challenging social services departments and primary care trusts on provision of care and other services for adults and children with disabilities living in their own homes or in residential placements.

*We as a family can't find the right words to thank you for everything... We are so grateful for what you have achieved for Luke and it's such a relief to know his future is secure.**

- Kevin

Something to remember

Our children are obviously precious and fortunately most survive the trauma of childbirth without difficulty.

Where a child is born with damage to the brain it is very tempting for parents to attribute that to the care provided at birth, particularly if the experience was difficult for the mother.

In fact, only a small percentage of cases can be accredited to injury at birth. An even smaller number are caused by negligence of the hospital staff.

In view of the difficulties inherent in these cases our aim at Irwin Mitchell is to tell you as soon as possible if your child's claim has no prospects of success. For those cases which do progress beyond this point we aim to maximise the compensation your child receives and ultimately provide financial security for the future.

At Irwin Mitchell we understand that contacting a lawyer might seem like a big step, especially if you haven't done so before. That's why we go out of our way to make sure that when you get in touch with us we make you feel welcome, relaxed, safe and secure.

We understand the issues affecting you and your family following a birth injury and our renowned team of specialists will fight fearlessly to ensure that you get the best compensation, medical care, rehabilitation and support possible.

Talk to a specialist advisor

Freephone

08000 23 22 33

Text 'CLAIM' to 61993
and someone will call you back

or visit www.irwinmitchell.com

"We found you very professional as well as approachable, helpful and caring. We can now move on and look forward to a more stable and secure future. I am sure that this would not have happened without Irwin Mitchell being involved".

- Jayne

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Email: Please visit the website for online enquiry form
Website: www.apil.com

AvMA (Action against Medical Accidents)

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CR0 1YB

Telephone: 0845 123 2352
Email: advice@avma.org.uk
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Baby Lifeline

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Bramston Crescent
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Telephone: 02476 422135
Email: info@babylifeline.org.uk
Website: www.babylifeline.org.uk

Birth Trauma Association

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Suffolk
IP1 9AT

Telephone: 01264 860 380
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Website: www.birthtraumaassociation.org.uk/

Birth Trauma Association Support Group (West Midlands)

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