




IM irwinmitchell
solicitors



Court of Protection

Personal Legal Services





“I started to relax the minute we met. I know you have been doing this for a long time and that you haven’t actually experienced a brain injury but you have a fabulous understanding of how it is and what impact it can have on an individual’s life. I knew I was in good hands from the word go.”

- Valerie



In certain circumstances, loved ones and close friends may not have the ability to make important decisions for themselves due to a serious injury or through ill health. If someone you care about needs support, our specialist Court of Protection team can help them and make sure that all of their interests are protected.

Introduction

The Court of Protection is the judicial body responsible for making decisions about the management of finances, health and welfare for people who do not have the capability to do so themselves.

As one of the UK's leading law firms, we have a dedicated and experienced team who specialise in Court of Protection and understand our clients to ensure that we protect their interests in a tailored way to suit their needs.

A holistic and caring approach from Irwin Mitchell

The Court of Protection team at Irwin Mitchell help a wide variety of vulnerable people ranging from those who are suffering from dementia or Alzheimer's, cerebral palsy caused by difficulties during birth, to those who have suffered severe life changing injuries such as brain or spinal cord injuries as a result of an accident.

Our clients range from new born babies to people who are in their 90's and the team supports everyone to make the right decisions and to protect their interests in a holistic and caring way that meets their individual needs.





Why choose Irwin Mitchell?

Our reputation for helping clients and their loved ones with a wide range of Court of Protection issues is second to none. Our highly specialised team combines powerful legal knowledge and experience with care and consideration to ensure that our clients receive the best possible support and guidance not only during the initial stages, but for life. These are some of the reasons why our clients choose us:

- The Court of Protection team is the largest dedicated and experienced team in the country
- It is one of the longest established teams, with an unrivalled track record which spans over 25 years
- The team support more than 1,000 clients nationwide
- We have been appointed Deputy for more clients than any other law firm
- The extensive specialist knowledge and resources it can provide to clients is unique including an in-house building surveyor and welfare benefits advice
- We will tailor our services to meet the needs of the clients, whether that is a one-off requirement or a lifetime of support
- It is regarded by independent experts Legal 500 and Chambers and Partners as the leading firm in the UK for Court of Protection services.





A tailored service for you

Every client we deal with is unique and every client we see has different needs. It could be support with a single issue such as organising a Lasting Power of Attorney or a diverse and complex range of needs looking at health, welfare and financial matters.

Because we are also unique at Irwin Mitchell, we can tailor and provide a service which is completely centred on your needs.

So whatever your need, we can support and advise you on:

- Appointing a deputy or acting as a deputy
- Lasting Powers of Attorney or Enduring Powers of Attorney
- Statutory Wills and Trusts
- Personal Injury Trusts
- Health and Welfare Disputes
- Financial matters such as tax returns, paying for state care.

Support services

The Court of Protection service at Irwin Mitchell isn't just about dealing with the legal aspects. We'll also work with you to ensure that you and your loved ones needs are met in the long term.

It's a unique, bespoke approach that really makes a difference to our clients who are often vulnerable and with complex needs. So as well as some of the UK's leading lawyers, our team includes support specialists who work closely with experts including:

- Building surveyor
- Welfare benefit advisers
- Carers and support workers
- Case management
- Client liaison managers
- Financial advisors.

To talk to a specialist advisor today simply call **0370 1500 100** You can also follow us on Twitter **@IrwinMitchell**





Kieran's story

In 2007, Kieran was at home on leave from the army when he was involved in a road traffic collision when the car he was travelling in as a passenger skidded and collided with a taxi. Kieran suffered a severe brain injury as a result of the accident, and now experiences weakness on the right hand side of his body. He also developed epilepsy.

Kieran had intensive rehabilitation at the Defence Medical Rehabilitation Centre Headley Court and now lives back at home with his family. He has ongoing therapies and professional support paid for by his personal injury compensation.

Our Court of Protection and personal injury solicitors dealt with the claim, which settled in 2011 with an award that included a lump sum and an ongoing periodical payment each year.

Kieran was always very sporty and, after the accident, worked in the gym to build his physical fitness.

He was later selected to be part of the British Armed Forces team at the Invictus Games in 2014. Kieran competed in a 1 minute and 4 minute endurance rowing event as well as a team rowing event. He won a bronze medal for the 4 minute event and a gold medal for the British team effort overall.

“I wanted a sport again,” he said. “I chose rowing. You sweat, it’s hard, it’s tough, it’s fun. I love to row.” - Kieran





- 7 -





Your very own team

We believe in putting our clients at the centre of everything we do. By building a special relationship based on openness, trust and honesty, we are better placed to provide the expert advice you need.

Dynamic Professionals

Specialising in Court of Protection for 25 years, we are able to attract, train and develop the country's most dynamic and effective lawyers. By arranging the best professional expertise into specialist teams and encouraging a culture of care, we always take the emotional aspect of you and your loved ones situation into account whilst using the law to help protect everyone.


Irwin Mitchell's commitment

Our first commitment is to you. We are committed to ensuring that you and your loved ones interests are protected at all times. Seen as innovative, our teams are encouraged to search out new solutions where the usual approach doesn't fit. We are confident, willing to take on a challenge and we will do what we think is right for you.



Joseph and his mum





Taking care of you and your loved ones

Going through the legal process can seem very daunting on top of everything else you may be experiencing.

Everything explained

We understand your anxiety, so right from our first conversation and every step of the way we will ensure that everything is explained to you fully and support you throughout.

Key Contact

When you become a client you will have a dedicated team of professionals working with you. You will be assigned a dedicated lawyer who will act as your key point of contact and be responsible for making sure your team achieves the best outcome for you.

No compromise

Every client we deal with is unique and every client we see has different needs. Whatever support you need, good work takes time and we will never compromise where quality of life and your future is at stake.

Unique approach

Our unique approach provides the assurance that your situation is completely understood. Any advice is based on the facts, and committed to making a positive difference to you and your loved ones.



Court of Protection Deputyship

There are many reasons why a person in your life may no longer be able to manage their own financial affairs or make informed decisions about their personal welfare. In situations like this, it is often necessary to appoint a Deputy to be responsible for the vulnerable person's decisions about issues like healthcare, property and finance. Deputyship is usually granted by the Court to a close family member, friend or to a professional and must be applied for through the Court of Protection.

How we can help you as a Court of Protection deputy

We can help you apply for a deputyship or if you are already a Deputy we can help you with your duties. We can also act as a Deputy in complex cases where a professional might be more appropriate, and cases where a Deputy wants to give up their duties.

There are two forms of Court of Protection deputyship:

- Deputyship for property and affairs
- Deputyship for personal welfare.

The type of deputyship that is applied for, will depend on the individual circumstances of you and the vulnerable person in question. If you have been or need to be appointed in either of these roles, we could help you.

Managing the finances and welfare of a loved one can be difficult and stressful. Our experienced solicitors can use their expertise to give you help and advice and make being a Deputy as easy as possible.

We can help you with many of your duties, including:

- Completing tax returns
- Paying for care
- Accessing state benefits
- Applying for a Statutory Will
- Making decisions regarding healthcare
- Making decisions regarding accommodation
- Submitting your annual report to the Office of the Public Guardian.

Whatever roles and responsibilities your deputyship may involve, Irwin Mitchell can provide compassionate guidance and expert legal services throughout.

Working with experience and sensitivity

Deputyships can be extremely complex and may need to be re-evaluated regularly. In some cases you may need to apply to the Court of Protection to change your powers to allow you to make an important decision. In other cases you may need to give up your deputyship. From paying supervision fees, to keeping clear records of your actions and decisions, our experienced team can assist and support you in your role.





Personal Injury Trusts

Personal injury Trusts

If you receive compensation for a personal injury, you may cease to be eligible for means tested state benefits. These include; Income Support, Jobseekers Allowance, Housing Benefit, Council Tax Benefit, Income Based Employment Support Allowance and residential care home funding.

Of course, any compensation awarded to you was for a specific reason, such as to cover your lost earnings or to help you adapt to your new circumstances.

However, if your money is placed into a Personal Injury Trust, you may be able to continue to receive these means tested benefits. The Trust needs to be set up before any compensation is received, if possible, and the terms of the Trust must be carefully worded to ensure your benefits can be retained.

What are the basic principles of a Personal Injury Trust?

The people in charge of the trust are called “trustees”. Typically the trustees may be you and your spouse or a parent. The trustees hold your money on trust for you, and will agree to transfer sums to you as and when you require. The trustees are under an obligation to exercise their powers for your benefit.

The terms of a trust are governed by a document called a Trust Deed, which sets out certain rules and obligations. The trustees will set up a trust bank or building society account to hold your compensation award separately from your personal finances. The account should be set up in the names of the trustees with a title such as “The Joe Bloggs Trust”. All trustees should be signatories to all cheques and transactions.

You and your partner can then hold up to £6,000 (between you) in your own right without it affecting your benefits. You can top up your own account from the money held in the trust.

Other points to remember

Further money received as compensation for personal injury can be put into the trust. No other monies should be put into the Personal Injury Trust.

Upon your death, the trust fund would fall into your estate and would be dealt with by your will. If you do not have a will, it would be dealt with by the rules of intestacy. If you wish to consider setting up a will then do not hesitate to ask one of our legal advisers

It is important that you consider the various rules carefully with your legal adviser, particularly if you are likely to hold the funds for more than a certain period or if you are likely to receive more funds later.

Irwin Mitchell can provide you with expert help and advice on everything to do with creating and managing a trust.





Jaxx's story

On 5 May 2010, Jaxx's life changed dramatically when she was hit by a bus whilst leaving her office in Croydon.

As a result of the accident, Jaxx's skull was shattered and extensive neurosurgery was required. Those in charge of her care were fearful that Jaxx was not going to pull through. She spent 10 months in London hospitals before being transferred to a specialist rehabilitation unit.

Serious injury experts at Irwin Mitchell worked tirelessly to secure a lifetime settlement for Jaxx for her ongoing care and rehabilitation. The insurers of the bus company eventually admitted partial liability and interim payments were provided to meet Jaxx's immediate needs. Settlement was finally reached in 2014 and Jaxx received a large lump sum which would ensure continued access to a variety of support services.

Following the accident, doctors initially feared Jaxx would not survive and were concerned that even if she did, her quality of life would be very poor. Jaxx had sustained a traumatic brain injury and was struggling to process information. Her cognitive capacity had also been affected and she had associated difficulties with memory and high level cognitive skills.

Despite these difficulties, Jaxx went on to surpass all expectations and learnt to walk, talk and feed herself again with help from client liaison

managers implemented by Irwin Mitchell. With daily rehabilitation, Jaxx was finally well enough to move into a specialist 'transitional' house in Putney in December 2010, with help from her mum and a team of carers. Jaxx eventually decided to move to Bath to be closer to her mum.

Since the accident, Jaxx has been involved in a great deal of charity work and is a strong advocate for the importance of rehabilitation and the fact that there is always hope. As Jaxx put it 'I know I've lost a lot and am not the same person I was before the accident... but my rehabilitation team have helped me feel that I can contribute to society and that I can perhaps now help others who find themselves on the same long road to recovery'.

Following the conclusion of the litigation case, Irwin Mitchell were appointed as Jaxx's property and affairs Deputy by the Court of Protection and, as well as helping with the management of her day to day affairs, assisted Jaxx in selling her property in London and purchasing in Bath, where she continues to live.

Now, five years after her accident, and following a further assessment which confirmed Jaxx had regained her capacity to manage her financial affairs, the Court of Protection team at Irwin Mitchell have successfully applied to the Court for Jaxx to be discharged.

This shows her determination to live as independently as possible and highlights the success of her extensive rehabilitation programme. To see Jaxx come full circle so soon and be in a position to take responsibility once again represents the next step towards her ambition of full independence.





Jaxx





Lasting Powers of Attorney

A Lasting Power of Attorney is a legal document that allows you to plan what should happen to you and agree who can make decisions for you if you become unable to decide for yourself.

By making a Lasting Power of Attorney you can:

- Choose a person who you trust to look after your affairs and welfare in the future
- Specify your wishes and what powers your attorneys should have
- Choose who is told about your Lasting Power of Attorney, allowing people to raise concerns now should they wish to do so
- Reduce the likelihood of conflicts in the future by ensuring that your signature and the signatures of your attorneys are witnessed.

If you can still make decisions for yourself, we can help you to register a Lasting Power of Attorney at any time. Once you lose the ability to understand what a Lasting Power of Attorney is, your family may need to apply for a deputyship instead.

What about an Enduring Power of Attorney?

Whilst it is no longer possible to make an Enduring Power of Attorney, many created before October 2007 are still valid and in existence.

Although these documents did not need to be registered when created, they will need to be registered if they are to be used once the person who made the Enduring Power of Attorney is no longer able to make decisions for themselves.

Our specialist lawyers can help with this process and if objections are received, or you are a person wishing to make an objection, we can assist in any resulting court proceedings.

“I wanted to thank you for the wonderful way in which you helped me. I’d like to let you know that I am at last coping well with everything, and at the start I could never have imagined how optimistic I’d be feeling. I’m financially stable due to what you achieved for me, and that has really made a difference” - Helen



Statutory Wills & Trusts

If someone you know is struggling mentally or unable to make their own decisions, they may need a Statutory Will to make sure their estate is distributed in line with their wishes.

Whoever you are writing the Will on behalf of must have a clear understanding of what their Will is saying. They must also be aware of what they are leaving in the Will and be able to consider who they should be providing for.

If it can be medically proven that the person does not understand these issues, they will not have what is known legally as the testamentary capacity to be involved and you will not be able to make or amend a Will for them.

How do I make a Will for someone else?

To make a Statutory Will on behalf of someone else you need to complete a number of application forms and make a statement supporting the terms of the Will. This application goes to the Court of Protection and a decision is made on whether the Will is appropriate.

Interested parties such as family members will be given the opportunity to comment on the Will, which could lead to the terms being changed.

We can guide you through each step, from the completion of the forms all the way through to the court's decision. Our experience and expertise will take some of the stress out of the situation for you and make sure that the best interests of you and your loved one are protected.



Carl and his Mum, June.





Carl's story

Carl is a 32-year-old single man, living in his own home in Ruislip, which the Deputy supported Carl in renovating and extending recently.

Carl was 21 when he was assaulted after a night out watching his football team Arsenal FC.

He sustained blows to his head and face and strangulation to his neck in the course of the assault, which resulted in Carl suffering from a severe traumatic brain injury.

Carl suffered a deterioration in consciousness with a Glasgow Coma Score falling from 15/15 to 3/15 with abnormal CT brain scan findings. He then underwent a craniotomy for the removal of a haematoma. This surgery should have occurred much earlier and the outcome of this was that Carl suffered secondary brain damage, which would go on to affect his life significantly in the future.

When Carl eventually gained consciousness, he had to re-learn everything from walking through to talking, and underwent intensive rehabilitation at Thomas Edward Mitton House in Milton Keynes.

With the assistance of Irwin Mitchell and his mother June, Carl brought a claim for clinical negligence against North West London Hospitals NHS Trust who accepted that the deterioration in Carl's consciousness was not promptly acted upon, resulting in a delay in investigation and intervention.

Carl has on-going motor problems, which mostly affect the right hand side of his body. He also has problems with his speech, difficulties with expressive language, slowing of intellectual function and dysfunction affecting his planning and organisation.

Carl finds it hard to adjust to many of the losses he has faced as a result of his brain injury, and suffers from periods of negative thinking, which necessitates periods of intense support.

However, Carl has made an unusually good recovery from his injury, more recently showing a distinct improvement in his mental capacity levels. Throughout the Deputyship Carl was given a lot of financial independence, but in November 2014 the Deputy had him reassessed by a specialist to see if he could resume control of his financial affairs. Carl was assessed as having the requisite mental capacity and Julia Lomas subsequently applied to be discharged as Carl's Deputy.

Irwin Mitchell is currently supporting Carl in transitioning from the Court of Protection to a Personal Injury Trust, which Carl has asked Irwin Mitchell to administer alongside him.





Frequently asked questions

We fully understand that you may have a number of questions which need some answers. We often hear similar questions from our clients at the beginning of their journey with us, so we've provided answers to some of the most common questions below:

What is the Court of Protection?

The Court of Protection helps people who are mentally incapable of making their own decisions. It does this by making decisions for them about their money, property, health or welfare.

The Court of Protection can also grant this responsibility to someone else if there is a need for decisions to be made on an ongoing basis because the person can no longer make their own decisions. If the Court of Protection grants this responsibility to someone else, they will be known as a Deputy.

How do I apply to the Court of Protection?

If someone you care about loses the ability to make their own decisions as a result of a serious injury or through ill health you can apply to the Court of Protection for permission to make decisions for them. To apply, there are some forms that will need to be filled in and a doctor's certificate will be required to confirm to the Court that the person cannot make decisions for themselves.

It is very important that those forms are filled in properly or they will not be processed. It is crucial that you know exactly what you are applying for as a Deputy. For example, you might only need to request taking responsibility for your relative or friend to help manage their money, or to make decisions about their treatment they receive in hospital.

We can help you to work out which forms you will need and we can complete them for you so you can concentrate on your loved ones.

Is it possible to make an application in an emergency?

An urgent application for the Court of Protection can be made if your relative or friend suffers physical, mental or financial harm if the application is not dealt with quickly. The process is different to a standard application and we can provide all the help and expertise you need in completing the application so that they can be dealt with by the Court of Protection quickly.

Who can be a Deputy?

Deputies are usually relatives or friends of the person who needs help to make their decisions. Depending on your relationship with that person and what decisions you are asking to make, you might need the Court of Protection's permission to apply to become a Deputy.

A Deputy could also be a solicitor. A solicitor is usually appointed where a professional might be more appropriate. Solicitors are also appointed if there are very complicated decisions to be made.

We are asked by many of our clients to be their appointed Deputy as a result of our expertise, dedicated team and our caring approach. We manage more deputyships than any other law firm in England.





Personal Injury Trusts

I have received compensation for a personal injury and am on benefits, do I have to give up my benefits?

You can only get state benefits if you have very little income and very little by way of savings. If you have received compensation for a personal injury the benefits agency will see that money as being savings you own. Depending on how much compensation you have received, you might lose some or all of your benefits.

However, your compensation can be put into a Personal Injury Trust so that the benefits agency does not think of it as savings. That way, you can keep your state benefits.

How do I set up a trust?

This is something you need a solicitor for. Whether you have received compensation through us or another solicitor or claims handler, we can write a legal document called a Trust Deed.

You will need to choose at least two people to be Trustees, who will be in charge of looking after the money in the Trust. The Trustees must be 18 or over and you can be one of the Trustees.

What do trustees do?

The Trustees must set up a special account at a bank or building society known as a Trust account. The money from your compensation must be put into that account and kept separate from any other money or accounts that you own.

The Trust account will be in the names of the Trustees and should have a name that identifies it as your trust (e.g. the Joe Bloggs Trust).

All cheques and all transactions must be authorised by your Trustees, who have the legal power to manage your Trust account and must handle your money for your benefit. The Trustees must set up a Trust account at a bank or building society. The money awarded to you as compensation must be held in this account, separate from your personal finances.

What can money in the trust be used for?

The money in the Trust must not be used to pay for ordinary living expenses such as food, household fuel bills, ordinary clothing or ordinary footwear. Money held within your Trust should be used to pay for luxury or extraordinary items, such as specialist equipment.

How do I pay for things with money from the trust?

You can ask the Trustees for a cheque from the Trust account, or if you cannot pay by cheque you can pay for the item yourself and ask the Trustees to pay you back from the Trust account.

Will money in the trust be taken into account for nursing home or residential fees?

No, Trust money is not looked at when the council works out whether you have to pay for your residential or nursing home fees.





Lasting Powers of Attorney

When can I make a lasting Power of Attorney?

You can make a lasting power of attorney at any time, as long as you have mental capacity to do so: you must be able to understand the decision you are making. A Lasting Power of Attorney allows you to set out how you want your healthcare or financial affairs to be managed if you become unable to manage them yourselves in the future.

Who should I choose as an attorney?

You should choose someone you trust, and who you believe will make decisions for you that are in your best interests. People normally choose family or friends but many prefer to choose a solicitor. You can choose anyone as long as they are aged over 18 and have mental capacity.

Are there different kinds of Lasting Powers of Attorney?

Yes, there is a Property and Affairs Lasting Powers of Attorney which allows you to choose someone to manage your finances and other property. There's also a Health and Welfare Lasting Powers of Attorney which allows you to choose someone to make welfare decisions for you if you are not able to this yourself. You can choose to make one or both of these. You must make separate Powers of Attorney for each kind of decision. You can choose the same attorney to make decisions to do with your finance and property and your health and welfare, or you can choose different attorneys for each.

Can an attorney make gifts?

Attorneys can make gifts of your money and property but their power is limited. The Court can authorise attorneys to make extra gifts in certain circumstances.

Can I have more than one attorney?

Yes, you can choose more than one attorney. You can decide whether your attorneys must make their decisions together or whether they can make their own decisions separately.

How do I make a Lasting Power of Attorney?

There are a number of forms that you need to fill in. To give your attorney the powers you want them to have, the forms have to be sent to the Office of the Public Guardian to be registered. The Office of the Public Guardian will check through the forms and make sure that they have been filled in and signed properly.

It is usually recommended that you send the forms in as soon as possible to avoid any delays because it can take several weeks for the Office of the Public Guardian to process the forms.

What happens if I don't make a Lasting Power of Attorney and I lose mental capacity?

Your family or friends might need to apply to the Court of Protection to appoint a Deputy to make your decisions for you. That takes the choice and control out of your hands and can cause a lot of delay and stress for your loved ones.

Who is told about my Lasting Power of Attorney?

You can choose who is told, so you might want to tell family members or close friends. These people can raise concerns about your Lasting Power of Attorney if they wish to do so.

My mum has dementia/a stroke and is in hospital/a home - can I take out a Power of Attorney?

Only if she has the mental capacity needed to take out the Power of Attorney. If her condition means that she cannot do so, you may need to apply to the Court for a Deputyship instead.



Statutory Wills

Who can make a Statutory Will?

The Court has to give permission for a Statutory will. Statutory wills can be made by Deputies appointed by the Court of Protection, Attorneys or someone who is likely to inherit from the person who is unable to make their own Will when that person dies.

How do I make a Statutory Will?

You (acting as Deputy, Attorney or potential beneficiary) need to complete a number of application forms and make a statement saying why you think the Will should be written as you suggest. The application is sent to the Court of Protection which will decide whether the Will is appropriate. Making a statutory Will can be complicated because of the Court requirements and you should get legal advice.

Will I have to go to Court?

Only if there are serious disagreements between beneficiaries and/or the people making the Will.

Can a Will be changed if the person the will relates to does not have capacity to change it?

Yes, if you are a Deputy or have power of attorney, you could apply to the Court of Protection to change a Will that your loved one made before they lost mental capacity. You might need to do this if your loved one's financial circumstances have changed a lot since they made the Will, or if key beneficiaries have died.

If you would like to change an existing Will, please contact us so we can advise and guide you through the legal process.



What else can we help you with?

We don't just specialise in Court of Protection issues. Irwin Mitchell has dedicated teams working in all areas of personal legal services, enabling us to deliver quick and efficient legal advice on anything from buying a house or claiming compensation to settling family disputes and Wills.

Our friendly, professional staff give straightforward honest advice in all areas of personal legal services including:

- Divorce, children and family matters
- Buying or selling property
- Wills, trust and probate services
- Personal injury or illness
- Questioning social, education and health care provision
- Employment difficulties
- Financial planning including tax and trusts
- Planning or environmental decisions.

Whatever your legal issue our specialist staff will be pleased to help you sort it out – all you need to do is pick up the phone and give us call.

To talk to a specialist advisor today simply call

 on: **0370 1500 100**

 or visit: **www.irwinmitchell.com**

 you can also follow us on Twitter: **@irwinmitchell**






UK offices





 0370 1500 100

 www.irwinmitchell.com

 @irwinmitchell

For a list of our offices visit our website

To see a list of our offices please visit our website. Irwin Mitchell LLP is authorised and regulated by the Solicitors Regulation Authority.

PLS-COP-0008-B

