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Irwin Mitchell - Court of Protection Team

Proud of our past, focussed on our future



Introduction

This year marks the 25th anniversary of Irwin Mitchell’s Court of Protection team.

Proud of our past but focussed on our future, the Court of Protection team continue to develop their service to ensure that clients and their families benefit from a holistic and caring approach which protects their interests.

Irwin Mitchell’s Court of Protection team is the largest in the country. The team has an unrivalled track record with over 25 years of experience, supporting more than 1,000 clients nationwide. It is ranked by Chambers and Partners UK and Legal 500 as the ‘Leading Firm’ in the UK for Court of Protection matters. Nine of the Irwin Mitchell offices have a dedicated Court of Protection team who pride themselves on their extensive specialist knowledge and resources to assist clients who lack the requisite capacity to manage their own property and affairs.

The team help people who are incapable of making their own decisions and advise a wide variety of vulnerable people ranging from those suffering from dementia or Alzheimer’s, brain injuries caused through medical negligence at birth or during their lifetime, to those who have suffered severe head injuries in accidents or assaults. Our clients range from new-born babies to individuals in their 90’s and the team strives to support each and every one to make the right decisions and to protect their interests in a way tailored to their individual needs.

The Court of Protection team works in conjunction

with other departments within Irwin Mitchell to ensure that our clients receive the best possible support and guidance not just during the initial stages of a case, but for life.

“The team are highly knowledgeable and experienced, effective at all levels, and their communication is excellent. A very efficient service.”

- Chambers & Partners, 2015





What is the Court of Protection?

The Court of Protection is a judicial body that has the jurisdiction to make decisions about an individual's property and financial affairs or personal welfare where a person lacks the requisite capacity to make decisions themselves. Whilst it has a long history, the present Court was created by the Mental Capacity Act 2005 ('MCA') which came fully into effect on 1 October 2007.

In addition to making specific decisions on a one-off basis, the Court can also give decision-making powers to an individual such as a family member or professional, if decisions are required on an on-going basis. This person is referred to as a Deputy. The extent of the Court's remit is evident when considering the number of Deputies that have been appointed by the Court. Recent statistics show that in 2014 alone 14,130 Property and Affairs Deputies and 186 Health and Welfare Deputies were appointed by the Court.

Despite the Court of Protection itself being a relatively new institution, its origins date back to the Middle Ages. In the reign of Edward I provision was made to protect the money and property of the mentally ill and mentally disabled. This later became the Court of Wards (hence the term 'Wardships') and the name 'Court of Protection' was first used in 1947. The MCA abolished the old Court and the 'new' Court was implemented at the heart of this legislation providing a remedy for individuals that lack capacity and require someone to make decisions on their behalf.

The Court now not only has extensive powers to make decisions regarding a person's property and affairs but also decisions in relation to a person's welfare. The Court also has an important role in overseeing Lasting and Enduring Powers of Attorney where relevant, intervening when there are problems or disputes over their validity or operation.

The Court is now responsible for the following:

- Deciding whether someone has the mental capacity to make a particular decision for themselves
- Appointing Deputies to make on-going decisions for people who lack mental capacity
- Making one-off decisions on behalf of a person who lacks mental capacity
- Handling urgent or emergency applications where a decision must be made on behalf of someone else without delay
- Making decisions about a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) and considering any objections to their registration or on-going use by the attorney(s)
- Considering applications to make Statutory Wills or gifts
- Making decisions about when someone can be deprived of their liberty.

Proud of our past

The Irwin Mitchell Court of Protection team was originally established with two clients over 25 years ago. What began as one sole named Deputy has since grown and vastly expanded to today's team, where we act as Professional Property and Affairs Deputy for a significant number of clients, particularly in complex and high value cases.

The national Court of Protection team is currently headed by Julia Lomas who is described by Chambers & Partners 2014 as a "real force of nature" and the "deputy of deputies." Her experience and knowledge are also described as "phenomenal". This is supported by the fact that she was asked to give evidence to The House of Lords Select Committee on the Mental Capacity Act 2005. She was invited before the Committee to help consider the effectiveness and adequacy of the law as well as access to justice for vulnerable individuals. Julia is supported by a number of partners across the country in managing over 900 Deputyships.

The Court of Protection team benefits from being a specialist team within a full service law firm. It was described by the Chambers & Partners 2013 guide as a "mammoth team" with a "truly nationwide footprint".

Irwin Mitchell's cross-discipline and streamlined approach ensures that clients and their families have access to the best possible support and personalised advice. The Court of Protection team work closely with experts across all relevant areas of law in which their clients may need advice and support.

This enables them to assist with matters such as:

- Applications to the Court of Protection to appoint a Professional or Lay Deputy
- Employing carers and/or support workers
- Advising on Wills, trusts, Inheritance Tax and planning for the future
- Health and social needs and entitlement to public funding
- Lasting and Enduring Powers of Attorney
- Managing investments and tax advice
- Property purchases, sales and adaptations
- Family and matrimonial matters
- Providing expert evidence in relation to Court of Protection costs as part of personal injury and clinical negligence claims
- Taking financial advice
- Assistance and expert advice on benefit entitlement.





Focussed on our future

We see ourselves as the legal firm with a difference, using our pioneering approach to ensure that we offer our clients a bespoke service, which is tailored to suit their individual needs.

Protecting and providing value for our clients

The increasing level of spend activity managed by any Court of Protection department necessitates a far greater level of financial control. Irwin Mitchell currently spends over £200 million per annum on meeting our clients complex needs, and with that value comes a great responsibility. Through our heavy investment in this area, we are able to provide a high level of visibility, control, expertise, efficiencies, and information. We make their money go further through leveraging that purchasing power on the goods and services our clients need to make their everyday life easier.

Improving the quality of our clients' lives

The nature of our clients' needs require a significant level of building-related activity, with over 100 building projects undertaken in 2013-15 alone, totalling tens of millions of pounds. To ensure this can be delivered to the level of consideration and quality needed, we recognised that a far greater level of expertise is required. To these ends we have added an experienced licensed building surveyor to our team who will act as our in-house advisor and oversee this wide-ranging area, covering suitability assessments and survey risks reviews to due diligence and performance administration.

Improving the standard of our client's lives

Welfare benefits play a major part in the standard of life our clients can have. To recognise the importance of this we have added a team to our department who have extensive knowledge of assessing and reviewing entitlements, and who can also successfully appeal those adverse decisions that impact our clients' standard of living. As well as ensuring that all of our clients receive the appropriate benefits, we also make sure that all welfare benefits remain compliant to the rules, in order to ensure that our clients are protected.

“First-rate, fantastic client care and have a proactive approach. They are unusually diligent and have an up-to-the-minute grasp of legal issues.”

- Legal 500, 2014





Jaxx





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 I'm 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.





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. He was taken to Northwick Park Hospital and after four hours he slipped in to a six week long coma.

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.

Carl has however, 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.





Carl and his Mum, June

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