



IM, irwinmitchell
solicitors



Supporting you and your child

Personal Legal Services

Contents

- 4 - Disability and Educational Rights
- 6 - Your Child's Finances
- 8 - Statutory Wills
- 9 - Client Liaison Services
- 10 - Medical Law and Negligence
- 11 - Children Who Have Suffered Injuries During Their Birth
- 12 - Personal Injury
- 14 - Additional Services
- 15 - Why Choose Irwin Mitchell?
- 16 - Useful Contacts

“From advice on benefits to a very satisfactory compensation conclusion, you kept us updated every step of the way. The stress has been taken away from us. Now our peace of mind is unbelievable and you have changed our lives forever.”

- Sandra

This guide has been prepared in order to offer some help and advice in some of the common areas that may need to be addressed if your child has been injured or suffers from a disability.

Introduction

If your child has been injured and suffers from a disability, there can be a raft of obstacles and issues that you and your family may have to consider and face.

For many years we have been working with families whose children have disabilities. Through our experience we have found that families are often concerned about the level of care and support their child is receiving, how they can protect their child's future and in some cases, look at how their child was injured.

At Irwin Mitchell we are committed to ensure that families have the right legal support to ensure where possible that their child's needs are addressed.

We have the UK's largest and most experienced teams who specialise in assisting families from education law, community care, family law, court of protection, personal injury, medical negligence, trusts and investment services and through this experience we are able to offer families the support and understanding they need.

We hope that you find this guide useful in providing an insight into some of those areas.

Disability and Educational Rights

This section provides some information on the care and support your child may be entitled to because of their disability.

- Community Care Services – Helping you get all the care and support you need for your child
- Continuing Healthcare – Ensuring that your child receives the healthcare they need to live in the community or when returning from hospital
- Education – Ensuring that your child gets the education they need.

Care and Support

Some children who suffer from an injury or a disability may have long-term side effects or require special on-going treatment. The effect of caring for a disabled child cannot be underestimated with everyday tasks suddenly appearing daunting and unmanageable.

It may be a surprise to hear that help could be easier to access than you may think. You may need guidance on how to approach Social Services to obtain the care and support your child needs, whether that is in the short-term, such as respite care or the long-term. On some occasions you may need someone to act as an advocate on your behalf in order for your child to receive the care that will fully meet their needs.

If your child is in need of longer term care or support services your local Social Services department or Clinical Commissioning Group (CCG) within your local area can be approached to carry out an assessment and provide you with a care plan detailing the services they feel would assist your child. These support services can be provided directly by Social Services or the CCG or they can assist you to access your own care and support funded by your child's individual budget.

Unfortunately, due to the pressures and constraints on Local Authorities and the CCGs more limited care may be provided to those who have greater needs or the care assessment may fail to recognise the extent of your child's individual needs. However, you can seek to challenge the assessment and funding your child receives to ensure that they are provided with the services which they are entitled to.

Our specialist Public Law team has a wealth of experience providing advice and assistance about community and healthcare law.

Education

New Education, Health and Care Plans have now been introduced which enable children, up to the age of 25 and who are in education, to receive a complete package of support if they require it.

What are Education, Health and Care Plans?

Statements of special educational needs for children in schools and young people in further education and training have been replaced with a single combined Education, Health and Care Plan (EHC plan).

An EHC plan will cover children and young people from birth up to the age of 25 and will include information about health and social care needs as well as special educational needs in one single document.

This will extend the current age of eligibility for those with a statement of special educational needs and still in education from 16 to 25. EHC plans must be prepared and maintained by the local authority and include annual reviews and re-assessments.

Everyone should benefit from the right to a good education, regardless of their disability, and should be provided with all the support they need to progress through their education. This may be specialist teaching, therapy or one-to-one assistance.

This may mean seeking help with:

- Obtaining a statutory assessment of a child's educational, health and care needs (formerly known as a SEN)
- Refusals to issue an EHC plan, or challenging the content of an EHC plan
- Refusals to reassess a child's educational, health and care needs
- Decisions not to maintain or to cancel a child's EHC plan
- Assistance and representation with EHC plan appeals, including representation at Tribunals
- Refusal to allow your child access to a particular school or nursery.

Our specialist Public Law team has a wealth of experience providing advice and assistance about education law.



Your Child's Finances



This section deals with issues relating to financial matters. This ensures that you and your family are adequately aware of possible options when it comes to your child's finances.

Making a Will

Research suggests that more than two-thirds of people in the UK do not have a Will, many people believe that they are too young to make a Will or don't think they have enough money or property to make writing a Will worthwhile. However, preparing a Will is a positive step that can make things easier for your loved ones at a very difficult time, particularly if you have a child with a disability or permanent injury.

A Will removes any doubt about not only how your assets will be distributed, but also who you wish to look after your children and how you would like your affairs to be handled.

For children who have a disability a Will can be created to:

- Provide for your disabled child in a way that will not affect their benefits and will not put them at risk of being taken advantage of by dishonest people
- Ensure that you children inherit from you even if your spouse remarries
- Appoint a guardian to care for your children if they were orphaned
- Reduce the amount of inheritance tax paid
- Make sure that your loved ones receive all the money and property you want them to receive.

Where your child has received compensation following a successful personal injury or medical negligence claim.

Court of Protection

If your child receives a substantial amount of money and they will not be able to manage their financial affairs, you may need to seek legal support to ensure their finances are managed by a Deputy appointed by the Court of Protection.

The Court of Protection is the legal body responsible for making decisions about the management of the finances and affairs of people who lack the mental capacity to do so themselves. This can also include health and welfare matters.

It may be that you need help or support in relation to the following matters:

- You are responsible for managing your disabled child's affairs
- You are concerned about the ability of someone else to manage your child's affairs
- There is a dispute about what social care, residence or medical treatment is in your child's best interests.

Personal Injury Trusts

If your child has been awarded compensation as a result of a legal claim or an insurance policy pay out, you may find that they are no longer eligible for certain means tested benefits or funding when they reach 18 years old.

To ensure that the compensation is not taken into account when deciding whether your child is eligible for means tested benefits, and to help to protect your child's future, you may be able to place the money in a Personal Injury Trust when your child reaches 18. A court may 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 to do so.

Money held in a Personal Injury Trust can be accessed by 'trustees'. There needs to be at least two trustees for a Trust to be set up, for example, these could be the child's parent and solicitor. If your child is under 18 and a Trust is required then one of the trustees would have to be a solicitor.

Statutory Wills

If a child receives compensation for a personal injury or medical negligence claim it should be considered whether they would need a Will when they reach the age of 18.

If your child is unlikely to have capacity to make a Will when they reach the age of 18 then the creation of a Statutory Will should be considered, where the Court of Protection would authorise a Will to be made on their behalf.

To make a Statutory Will on behalf of someone else you need to complete an application form and a statement which is considered by the Court of Protection. A decision is made by them as to whether the proposed Will is appropriate.

If you are acting as a Deputy or Attorney of a loved one's estate you may find that you are required to be involved in the process of creating a Statutory Will. These types of Wills can be complex, but our expert lawyers can help you with it every step of the way.

Our nationally recognised specialist Court of Protection team deal with a full range of services including Deputyships, Compensation Management, Trusts (including Trusts for minors), Lasting Powers of Attorney, Statutory Wills and Personal Injury Trusts.



Client Liaison Services

Families often need practical help and advice when they are pursuing a legal claim in relation to a serious injury or disability. People often find themselves in a maze of services which they are unfamiliar with, such as hospitals, social services, rehabilitation units and the benefits agency.

It can be overwhelming and difficult to understand the function of each service and how best to communicate with each organisation. Our Client Liaison team can help you and your family make sense of these services for the benefit of your child.

“I would like to say thank you not only for all your hard work but also for the help you gave us with getting interim payments. I know that to you it is just part of your job but it really did make a huge difference to Laura’s life and for that we will always be grateful.”- Geraldine

Our approachable team can assist in providing the following services:

- Assessment of immediate and longer terms needs of your child
- Highlighting the areas of need and co-ordinating appropriate services and support for your family
- Support and education for your family regarding the implication of your child’s lifestyle as a consequence of their injury or disability
- Liaising with local services, professionals and agencies about on-going problems and your child’s immediate care needs
- Practical support with day to day issues such as budgeting, useful coping strategies and support with your child’s on-going rehabilitation
- Monitoring the progress of rehabilitation to maintain a consistent and co-ordinated approach
- Advice and assistance with benefit applications, reviews and appeals.

Medical Law and Negligence

Fortunately medical treatment in the UK is generally of a high standard - poor decision making and medical accidents are rare.

However, there are occasions where children are not provided with medical care of an acceptable standard, either during or after their birth, which can leave children and their families to cope with lifelong disabilities and on-going complex care needs.

Families naturally want answers and the comfort that lessons have been learnt and mistakes in the future will be avoided for other families.

This section offers some brief guidance on seeking legal advice if you are concerned about the standard of medical treatment your child was provided or are still being provided with now (for example where doctors are considering the withdrawal of treatment).

It may be that the hospital poorly managed the pregnancy or your child's birth, failed to reach a correct diagnosis in time or delayed commencing the necessary treatment. Or it could have been the case that your child's GP failed to pick up the early stages of an illness and delayed their referral to hospital for treatment which leads to a worsening of their symptoms and potentially permanent injury in some cases.

It may be appropriate to bring a formal complaint about the treatment received this can be done whether treatment was provided by a NHS hospital, a private hospital or by your GP.

Alternatively, a claim for compensation may be justified.

Compensation is not a windfall but rather a way of providing for your child with financial support in relation to on-going care needs, specialist aids, equipment and educational and rehabilitation needs.

If your child has on-going treatment at the hospital or with the clinicians where the negligence occurred, this should not stop families from investigating a claim. The hospital clinicians continue to have a duty of care to provide the best treatment and care to the child.

Children Who Have Suffered Injuries During Their Birth

A mishandled pregnancy or birth can result in life-changing consequences for mother, baby and the family as a whole.

From years of experience with working with families who have suffered pregnancy and childbirth problems, we appreciate what you are going through and know exactly what needs to be done to help your child receive the compensation they deserve.

Ante-natal errors – despite highly advanced scans, medical professionals can miss or even misdiagnose problems with an unborn baby. Errors made at this stage can have devastating consequences, including misdiagnosed miscarriage, severe unexpected birth conditions and even stillbirth.

Errors during the birth – concerns can arise from damage caused by medical instruments, anaesthetics, inadequate monitoring of the baby's heart beat and poor management of the labour. The injuries which might result following these concerns include cerebral palsy, brachial palsy (Erb's Palsy), brain injury, facial paralysis, spinal injuries or fractured bones.

Whatever the circumstances of your child's treatment, the legal investigation process requires information to be gathered, which will usually involve obtaining medical records and seeking independent evidence from expert medical practitioners. This is the kind of work which will be undertaken by your specialist medical negligence solicitor.

Irwin Mitchell have years of experience working with families whose children have suffered an injury due to negligent medical treatment and are one of the largest, dedicated, national teams specialising in all types of medical negligence. We have a franchise with the Legal Aid Agency for medical negligence which is an indication of our expertise and specialism in this area.

We are constantly campaigning for improvements in patient safety and medical treatment.

Personal Injury

Children can be especially vulnerable to being the victims of accidents and, fortunately, most accidents will be the usual little bumps or minor mishaps that we all associate with growing up.

However, sometimes accidents can have more serious consequences. Where a child suffers injury and it is someone else's fault, there may be a claim for compensation.

Where a child is injured, any claim for compensation should be handled by someone who is a specialist in dealing with children's injury. This is because children's accidents and injuries can be complex, and different considerations apply when investigating and pursuing a claim involving a child. It is important that specialist experts are instructed, and that children are provided with access to the right sort of treatment and rehabilitation to make sure their long-term future is as secure and fulfilling as it can be.

Accidents involving children can have wide-reaching effects, often affecting close family, friends, schools and sometimes wider communities. Such incidents need to be investigated carefully and sensitively by someone with expertise in children's claims and an understanding of what an injury to a child can mean to them and to their family.

Road Traffic Collisions

There are many myths about when a child can and cannot claim for personal injury, and it may help to consider some of those:

- When a child walks or runs into the road and is knocked down by a car, the police will often tell parents that the collision was unavoidable or that it was the child's fault for running into the road. It is important to remember that the police investigate what has happened from a criminal perspective, which is very different to what needs to be considered for a personal injury compensation claim. Just because the police do not prosecute the driver does not mean a compensation claim will automatically fail.
- There are also many myths about when a child is injured as a passenger in a car. For example, people believe that a child cannot claim if they are injured because they were not in a suitable child seat, or wearing a seatbelt. This is not the case.
- Similarly, families worry about making a claim for a child who is injured when travelling as a passenger in a car being driven by a parent or family member. Whilst it can feel uncomfortable making a claim against a relative, the reality is that the driver's insurance company will deal with the claim on their behalf.
- It is often assumed that a claim cannot be made if a driver is not insured. In fact, there are a number of ways that claims involving an uninsured driver can still be brought and can succeed – in fact it will be a rare case indeed where this is not possible.

Other Types of Accidents

As parents will know, children can suffer accidents almost anywhere. Thankfully, most of the time, these accidents won't cause any injury or loss.

However, there is a duty to take extra care when dealing with children, and if a child is injured at school or when out and about, it might be that the accident is someone else's fault. If someone has done something or failed to do something and this leads to a child being injured, there may be a claim for compensation.

It is obviously impossible to stop a child coming to any harm whatsoever – to try and do so would mean children would never be able to do anything! However, people who are dealing with children must assess any potential risk attaching to their actions and put in place reasonable steps to avoid those risks.

When looking at activities involving children, this is even more important, as children will not necessarily appreciate those risks for themselves and keep themselves safe.

The more involved an activity, the more care and thought is needed when looking at risk.

Criminal Injuries

If your child has suffered a brain injury through criminal injury, for example, shaken baby or abuse, then you can make a claim from the Criminal Injuries Compensation Authority (CICA), a government body created to compensate innocent victims of crime.

The CICA will investigate claims thoroughly by gathering witness statements, police reports and any other relevant documents about the alleged injury. Once they have all the information, the CICA will make a decision on whether to award compensation.

Sometimes the CICA may decline or make an inadequate offer of compensation. If this happens our specialist personal injury department can advise you on the possibilities of seeking a review of the decision.

Conclusion

For children who suffer injuries in accidents, the most important advice is to speak to a solicitor, regardless of whether you think there may be a claim or not. Our specialist team at Irwin Mitchell have many years of experience of dealing with these sorts of claims and are happy to discuss any concerns or worries you might have on behalf of your child.

Additional Services

Family Matters

Life changing events can place severe strain on a family at a very challenging time. As a result you may have financial or emotional worries, or you may find that your family unit is struggling to cope under the pressure.

In these kinds of circumstances, you may need to access legal support with regards to:

- Moving house, either in the UK or abroad
- Cohabitation issues
- Civil partnerships
- Pre-nuptial agreements
- Separation and divorce
- Financial settlements upon divorce
- Arrangements for children
- Parental responsibility
- Issues relating to the payment of child maintenance and spousal support.

It is important that the best approach is adopted for you and your child in a non-confrontational manner, in order to ensure the best possible outcome.

“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

To talk to a specialist advisor today simply call free

 on: **08000 23 22 33**

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

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

Why Choose Irwin Mitchell?

We are a national law firm, offering our clients the highest quality legal advice, ranked in the top tier by leading independent legal guides Chambers & Partners and Legal 500.

Irwin Mitchell offices can be found in the following locations - we will visit you at a place convenient to you and your family, whether at home or in hospital.



Useful Contacts

ACE Education Advice & Training

1C Aberdeen Studios
22 Highbury Grove
London
N5 2DQ

E: enquiries@ace-ed.org.uk

W: www.ace-ed.org.uk

AvMA (Action against Medical Accidents)

Freedman House
Christopher Wren Yard
117 High Street
Croydon
CR0 1QG

T: 0845 123 2352

W: www.avma.org.uk

Bobath Centre

250 East End Road
London
N2 8AU

T: 0208 444 3355

E: enquiries@bobath.org.uk

W: www.bobath.org.uk

Brainwave

Unit 602
Birchwood One Business Park
Dewhurst Road
Warrington
WA3 7GB

T: 0127 842 9089

E: enquiries@brainwave.org.uk

W: www.brainwave.org.uk

Cerebra

2nd floor
The Lyric Buildings
King Street
Carmarthen
SA31 1BD

T: 0126 724 4200

E: enquiries@cerebra.org.uk

W: www.cerebra.org.uk

Child Brain Injury Trust

Unit 1
The Great Barn
Baynards Green Farm
Nr Bicester
Oxfordshire
OX27 7SG

T: 0186 934 1075

E: info@cbituk.org

W: www.childbraininjurytrust.org.uk

The Children's Society

Edward Rudolf House
Margery Street
London,
WC1X 0JL

T: 0300 303 7000

E: supportercare@childrenssociety.org.uk

W: www.childrenssociety.org.uk

Useful Contacts

The Children's Trust

Tadworth Court
Tadworth
Surrey
KT20 5RU

T: 0173 736 5000
E: Online enquiry form
W: www.thechildrenstrust.org.uk

Contact a Family

209-211 City Road
London
EC1V 1JN

T: 0808 808 3555
E: helpline@cafamily.org.uk
W: www.cafamily.org.uk

Headway

Bradbury House
190 Bagnall Road
Old Basford
Nottingham
NG6 8SF

T: 0115 924 0800
E: enquiries@headway.org.uk
W: www.headway.org.uk

KIDS

7-9 Elliott's Place
London
N1 8HX

T: 0207 359 3635
E: Online enquiry form
W: www.kids.org.uk

Meningitis Now

Head Office
Fern House
Bath Road
Stroud
GL5 3TJ

T: 0808 801 0388
E: info@meningitisnow.org
W: www.meningitisnow.org

The Patients Association

PO Box 935
Harrow
Middlesex
HA1 3YJ

T: 0845 608 4455
E: helpline@patients-association.com
W: www.patients-association.com

SCOPE

6 Market Road
London
N7 9PW

T: 0808 800 3333
E: helpline@scope.org.uk
W: www.scope.org.uk

Notes

Notes

 08000 23 22 33

 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-0037-B

