

Supporting You Through Court of Protection

irwinmitchell



In certain circumstances, loved ones may not have the ability to make important decisions for themselves due to disability, injury or ill health. It's essential their best interests are put first.

If a loved one no longer has the capacity to make important decisions regarding their finances, health or welfare, we can help you to apply to the Court of Protection to become their Deputy, so you can decide what is best for them. Our specialist team will take time to understand your needs and tailor our support to help you both to live as independent and fulfilling lives as possible.

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

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> My solicitor has been brilliant, showing compassion and integrity while being prompt, polite and conscientious.
>
> **Joseph**
> 5* Trustpilot review

Accredited Personal Injury
Accredited Clinical Negligence
apil Accredited Practice
Chambers Top Ranked UK 2023 Irwin Mitchell
The Legal 500 United Kingdom Leading Firm 2023
The Sunday Times Best Law Firms 2021 in co-operation with statista

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



Your Team of Experts

By building a relationship based on openness, trust and honesty, we're best placed to provide the support and expert advice you need.

Our culture of care means we always take the emotions of you and your loved ones into account, while utilising our legal knowledge to protect you and your family.

We'll assign a dedicated solicitor to you to ensure we achieve the best possible outcome.

Our first commitment is to you

We'll protect you and your loved ones' interests at all times and always do what is right for you. We'll search for innovative solutions and we're confident and willing to take on any challenge.

A Tailored Service For You

Every client we help is unique. It could be support with a single issue, such as organising a Lasting Power of Attorney*, or a diverse and complex range of needs, like health, welfare and financial matters.

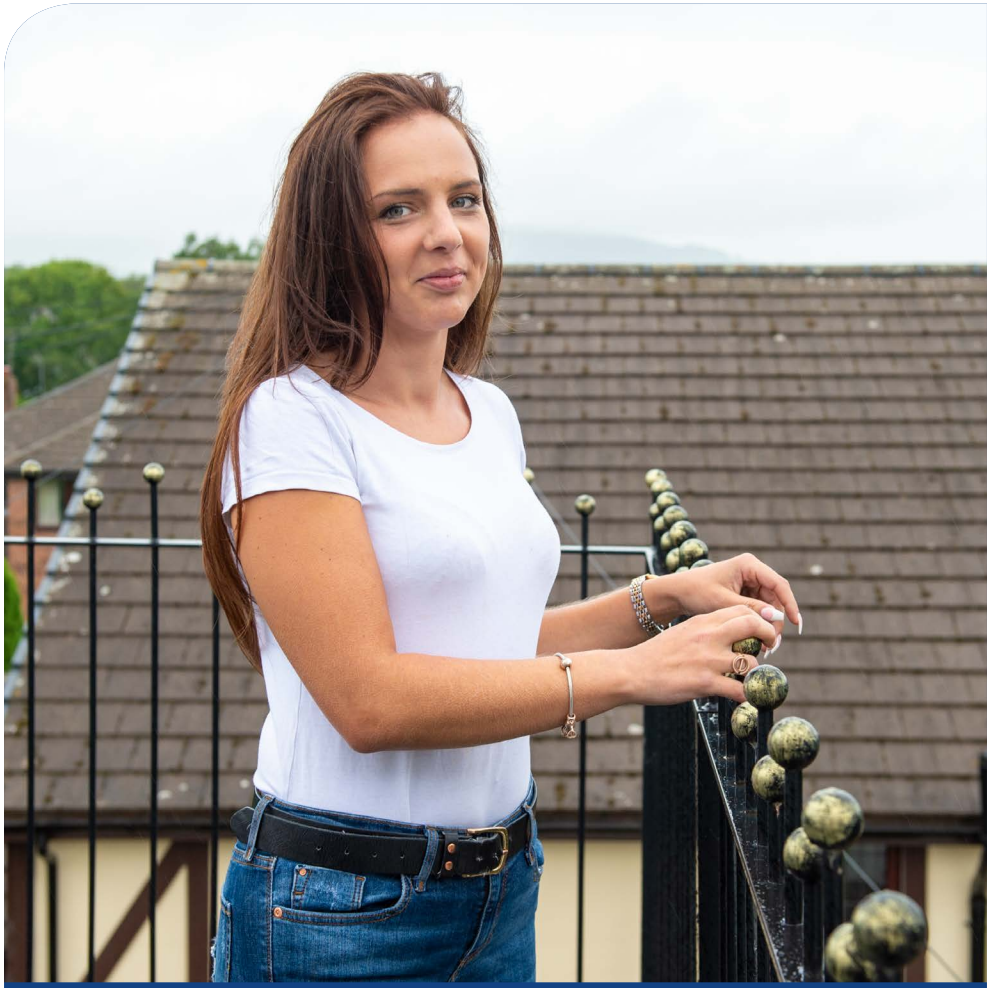
We support many vulnerable people of all ages including those with dementia or long-term disability, or those who've suffered head or brain injuries.

We can provide a tailored service centred around your needs, including:
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 and paying for state care.



*A Lasting Power of Attorney is a legal document that lets you appoint one or more people to help you make decisions or to make decisions on your behalf.

**A Deputy manages the affairs of people who lack mental capacity.



They built me up to be more independent and to trust others again. I know that even now when I have a bad day, I can call Sally and she'll be there to support, guide me and give the best advice.

Rebecca Gilmore
Our client

Rebecca's Story

Rebecca was just 11 years-old when she was involved in a road traffic collision. After being rushed to hospital, she was placed on a life support machine for three days having suffered three fractures to her skull and two bleeds on her brain.

After recovering from the physical injuries in hospital, Rebecca's family had to adapt the family home so she could live downstairs due to reduced mobility. At the same time, they were dealing with a significant change in her behaviour due to an undiagnosed brain injury.

The road to recovery

It wasn't until the age of 16 that Rebecca was put in touch with a head injury specialist, who diagnosed her brain injury and the long road to recovery could begin. Rebecca initially attended Redford Court Rehabilitation Unit in Liverpool for six months of intensive treatment – the first specialist help she had recieved for dealing with and overcoming her injury.

Our in-house client liaison manager closely supported Rebecca to find a rental property, seek therapies, such as physiotherapy and neuropsychology, and build up her independent living skills.

Five years ago, Rebecca struggled with social situations and was told by professionals that she wouldn't be able to have children, drive or hold down a job as she wasn't stable mentally.

Amazing progress

Rebecca now has a five-year-old son, has passed her driving test, and works as a support worker. She loves making a difference to other people's lives and helping them through their own rehabilitation journeys.

Due to Rebecca's progress, our Court of Protection team applied for her capacity to be reassessed and for her to be discharged from the Court of Protection. As a testament to her hard work, this was successfully granted and Rebecca now independently manages her own affairs.

I say to Rebecca the world is her oyster. I'm excited to see what the future holds for such an incredible woman.

Sally Murphy
Court of Protection expert



Support Services

Our Court of Protection service 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 bespoke approach that really makes a difference to our clients who are often vulnerable and have complex needs. Our specialist team works closely with experts, who provide guidance and specialist knowledge to ensure all of our client's needs are met.

Expert guidance from:
Building surveyors to ensure your property is suitable for your needs
Carers and support workers to ensure your loved one gets access to the best care in the community
Specialist brain injury case managers to assess your situation and help you access social care, educational and employment needs
Client liaison managers with a medical background to help you make the most of your rehabilitation by connecting you with charities and organisations
Financial advisors who will take the time to learn about your circumstances and provide financial protection for the future
Welfare benefit advisors to assist you in completing the necessary forms and making applications to the relevant agencies.

Court of Protection Deputyship

There are many reasons why a loved one may no longer be able to manage their own financial affairs or make informed decisions about their welfare.

In situations like this, it's often necessary to appoint a Deputy to be responsible for an individual's decisions on health, welfare, property and finances.

We can help you apply for a deputyship, or if you're already a Deputy we can assist you. We can also act as a Deputy in complex cases, where a professional might be more appropriate, and cases where a Deputy would like to give up their duties.

There are two forms of Court of Protection deputyship:
Deputyship for property and affairs
Deputyship for health and welfare.

The type of deputyship applied for will depend on an individual's circumstances. If you've been, or need to be appointed to either of these roles, we can assist you to make the process a smooth one.

We can help you with:
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.

Working with experience and sensitivity

Deputyships can be complex, however we have the experience required to assist and support you.

In some cases, you may need to apply to the Court of Protection to change your powers to allow you to make important decisions. In some circumstances, you may be required 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.

*Annual financial accounts and the list of decisions that a Deputy has made on behalf of a person who lacks capacity in the past 12 months.

Personal Injury Trusts

If you or a loved one have received compensation from a claim, saving this money in a Trust can ensure you're always provided for and give you peace of mind for the future.

The money may be awarded for a specific purpose, such as to cover the costs of rehabilitation, care, therapies and property adaptations, or to compensate for future lost income. It's important to consider whether a Personal Injury Trust could be used to manage funds, so that your loved one is able to claim all of the state benefits and care funding they may be entitled to.

We'll work closely with financial advisors to create a bespoke plan tailored to you and your needs.

Protection when claiming means tested benefits

Compensation paid directly will be included as part of the assessment undertaken by the benefits agency when calculating entitlements to means tested state benefits. Compensation funds will also be included when the local authority undertake financial assessments for residential care home funding.

Depending on the nature of the injury, you may be eligible for a number of benefits and support services. Means tested state benefits include Income Support, Jobseekers Allowance, Housing Benefit, Council Tax Benefit and Income Based Employment Support Allowance.

By moving your compensation into a Personal Injury Trust, you'll still be able to claim the benefits you're entitled to. It also ensures it's protected from being used in the wrong way by others. This is especially important if the Trust is for a child or vulnerable adult. A Trust may also help protect assets from a claim against your estate, i.e. in cases of divorce or bankruptcy.

Basic principles of a Personal Injury Trust

The people in charge of the Trust are called Trustees. They are appointed to look after the Trust and make decisions on behalf of the beneficiary if needed.

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 the compensation award separately from your personal finances.

Up to £6,000 may be held in your own personal accounts, and that of any partner that you live with, without it affecting your benefits. Any personal accounts can be topped up with money held in the Trust, as and when required.

Following the passing of the beneficiary of the Trust, the estate would be dealt with in accordance with their Will. If a Will hasn't been created, the estate would be dealt with by the rules of intestacy*.

* When a person dies without leaving a valid Will, their estate must be shared out according to certain rules. These are called the rules of intestacy.

Lasting Powers of Attorney

A Lasting Power of Attorney is a legal document that allows you to choose a person to make decisions if you're unable to make decisions for yourself.

By choosing 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're still able to make decisions for yourself, we can help you to register a Lasting Power of Attorney at any time. If a person is no longer able to make their own decisions, their family may need to apply for a deputyship instead.

Enduring Power of Attorney

It's no longer possible to make an enduring Power of Attorney, but many created before October 2007 are still valid and in existence.

Although these documents didn't need to be registered when created, they'll need to be registered if they're to be used once the person who made it no longer has capacity to make decisions for themselves.

We can help with this process if objections are received, or you wish to make an objection, we can assist in any resulting court proceedings.





Statutory Wills

If someone you know lacks capacity (known as testamentary capacity) to make a Will, they may need a Statutory Will to make sure their estate is distributed in line with their wishes.

When making a Will you must have a clear understanding of the contents and what this will ultimately mean. You must also be aware of what you're leaving in the Will and who the beneficaries are.

If it can be proven that a person doesn't understand these issues, they'll lack what is known legally as testamentary capacity, and won't be able to make or amend a Will.

How does a person who lacks testamentary capacity make a Will?

In order to make a Statutory Will there needs to be an application to the Court of Protection. 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 to the court's decision. Our experience and expertise ensures that the best interests of you and your loved ones are protected.



Frequently Asked Questions

We often hear similar questions from our clients at the beginning of their journey with us, so we've answered some of the most commonly asked ones here.

What is the Court of Protection?

The Court of Protection helps people who are mentally incapable of making their own decisions by appointing a Deputy to help.

How do I apply to the Court of Protection?

If someone you care about loses the capacity to make their own decisions, through a serious injury or ill health, you can apply to the Court of Protection for the appointment of a Deputy. To apply, there are some forms to complete. A doctors certificate will be required to confirm to the Court that the person can't make decisions for themselves. It's very important that the forms are completed correctly or they will not be processed.

It's 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 the treatment they receive in hospital. We can help you to work out which forms you'll need. We can also complete them for you.

Is it possible to make an application in an emergency?

An urgent application to the Court of Protection can be made if someone could suffer physical, mental or financial harm if the application isn't dealt with quickly. The process is different to a standard application, and we can provide the help and expertise you need to complete the application, so that it can be dealt with by the Court of Protection quickly.

Who can be a Deputy?

Anyone can become a Deputy, including friends and family of the person needing support. If there are complicated decisions to be made, the Court of Protection may decide that it's appropriate for a solicitor to carry out the role of Deputy.

Many of our clients instruct us due to our caring approach and we manage more deputyships than any other firm in England and Wales.

FAQs – Personal Injury Trusts

I have received compensation for a personal injury and I'm on benefits – do I have to give up my benefits?

Not as long as you set up a Personal Injury Trust. You'll only receive means tested state benefits if you have very little savings and income. If you've received compensation for a personal injury and these funds are held in your personal account, the benefits agency will take it into consideration when assessing your entitlement. Depending on how much compensation you've received, this could mean you lose some or all of your benefits. If your compensation is put into a Personal Injury Trust, you'll keep your entitlement to these benefits. Trust funds will also be disregarded when the Local Authority assesses financial contributions towards direct payments and care home fees.

How and when do I set up a Trust?

This is something you need a solicitor for. Whether you have received compensation through us or another solicitor, we can draft a legal document called a Trust Deed to establish the Trust. You'll 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 aged 18 or over, and you can be one of the Trustees. It's best to set up the Trust before any compensation is received. It's advisable to set it up within 52 weeks of your first payment, as your benefits could be put at risk if you don't set it up within this time period.

Who can be a Trustee and what do they do?

The Trustees of the Trust can be anyone you choose. You can be a Trustee as well as the beneficiary. Choosing reliable and responsible Trustees is very important – typically the Trustees would be the beneficiary and another close family member or friend. We're also able to act as a Trustee if you so wish. The Trustees are responsible for managing the money in the Trust account according to the terms on which the Trust has been established. This could include managing a bank account, making investments, buying or selling property, arranging care, therapy, equipment costs and preparing annual Trust accounts and tax returns.

What funds can go in to a Personal Injury Trust?

The benefit regulations state that any funds arising 'as a consequence of a personal injury' can be disregarded when assessing entitlement. This includes compensation from a personal injury award, funds received from charitable or public donations following an accident, as well as accident or travel insurance payouts.

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

The Trustees will set up a Trust bank or building society account to hold the compensation award separately from your personal finances. The account should be set up in the name of the Trust, such as "The Joe Bloggs Trust". All Trustees should be signatories to all cheques and transactions. Money can be released from the Trust for the benefit of the beneficiary. You can ask the Trustees for a cheque from the Trust account. If you can't pay by cheque you can pay for the item yourself and ask the Trustees to pay you back from the Trust account. Some banks are able to offer bank transfers for Trusts.

Can a Trust be set up for children or those who lack capacity?

Usually, the decision to set up a Personal Injury Trust will be one for the person receiving the compensation. If a person is unable to make their own decisions it will be necessary to obtain approval to set up a Trust on their behalf.

Children:

A court Judge will need to approve the creation of a Trust to manage funds on behalf of a child, until they reach the age of 18. The court will want to be satisfied that a Trust is suitable and will approve the Trustees and type of Trust to be used.

People who lack capacity:

In order to make decisions for someone who lacks capacity, an application must be made to the Court of Protection. A judge will then decide on the most appropriate method for management of that person's finances. The majority of the time, a Deputy will be appointed, but there are some instances where a specific type of Trust may be put in place.

FAQs – 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 and understand the decision you're 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 yourself 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 Power of Attorney which allows you to choose someone to manage your finances and property. There's also a health and welfare Lasting Power of Attorney which allows you to choose someone to make welfare decisions for you if you're not able to do this yourself. You can choose to make one or both of these. You must make separate Lasting Powers of Attorney for property and affairs or welfare matters. You can choose the same Attorney to make decisions for 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 to a limited expense. 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 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 they've been filled in and signed correctly.

It's usually recommended that you send the forms in as soon as possible to avoid any delays. 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 assist you in decision making.

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.

A close family member has dementia and is in a home. Can I take out a Lasting Power of Attorney?

Only if they have the mental capacity needed to understand the document that they're executing. If their condition means that they can't do so, you may need to apply to the court for the appointment of a Deputy instead.

FAQs – 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's unable to make their own Will.

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. You should therefore seek 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 it relates to doesn't have capacity to change it?
Yes, if you're 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 since they made the Will, or if key beneficiaries have since passed away.

If you'd like to change an existing Will, we can advise and guide you through the legal process.



What Else Can We Help You With?

Whether it's business or personal we understand that everyone's situation is different.

If you need legal advice or support with financial planning, we're here to offer *an expert hand with a human touch*, so you're able to focus on what really matters.

We're here to help you with:

- Buying or selling a house
- Court of Protection
- Divorce, children and family matters
- Planning disputes
- Financial planning and wealth management*
- Support with your business and employment issues
- Social, education and healthcare provisions
- Tax and trusts
- Welfare and healthcare matters
- Wills

* Financial planning and wealth management services are provided by IM Asset Management Limited which is authorised and regulated by the Financial Conduct Authority. Its Financial Services Register Firm Reference Number is 402770.



Useful Contacts

We have close relationships with organisations and charities that can provide extra support when you need it most.

Carers Trust

Work to improve support, services and recognition for anyone living with the challenges of unpaid, caring, for a family member or friend who is ill, frail, disabled or has mental health or addiction problems.

Unit 101
164–180 Union Street
London
SE1 0LH

0300 772 9600
info@carers.org
carers.org

Citizens Advice

Offer people the knowledge and the confidence they need to find their way forward - whoever they are, and whatever their problem.

You can find your local Citezens Advice center on their website.

03444 111 444
citizensadvice.org.uk

Court of Protection

Make decisions on financial or welfare matters for people who can't make decisions because they lack mental capacity.

PO Box 70185
First Avenue House
42-49 High Holborn
London
WC1A 9JA

0300 456 4600
courtofprotectionenquiries @justice.gov.uk
gov.uk/courts-tribunals/court-of-protection

Mencap

Aim to improve the lives of people with a learning disability and their families now, and fight alongside them for a better future.

You can find your closest Mencap office on their website.

0808 808 1111
mencap.org.uk

Mind

Provide advice and support to empower anyone experiencing a mental health problem. They campaign to improve services, raise awareness and promote understanding.

15-19 Broadway
Stratford
London
E15 4BQ

0300 1233 393
info@mind.org.uk
mind.org.uk

Headway – The Brain Injury Association

Working to improve life after brain injury by providing support, services and information to brain injury survivors, their families and carers.

Bradbury House
190 Bagnall Road
Old Basford
Nottingham
NG6 8SF

0808 8002 244
helpline@headway.org.uk
headway.org.uk

Motability

A national charity providing impartial advice, information and training on independent living.

motability.co.uk

Expert Hand. **Human Touch.**

P-COP-1001-B

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