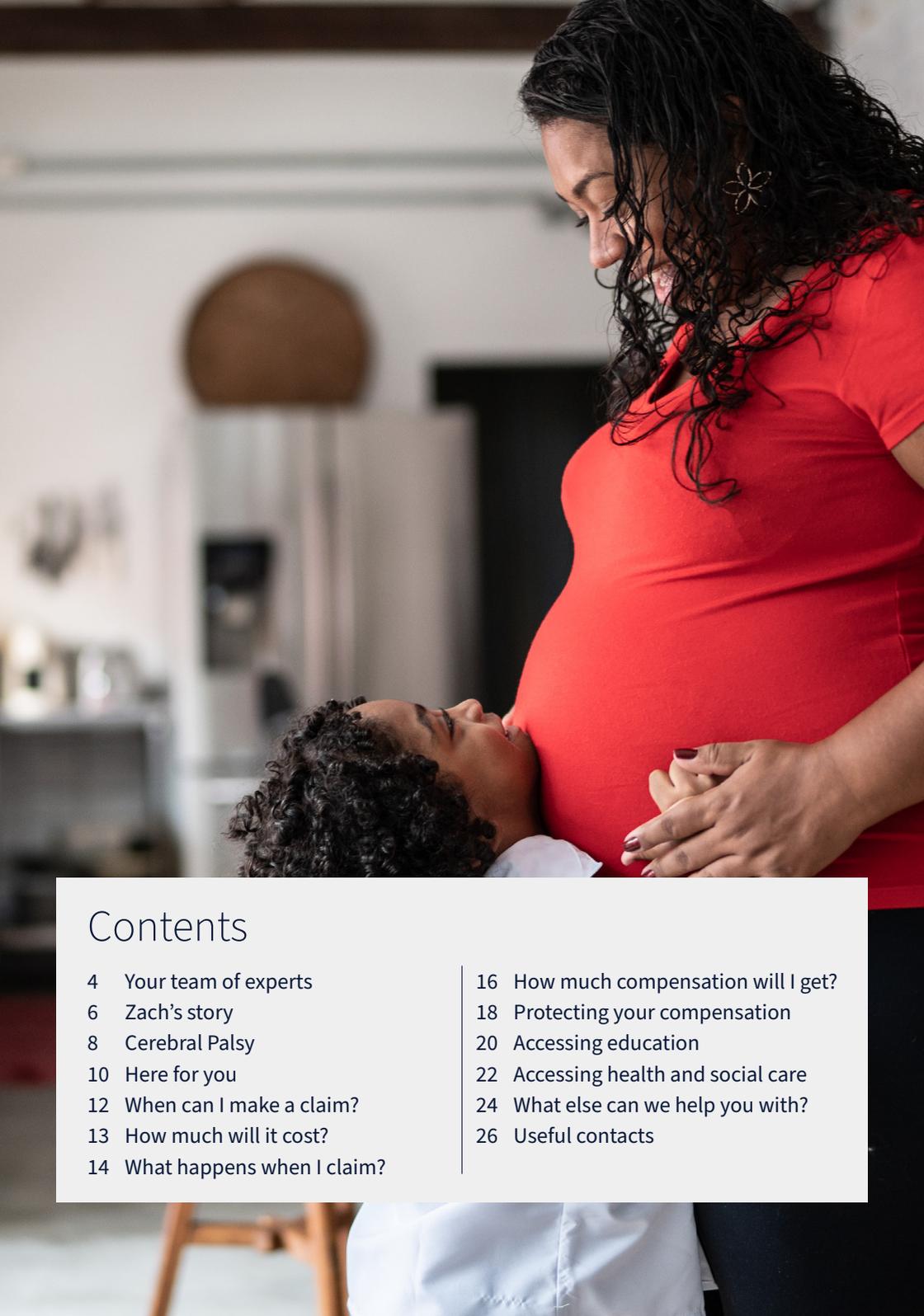




# Supporting you after a birth injury

**IM**, irwinmitchell



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If you've suffered pregnancy or childbirth problems, the emotional and physical impact can be life-changing. We're here to help you and can offer support and guidance during this difficult time.

If you believe that you or your child have suffered an injury during pregnancy, childbirth or a gynaecological procedure, our specialist team can help you gain the financial support and the closure you need to move forward. We'll also assess the impact of the injury to understand what support may be needed now and in the future.

We have close relationships with organisations and charities that will help you come to terms with what's happened and offer further support every step of the way.



The case was one of the hardest things we have ever done emotionally, and yet Irwin Mitchell were right by our side every step of the way. Their knowledge, skill, professionalism and empathy are without comparison.

**Phil and Bex**  
5\* Trustpilot review



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.

0800 023 2233

## Your team of experts

With years of experience working with families who've suffered pregnancy and childbirth problems, we're here to help and can offer support and guidance during this difficult time.

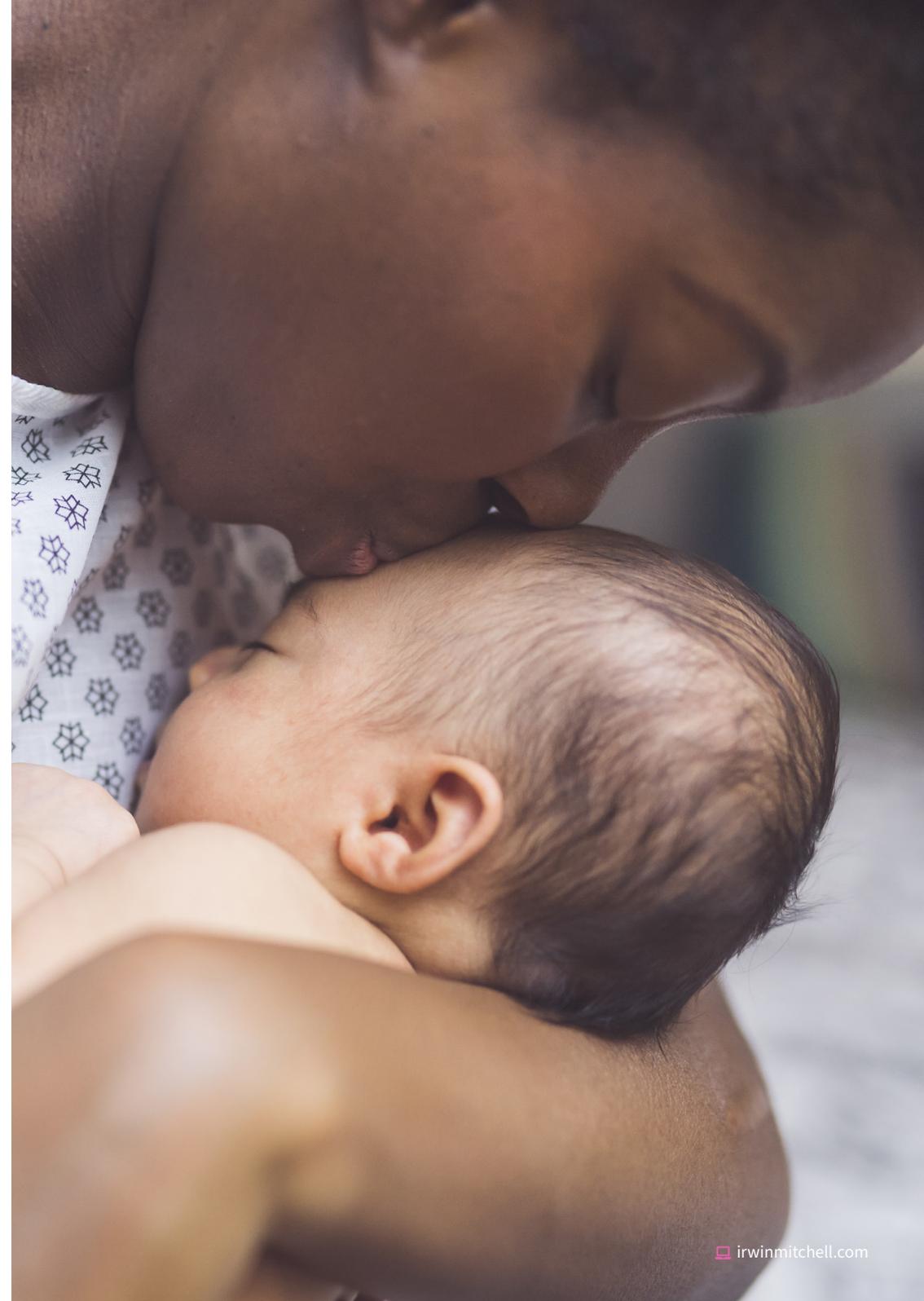
A mishandled pregnancy or birth can result in life-changing consequences for a mother, a baby and the whole family.

### Key areas where mistakes are made include:

**Ante-natal errors** – despite highly advanced scans, medical professionals can miss or misdiagnose problems during pregnancy. Errors made at this stage can have huge consequences including misdiagnosed miscarriage, major unexpected conditions in the baby and stillbirth.

**Errors during birth** - damage from medical instruments, anaesthetics or inadequate care can cause serious gynaecological damage to mothers and injuries to babies including cerebral palsy, hypoxic-ischemic encephalopathy (HIE), brachial palsy (Erb's palsy), brain injury, facial paralysis, spinal injury, fractured bones and perinatal asphyxia.

If you believe that you or your child suffered an injury during pregnancy, childbirth or a gynaecological procedure, our specialist team of solicitors can help you gain the financial support and the closure you need to cope with whatever the future may bring.





If I can do this at 11,  
what else can I do?

**Zach**  
Our client

## Zach's story

At three years old, our client Zach was diagnosed with cerebral palsy after suffering a brain injury at birth. He has difficulty with his mobility and cognitive development, and has epilepsy.

Following his diagnosis, Zach and his mum Claire were referred to us by Action Against Medical Accidents (AvMA) to investigate the care he received when he was born.

Early interim payments in his legal case meant he could see a speech and language therapist, occupational therapist, and physiotherapist. Having a team of experts around him makes a huge difference to how he feels and what he can do.

We later secured a settlement that gives Zach access to the lifetime specialist treatment, therapies, and equipment he needs in his day-to-day life.

### **A remarkable young man**

In May 2020 during Covid-19 lockdowns, Zach wanted to fundraise for the Epilepsy Society, who shared his JustGiving page on social media. Sadly, online trolls flooded the posts with flashing images trying to trigger seizures in people who have epilepsy.

Zach and his mum have since led a campaign pushing for new legislation to stop online bullying and prevent similar attacks from harming people with epilepsy in the future.

'Zach's Law' will officially come into effect in autumn 2023.



## Cerebral Palsy

Cerebral palsy is a movement and posture disorder that affects two out of every 1,000 children.

### What causes cerebral palsy?

Cerebral palsy is caused by damage to the part of the brain that controls motor functions. This damage happens while the brain is developing, before, during or after birth. It's estimated that only 10% of children with cerebral palsy suffered this damage during birth.

### Children with cerebral palsy often have difficulties including:

Learning impairment

Hearing and speech problems

Visual impairments

Behavioural problems

Epilepsy.

### Erb's Palsy

Erb's Palsy, also called brachial plexus paralysis, often results from medical staff using excessive force on a baby's shoulder during birth.

You may be able to claim for compensation if the doctor, midwife or nurse treating you didn't:

- Use the correct tools/force during the birth
- Advise you about the potential risks of birth injuries and acknowledge signs that can cause Erb's Palsy
- Refer you for a caesarean section in the likelihood of a problematic birth
- Take steps to move your baby out of a trapped position.

### What is duty of care?

Medical professionals owe their patients what is known as a duty of care. This means that they're responsible for providing an acceptable level of care and protecting you and your baby from harm.

As a patient you're entitled to expect reasonable standards and if these aren't met, you may be able to claim compensation, if it can be proved that your doctor, midwife or other health professionals have breached their duty of care. The most common example of this is where a baby has been deprived of oxygen before or during birth.

# Here for you

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

Our reputation for helping clients who've suffered injury or illness through medical negligence is second to none and every year we help many people who've been injured in this way get access to the best rehabilitation, medical care and support.

## Specialist team

Our highly specialist team will put you at the focus of everything we do, and approach your case with care and consideration to ensure you get the best possible outcome.

### Our promise to you:

An early investigation into who's at fault

Early compensation payments where possible, to pay for medical care, rehabilitation and to ensure you're financially secure

Expert advice on state benefits and access to advice on employment and other financial issues

Access to rehabilitation and therapy services

Help from our solicitors in other areas of law, such as financial planning, Personal Injury Trusts, Wills advice, Power of Attorney, education and social care needs advice

Access to our Court of Protection team if you or a loved one needs assistance with managing your finances or property and affairs.

## Campaign for improvements

We have a long history of campaigning for improvements to medical care. Our aim is to help develop medical procedures, improve quality of life and levels of compensation for those who have suffered. We're also sponsors and fundraisers for several leading charities and support groups.



## When can I make a claim?

Normally, adults must make a claim within three years of the date they first knew or suspected that they were injured as a result of medical negligence.

### For children

The rules relating to children are different. The three year period applies but doesn't start until the child's 18th birthday. Court proceedings can be started at any time before their 21st birthday.

If a child is found to lack capacity due to intellectual impairment, then there may be no time limit in terms of bringing a claim, but it's always best to seek legal advice as quickly as possible.

### Do I have a case?

All cases are unique and we won't know your chances of securing compensation until we look into the circumstances that caused your child's injury. We'll assess your case free of charge, tell you what we think and then you can decide if you want to go ahead.

### Can you take over from my current solicitor?

We have helped many people who've been dissatisfied with the advice or

service they've received from their current solicitors. Our specialists have then gone on to achieve a successful outcome for them, including gaining access to the best medical care, rehabilitation and compensation. If you decide to move your case to us, the process is very simple and we'll speak to your current solicitor on your behalf.

### What are my chances of winning?

Many people come to us who don't think they have a claim. We go on to secure rehabilitation and financial security for the future.

We're realistic in our assessments. When you contact us, we'll give you honest, straightforward advice on your chances of winning based on the information you've given us. It's not possible to give a definitive answer on any case, but the more information we have the more accurate an assessment we can make.

## How much will it cost?

Contacting us for initial advice on your claim won't cost you anything. If you do go on to pursue a claim with us we'll review all the options for funding it.

### These may include:

**Conditional fee agreement** – commonly known as a 'No Win No Fee' agreement\*

**Public funding/legal aid** – for children who have a severe disability as a result of neurological injury caused by medical negligence during pregnancy, birth or the postnatal period up to eight weeks old

**Legal expenses insurance** – you may have legal expenses cover to help with any legal costs as part of your household or car insurance

**Trade union** – if you're a member of a trade union, they may provide assistance for some legal issues.

### Public funding/legal aid

You can receive public funding for a claim if your child is under the age of 18. In this instance, we'll prepare a statement for the Legal Aid Agency, which explains why public funding should be granted.

Although public funding is means-tested, it's only the means and resources of the child that are taken into account. Unless your child has any savings, items of value or investments totalling £2,500 or more, or is due to receive money from a trust fund or Will, they should qualify.

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

Public funding isn't retrospective and therefore legal costs are only covered from the date when the public funding certificate is issued.

\* To make a No Win No Fee claim, you need to enter into an agreement that's linked to a suitable insurance policy. We'll explain this in more detail before we start your claim.

# What happens when I claim?

We aim to ensure that whether a claim for compensation is successful or not, you achieve a greater understanding of exactly what happened during your child's birth and afterwards.

## Investigating the claim

When we first meet, we'll take a detailed statement recording your recollections of the pregnancy, birth and your baby's condition in the first hours and days of their life.

Where a child is born with damage to the brain, it's very tempting for parents to attribute that to the care provided at birth. In fact, only a small percentage of cases can be accredited to injury at birth; an even smaller number are caused by negligence of the hospital staff.

In view of this we'll tell you as soon as possible if your child's claim has any prospects of success. If we think it does, we'll ask independent expert doctors to consider the mother's and child's medical records and answer two crucial questions.

### Crucial questions:

Was there any incompetence in the way the pregnancy, labour, birth or the care of the baby after the birth was handled?

If so, did the incompetence cause the disability or injuries your child has sustained?

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

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

## Court settlements

The vast majority of cases are settled before they go to court. If your case is one of the few that's to be decided by a judge, don't worry. This is perfectly normal and we'll be there to help you every step of the way.





## How much compensation will I get?

The level of compensation depends on the level of disability your child has, and to what extent quality of life can be improved for them and your family.

### **Individually assessed**

It's important to bear in mind that everyone is different, and the consequences of the same injury may differ, so the level of compensation awarded will vary from person to person.

As we learn more about you and your circumstances, we'll be able to provide a more accurate idea of the financial value of your claim. You can be assured that we'll do everything we can to recover the maximum amount of compensation available to you and organise payment terms to suit your immediate and ongoing needs.



## Protecting your compensation

If your case is successful, the compensation you receive should be managed to ensure a financially stable future for you and your family.

How your compensation is managed will depend on whether your child is likely to have the mental capacity to manage the funds themselves when they reach 18.

If a medical assessment determines they will have the mental capacity to manage their own finances, the award will be paid into court and invested on their behalf until they reach 18. The adult legally representing the child in court, known as the Litigation Friend, can apply to access the compensation at any time. The court will consider whether it's reasonable to do so before releasing any money.

A Personal Injury Trust can also be set up for when the child reaches 18. These trusts help protect entitlement to various means-tested benefits and also provide a easy way of managing the money. A court

may consider authorising a Trust on the child's behalf before they reach the age of 18, but they'd have to be satisfied that it's in the child's best interests before doing so.

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

Legal management of finance is a complex field, but our specialist Personal Injury Trusts and Court of Protection teams will make it as straightforward as possible and guide you through.

# Accessing education

Our Public Law team regularly fights on behalf of parents and guardians whose children are denied the right to a full education at school or nursery.

If your child's injury interferes with their ability to learn at school you should contact the Local Education Authority (LEA) and ask them to consider whether additional support is required. For example, your child may benefit from specialist teaching, therapy or one to-one assistance.

Often, the LEA will agree to assess any special educational needs your child may have. However, if they refuse to do so or offer provision that you regard as insufficient, you have a right to appeal at a tribunal.

Our Public Law team are experts in education litigation. We can help you contest decisions made by your child's school, nursery or LEA if you feel their right to education has been denied.

## **Education, Health and Care (EHC) plan**

Statements of Special Educational Needs (SEN) for children in schools and young people in further education have been replaced with a single combined Education, Health and Care (EHC) plan. An EHC plan is for children and young people from birth, up to the age of 25. This extends the current age of eligibility for those with a statement of SEN, and still in education, from 16 to 25.

EHC plans include information about health, social care and educational needs and must be prepared and maintained by the local authority, including annual reviews and re-assessments. Our specialist team can explain your rights in this area and help ensure that your child's needs are properly assessed and provided for.

### **Examples of this include:**

Special educational needs aren't being met

An appeal needs to be made against an exclusion

Admission may have been denied to a school or nursery.





## Accessing health and social care

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

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

If you're a service user, carer or family member who has been denied access to health or social services, we can help you in many ways.

### Examples of this include:

Obtaining assessments of your child's needs and securing care plans

Liaising with primary care trusts about NHS continuing healthcare funding

Attaining respite care services

Challenging social services departments and primary care trusts on provision of care and other services.

If you need expert help with anything connected to community or healthcare law we can introduce you to our Public Law & Human Rights team.

## What else can we help you with?

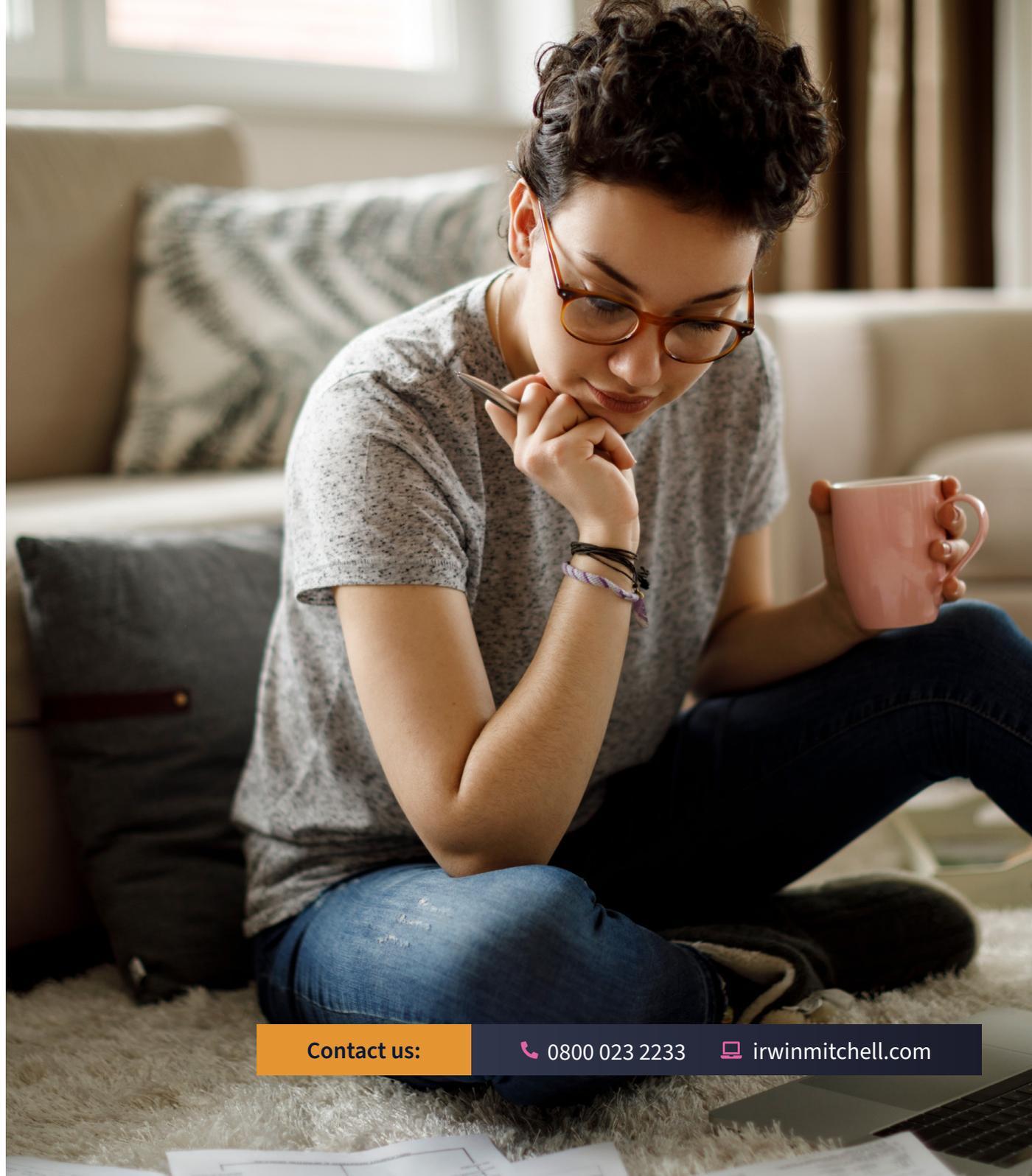
Whether it's business or personal we understand that everyone's situation is different.

If you need legal advice or support with financial planning, we're here to offer expert advice tailored to your circumstances, so you can 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.



Contact us:

0800 023 2233

[irwinmitchell.com](https://www.irwinmitchell.com)

## Useful contacts

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

### Action against Medical Accidents (AvMA)

The UK charity for patient safety and justice.

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

☎ 0845 1232 352

🌐 [avma.org.uk](http://avma.org.uk)

### Birthrights

Birthrights exists to protect your human rights during pregnancy and childbirth.

✉ [info@birthrights.org.uk](mailto:info@birthrights.org.uk)

🌐 [birthrights.org.uk](http://birthrights.org.uk)

### Baby Lifeline

A national charity which supports frontline NHS staff to prevent injuries and deaths in and around childbirth.

Baby Lifeline  
The Granary  
Fernhill Court Balsall Street  
East Balsall Common  
CV7 7FR

✉ [info@babylifeline.org.uk](mailto:info@babylifeline.org.uk)

🌐 [babylifeline.org.uk](http://babylifeline.org.uk)

### Brainwave

Helping children with disabilities and additional needs to achieve greater independence by aiming to improve mobility, communication skills and learning potential through a range of educational and physical therapies.

Marsh Lane  
Huntworth Gate  
Bridgwater  
Somerset  
TA6 6LQ

☎ 01278 429 089

✉ [enquiries@brainwave.org.uk](mailto:enquiries@brainwave.org.uk)

🌐 [brainwave.org.uk](http://brainwave.org.uk)

### Caudwell Children

Caudwell Children aims to change the futures of all disabled children by providing access to the therapies they need, increasing awareness and understanding to enable all children to lead an active and independent life.

Caudwell International Children's Centre  
Innovation Way  
Keele Science Innovation Park  
Newcastle-under-Lyme  
ST5 5NT

☎ 0345 300 1348

✉ [charity@caudwellchildren.com](mailto:charity@caudwellchildren.com)

🌐 [caudwellchildren.com](http://caudwellchildren.com)

### The Children's Trust

A charity that offers both residential and community-based rehabilitation services for children and young people with a brain injury.

Tadworth Court  
Tadworth  
Surrey  
KT20 5RU

☎ 01737 365 000  
✉ enquiries@thechildrenstrust.org.uk  
🌐 thechildrenstrust.org.uk

### Child Brain Injury Trust

A charity providing emotional and practical support, information and learning opportunities for families affected by childhood acquired brain injury.

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

☎ 01869 341 075  
🌐 childbraininjurytrust.org.uk

### Contact

Contact pride themselves on being the charity for families with disabled children.

Wenlock Studios  
50-52 Wharf Road  
London  
N1 7EU

☎ 020 7608 8700  
✉ info@contact.org.uk  
🌐 contact.org.uk

### CPotential

CPotential provide integrated rehabilitation for children and young people with movement disorders.

143 Coppetts Road  
London  
N10 1JP

☎ 020 84447242  
✉ info@cplondon.org.uk  
🌐 cpotential.org.uk

### Group B Strep Support

A charity dedicated to working to stop group B Strep infections, including meningitis, in babies.

PO Box 203  
Haywards Heath  
West Sussex  
RH16 1GF

☎ 01444 416 176  
✉ info@gbss.org.uk  
🌐 gbss.org.uk

### Heel & Toe

The charity provides a range of therapies to children with physical disabilities and complex needs.

40 Front Street  
Pelton  
Chester le Street  
Durham  
DH2 1DE

☎ 0191 3868606  
✉ info@heelandtoe.org.uk  
🌐 heelandtoe.org.uk

### Kids

A charity providing a wide range of support services to disabled children, young people and their families.

🌐 kids.org.uk

### Make Birth Better

A collective of experts who bring together lived experience and extensive professional knowledge of birth trauma and vicarious trauma.

✉ hello@makebirthbetter.org  
🌐 makebirthbetter.org

### MASIC

Advocate for women and aim to change the lives of those injured during childbirth.

The MASIC Foundation  
PO Box 10875  
Nottingham  
NG12 5YU

☎ 0115 937 594  
✉ [info@masic.org.uk](mailto:info@masic.org.uk)  
🌐 [masic.org.uk](http://masic.org.uk)

### Peeps

A charity that provides support to parents, families, and friends of those affected by Hypoxic-Ischaemic Encephalopathy.

39 Ladysmith Road  
Ashton-under-Lyne  
OL6 9BZ

☎ 0800 987 5422  
✉ [info@peeps-hie.org](mailto:info@peeps-hie.org)  
🌐 [peeps-hie.org](http://peeps-hie.org)

### Shine

A charity providing specialist advice and support for spina bifida and hydrocephalus across the UK.

42 Park Road  
Peterborough  
PE1 2UQ

☎ 01733 555 988  
✉ [firstcontact@shinecharity.org.uk](mailto:firstcontact@shinecharity.org.uk)  
🌐 [shinecharity.org.uk](http://shinecharity.org.uk)

### WellChild

A national charity giving seriously ill children, young people, and their families the best chance to thrive at home.

Office 23, Sunningend Business Centre  
22 Lansdown Industrial Estate  
Cheltenham  
Gloucestershire  
GL51 8PL

☎ 01242 530007  
✉ [info@wellchild.org.uk](mailto:info@wellchild.org.uk)  
🌐 [wellchild.org.uk](http://wellchild.org.uk)

### National Bobath Cerebral Palsy Centre

A specialist treatment centre dedicated to supporting children and families living with cerebral palsy and similar neurological conditions.

Tandy House  
Regal Way  
Watford  
WD24 4YE

☎ 0208 444 3355  
🌐 [bobath.org.uk](http://bobath.org.uk)

### Pace

A charity that helps children with neurodisabilities reach their fullest potential in life.

156 Wendover Road  
Aylesbury  
Buckinghamshire  
HP22 5TE

☎ 0129 661 6973  
✉ [info@thepacecentre.org](mailto:info@thepacecentre.org)

### Twins Trust

Supporting parents through every milestone of their journey with twins, triplets or more.

Manor House  
Church Hill  
Aldershot  
Hants  
GU12 4JU

☎ 01252 332 344  
✉ [enquiries@twinstrust.org](mailto:enquiries@twinstrust.org)  
🌐 [twinstrust.org](http://twinstrust.org)

 0800 023 2233

 [irwinmitchell.com](https://www.irwinmitchell.com)



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