

Overview of the Mental Capacity Act and Deprivation of Liberty 2011

On the 30 November 2011, Irwin Mitchell held an evening seminar discussing the Mental Capacity Act and Deprivation of Liberty. This educational seminar was held at James Cook University hospital and delivered to 46 health and social care professionals from across the region.

The seminar was presented by Katie Thackray, Court of Protection specialist solicitor, and Matheiu Culverhouse, expert solicitor from our Public Law team. An overview of the Mental Capacity Act and Deprivation of Liberty Safeguards was provided and it addressed the assessment of capacity, best interests and the practical effects of the Deprivation of Liberty Safeguards on care and treatment.

This was an opportunity to highlight the Mental Capacity Act and to give an update on the recent and important changes in case law when looking at Deprivation of Liberty.

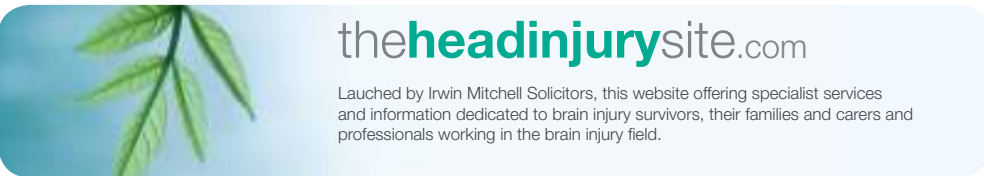
Forthcoming Events

You may be interested in attending some of the following events in 2012, please visit the relevant website for further information:

<p>30 January 2012 Challenging Decisions for Vital Public Services Irwin Mitchell, Newcastle E: northeastevents@irwinmitchell.com</p>	<p>February – March 2012 Law For Nurses Irwin Mitchell, Newcastle E: northeastevents@irwinmitchell.com</p>
<p>29 February 2012 Risky Business – Young Children and Acquired Brain Injury Child Brain Injury Trust Annual Conference Hilton Metropole, Birmingham E: www.childbraininjurytrust.org</p>	<p>15 March 2012 Deprivation of Liberty – The Benefits and Pitfalls in Brain Injury Cases The Mint Hotel, Leeds E: DOLconference@irwinmitchell.com</p>

Irwin Mitchell are dedicated to providing **FREE** education on legal issues to health and social care professionals. If you would like us to present to you and your colleagues on any of the topics below, please email: rachel.watson@irwinmitchell.com

- A Patients' Rights to Refuse Treatment
- Best Practice at the Interface between Rehabilitation and the Medico-Legal Process
- Effective Record Keeping
- Mental Capacity and Consent
- Preparing and Giving Expert Evidence
- The Litigation Process
- The Role of the Independent Case Manager in Personal Injury Cases.



theheadinjury.com

Launched by Irwin Mitchell Solicitors, this website offering specialist services and information dedicated to brain injury survivors, their families and carers and professionals working in the brain injury field.

Talk to a specialist advisor today Freephone 08000 23 22 33 or visit www.irwinmitchell.com Text claim to 61993 and someone will call you back

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North East Focus

Winter 2011-2012 Issue 1

Welcome...

...to our first edition of North East Focus which looks at the issues in personal injury and public law and to what is specifically what is happening in the North East.

In this edition we will be highlighting the work of Irwin Mitchell's Public Law Team, which helps individuals to gain access to vital public funding. We will also be introducing you to some of our team members.

If you have any feedback on this issue or would like us to address any particular topic in the future editions of North East Focus, please email us at: rachel.watson@irwinmitchell.com



Focus on Irwin Mitchell's Public Law Team

By Stephen Williams, Solicitor

At Irwin Mitchell we are able to provide a wide range of legal services to support our clients, and ensure they have access to the vital public funding they require. One of these in-house support services is that of the Public Law team.

Stephen Williams, Solicitor, is Irwin Mitchell's Public Law Team representative for the North East. Stephen specialises in judicial review, community care, health and welfare, mental capacity, disability discrimination, human rights law and environmental and planning law. He is instructed regularly by the Official Solicitor to act on behalf of vulnerable adults who lack the capacity to make decisions for themselves regarding their health and welfare. He also acts for clients who have ongoing difficulties with local authorities, NHS bodies and other public bodies.

He has successfully challenged decisions on disability discrimination, housing and community care, has experience of dealing with hospital bed blocking cases, and is currently involved in a potential high profile judicial review claim involving a department of central government.

Stephen was also involved in the Court of Protection case that set the legal test for consent to sexual capacity for those who otherwise lack the capacity to make their own decisions. The case set a precedent which ensured that the legal test in this sort of case was not placed at a threshold which was too high and would potentially deprive some adults from being able to engage in sexual relations.

If you would like further information or have any questions about the Public Law team, please contact Stephen Williams at: stephen.williams@irwinmitchell.com

Irwin Mitchell sweet for Strawberry Tea

On Tuesday 30 August, Irwin Mitchell Newcastle took part in the national Breast Cancer Care campaign and held a strawberry tea party. Staff donated a mixture of home made and purchased cakes. Selling each cake at 50p, we managed to raise £50 for Breast Cancer Care.

For more information on breast Cancer Care visit www.breastcancercare.org.uk



Innovation in Neurorehabilitation Implementing developments, Creating impacts

On 9 September 2011, Irwin Mitchell held a joint conference with Neural Pathways discussing innovation in a range of neurorehabilitation service and intervention areas. The conference aimed to provide fresh ideas and topics, create vibrancy, generate debate and challenge traditional ideas and practices. 165 enthusiastic delegates attended including health and social care professionals in the field of neurorehabilitation.

The conference was jointly organised with independent therapy provider, Neural Pathways; for more information please visit their website at www.neural-pathways.com. The programme consisted of experts and professionals in the field who presented a range of innovations across the spectrum of neurorehabilitation, from assessment to the use of new and emerging technologies as well as extending the use of approaches and evidence from other areas into the field of neurorehabilitation.



Also aspects of innovation and commissioning in the current climate were considered.

The day itself revolved around the theme of Innovation which included exhibitors demonstrating services and equipment. There was also the chance to win Speechmark Publications and to meet local author Nick Hedley. Questions and comments were text for live panel discussions.

For further information on Irwin Mitchell's approach to Innovation in Neurorehabilitation, please contact **Rachel Watson** at: rachel.watson@irwinmitchell.com



Funding for a Life-Time of Round the Clock Care

By John Davis, Partner

Chad Willis from Teesside, now 21, was left severely brain damaged after he was starved of oxygen when he was born. This was caused by a series of failings during Chad's birth which left him suffering from cerebral palsy.

In 1990 Chad's mother, Melanie Willis, was induced four weeks early because she had pre-eclampsia (a complication of pregnancy characterised by high blood pressure). Throughout the morning prior to the delivery medical staff at the hospital carried out tests and found a number of abnormalities with Chad's foetal heartbeats. However, when Chad was born there was no doctor present, he was not breathing and as a result of a severe loss of oxygen he was left severely brain damaged. If the hospital staff had acted sooner and Melanie had been given a caesarean, Chad would not have suffered any of his injuries.

As a result of the negligence of the staff at the hospital, Chad requires round-the-clock care for the rest of his life, with funding having been secured to support his care package.

A case manager was appointed and we have worked closely with them to implement a suitable care package. Further, interim payments were obtained to ensure that a suitable therapy programme was put in place as soon as possible to provide Chad with the best chance of rehabilitation. Suitable accommodation was also secured for Chad by securing an early interim payment.

We helped Chad to receive a £2.36 million as a lump sum, as well as £106,000 a year for the rest of his life. Now, Chad can receive the specialist care and support he needs for his future care support.



Chad and his mum Melanie

If you would like any further information or have any questions regarding brain injuries please contact **John direct** at: john.davis@irwinmitchell.com

Irwin Mitchell Aid Convoy to Bulgaria 2011

Communication Workers Union (CWU) Humanitarian Aid have, for the last 16 years, been delivering humanitarian aid to orphans and poor families in Eastern Europe. Using vehicles loaned to them free of charge by Parcelforce, Royal Mail and BT, they have sent over 30 convoys and delivered over 2,000 tonnes of aid.

CWU members Stephen Albon and Peter Sharrocks have been part of the convoy for several years and this year Irwin Mitchell Newcastle helped them fill their vehicle which, on 16 September 2011, delivered aid to an orphanage in Purvomai, Blagoevgrad, Bulgaria that cares for 54 disabled children aged between 7 and 18.

Stephen and Peter delivered clothing, shoes, toiletries, stationery, toys, televisions and furniture generously donated by the staff of the Newcastle office. Stephen paid us a visit in the vehicle that they would be using for the convoy with all of our donations. We also donated £500 to the convoy costs.



Convoy of deliveries

Stephen and Peter were thrilled with our staff's donations and hope to generate further enthusiasm for next year's convoy by giving a presentation of their trip and showing the Newcastle staff what a difference they have made to so many young lives.

Stephen and Peter have recently returned from their gruelling 3-week trip to Bulgaria. Being on the road for 16 hours each day is certainly no picnic, especially when topped off with a spot of Eastern European bureaucracy, but they agree that meeting the recipients of the aid for just one second is enough to remind them why they do it.

It was the first time the orphanage had received aid and seeing what the staff had achieved with so little was an inspiration to all. Peter and Stephen left feeling happy to have delivered the aid, but even more happy to be leaving the children in safe hands with such an amazing group of people who care for them.

For further details and photos see: www.cwuha.org



Emma Dumbleton and Roger Maddock (on the right) with Stephen

Recovery of Charity Service Costs

A recent landmark decision in the High Court allows charities to claim back their costs for provision of services for those who are injured as a result of negligence.

The Case

In 1951 James Willson, 20, finished his National Service and went to work for Foster Wheeler Limited erecting new boilers at Deptford Power Station where he was regularly exposed to asbestos. In 2006, more than 50 years later, Mr Willson was diagnosed with Mesothelioma and he sadly passed away in 2007. During his illness, Mr Willson received essential home visits for palliative care and also spent 23 days at St Joseph's Hospice in Hackney.

Mr Willson and his family brought a personal injury claim and the High Court recently ruled that Foster Wheeler Limited should pay the costs of the care provided by St Joseph's Hospice to Mr Willson. This ruling resulted in over £10,000 being paid by Foster Wheeler's insurers in St Joseph's Hospice to cover the care costs, representing the proportion of the care provided which was funded by charitable donations.

The Principles

The basic legal principles say that the claimant is entitled to recover compensation for all reasonable expenses incurred as a consequence of a defendant's negligent acts and the ensuing injuries. The general principle of the Willson ruling is that the cost of care which is provided without charge and without statutory obligation can be recovered as damages in a personal injury claim. This means that charities and other organisations that provide care to injured individuals outside of any statutory obligation such as NHS care, can now potentially seek to recover the costs of that care.

The main point to consider is 'why should defendants or their insurers profit from charitable donations?' Hospice and community care providers will clearly benefit from the Willson ruling and it could be argued that an even wider approach could be applied. For example, if a charity provides equipment that an injured person would otherwise have had to purchase or hire (the expense of which would be recoverable as damages), why can the charity itself not recover their own outlay? What about the situation where a charity provides aids and equipment to an accident victim to overcome, or adapt to their disability. Why shouldn't the charity recoup the cost of this provision or a notional hire charge? Or what about a charity which provides benefits advice to someone injured as a consequence of medical negligence?

By not claiming the costs of care, support and equipment provided by charities and other organisations to those injured as a result of negligence, it would deprive the community of a resource which could otherwise be ploughed back into the charities and allocated to those who do not have recourse to the Courts. It would also assist charities and other organisations to continue to provide their services in their local communities against the current economic background where many charities are facing local authority funding cuts.



James Willson