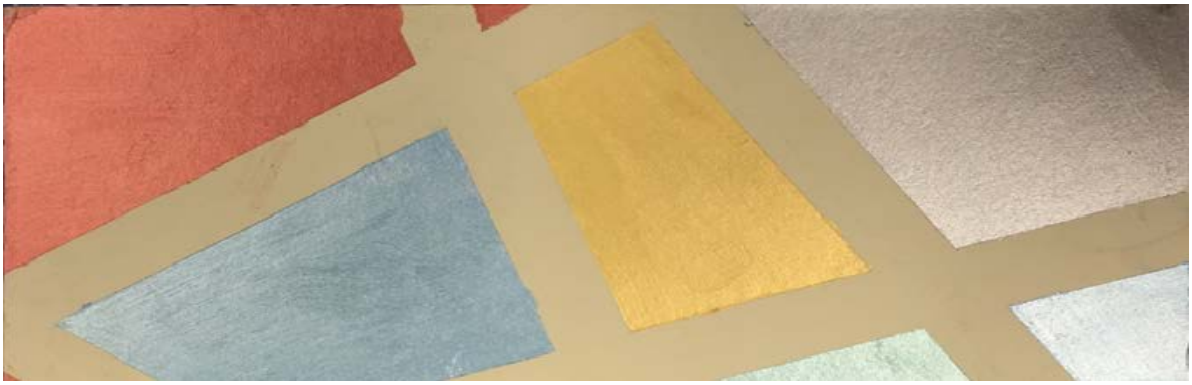
MENTAL CAPACITY REPORT:
PROPERTY AND AFFAIRS
March 2024 | Issue 138



Welcome to the March 2024 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: sexual and contraceptive complexities and an important light shed on DoLS from Northern Ireland;

(2) In the Property and Affairs Report: the obligations on the LPA certificate provider, telling P their damages award, and dispensing with notification in statutory will cases;

(3) In the Practice and Procedure Report: when it is necessary to go to court in serious medical treatment cases, and a Scottish cross-border problem;

(4) In the (new) Mental Health Matters Report: medical evidence, mental disorder and deprivation of liberty, and the approach to propensity evidence;

(5) In the Wider Context Report: when not to try CPR, developments in the context of assisted dying / assisted suicide and with Martha's Rule, and news from Ireland;

(6) In the Scotland Report: a Scottish take on the *Cheshire West* anniversary and a tribute to Karen Kirk.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also sign up to the Mental Capacity Report.

Finally, we should note March 2024 contains three ten year anniversaries. One is national – indeed international – significance: the decision in *Cheshire West*; one is of national significance: the House of Lords Select Committee post-legislative scrutiny report on the MCA 20025; and the third is of personal significance to Alex: the launch of his website.

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The picture at the top, "*Colourful*," is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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The obligations on the certificate provider

TA v the Public Guardian [2023] EWCOP 63 (Lieven J)

Lasting Powers of Attorney

Summary

The obligations on the certificate provider In a case from December 2023 which arrived on Bailii too late for the February 2024 Mental Capacity Report, Lieven J has confirmed something which might have been thought obvious: namely that a certificate provider must actually engage their brain when they are deciding whether they can complete a certificate that, in their opinion, at the time when the donor executes the instrument:

(i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,

(ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and

(iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.

(paragraph 2(1)(e) of Schedule 1 to the MCA 2005)

The (perhaps slightly surprising) argument advanced on appeal to Lieven J in *TA v The Public Guardian* [2023] EWCOP 63 was that, in the event that the court was being asked to exercise its powers under s.22 MCA 2005 to determine whether one or more requirements for the creation of an LPA have been met, it would suffice simply for the certificate to be provided. The first instance judge (HHJ McCabe) had held that the 'ordinary words' of paragraph 2(1)(e)

> *38.* […] *plainly requires the certificate provider, in order to provide the certificate, to take some steps to satisfy themselves of the matters set out in section 2 (e), otherwise they cannot be considered validly to provide the opinion. This opinion is one of the requirements for the creation of an LPA, and what is required is the provision of an opinion, not merely the witnessing of a signature.*
> *39. If the Court is asked, as I am, to exercise its powers under section 22 of the MCA, namely to 'determine whether one or more of the requirements for the creation of a LPA have been met', it*

follows that the Court must be entitled to look for evidence that the requirements have been met. Such evidence has manifestly not been provided in the current case, limited as it is to simply the asking and answering of a question "are you happy with the LPA"?

Lieven J agreed, holding that:

29. Paragraph 2(1)(e) requires the provision of a certificate, but it also requires that certificate to have particular content. The content is that the certificate provider has an opinion as to three specific matters. Therefore, on a pure black letter law approach, a valid certificate must be based on an opinion as to those three matters. If the evidence showed that the certificate provider did not have such an opinion because, for example, they had not spoken to the donor, then there would not be a valid opinion.

30. It therefore follows from the words themselves that the Court is entitled to check that the requisite opinion has actually been formed. If this stage of the analysis is not accepted, and Ms Collinson's argument is taken at its highest, then paragraph 1(e) becomes a nonsense. The mere provision of a certificate in the right form cannot be sufficient on its own.

31. I do not accept Ms Collinson's submission that the Court can only look at the existence of the certificate and no more. For the certificate to meet the requirement of the MCA it must be a certificate as to the matters in paragraph 2(1)(e). This follows from the terms of s.22, which allows the Court to determine whether any of the requirements for the creation of the LPA have been met.

32. It is then necessary to consider the statutory context and the mischief being addressed. The certificate is an important part of the procedure to ensure that a valid LPA has been entered into. The nature of the scheme is that validity turns not merely on the provision of certain documents, but that those documents themselves provide reassurance on a number of key matters. The whole purpose of the MCA is to make provision for the protection of those who have lost mental capacity, or who may do so, as we all may, in the future. The latter issue is dealt with, inter alia, through the making of Lasting Powers of Attorney. Those documents are of the utmost importance in the making of future decisions for people who subsequently lose capacity.

33. Paragraph 2(1)(e) does not merely concern whether the donor has capacity. It is also there to provide some safeguards that the donor understands the instrument, is not subject to fraud or undue pressure and there are no other barriers to the LPA. Plainly these matters go beyond capacity. The donor might have capacity, but not actually have read the LPA and therefore not understand its purpose or scope. This would not later be grounds to set aside on the basis of lack of capacity, but is an important safeguard in the process.

34. The scheme of the MCA, and paragraphs 2(1)(e) also gives protection to the donor at the stage of making the LPA. Although the power to set aside exists in s.22, in practice that power rests on someone raising the issue of validity after the making of the LPA. In many cases such an issue will not be raised, perhaps because there is no other person concerned and the OPG is not aware of the circumstances. Therefore the power in s.22 does not mean that a purposive and careful approach should not be taken to the safeguards in paragraph 2(1)(e).

Lieven J's judgment is an important and helpful reminder not just of the position if the case comes to court, but also of the duties on the certificate provider. It is also of note that Lieven J appeared to take it as read that the certificate provider is considering the donor's capacity (as had Poole J in *The Public Guardian v RI & Ors* [2022] EWCOP 22 (see paragraph 27)). Proposals to amend the MCA 2005 to put this beyond doubt during the passage of the Powers of Attorney Act 2023 did not see fruit, but as the secondary legislation and – above all – the forms (including the digital forms) are being worked up to enable the Act to come into force, it will be interesting to see what can be done to ensure that (1) certificate providers are aware of the duties upon them; (2) are supported to engage their brains; and (3) to record the contemporaneous evidence of such.

For those wanting to ensure that they do their job as certificate providers correctly, we recommend this guidance available from the Mencap Trust Company.

Telling P their damages award

PSG Trust Corporation Ltd v CK & Anor [2024] EWCOP 14 (Hayden J)

Deputies – property and financial affairs

Summary

Hayden J has returned to the question of what, exactly, the 'decision' in question is where the issue is whether a person with cognitive impairments in receipt of a damages award should be told the amount of that award. Previous judges who had looked at this had approached it on the basis that the decision was whether the person should be told. Hayden J, however, was uncomfortable with the phrase "capacity to be told," because "[it]*does not seem to me to capture the matter with sufficient clarity. In many respects, we have no control over what people tell us and, it follows, no decision to take*." Having traversed the authorities, and with the benefit of counsel for the applicant deputies in two cases where the issue had arisen, and the Official Solicitor as Advocate to the Court, considered that the real question was whether the person had capacity to request the value of the funds.[1] The information relevant to that decision, he considered, was likely to include: (1) the nature of the information in question; (2) the risks of obtaining it; (3) the risks of not obtaining it; (4) the benefits of obtaining it; and (5) the benefits of not obtaining it. He continued at paragraph 29**:**

> *When assessing P's capacity to take the decision, her ability, or the extent of her ability, to recognise, retain, and weigh the above questions and specifically to recognise, retain and weigh her own vulnerability and its potential consequences, will frame the scope of the decision. It follows that if she does recognise, retain and weigh these problems and vulnerabilities, it is likely that the presumption that her decision is capacitous has not been rebutted. Of course, none of this causes the identified vulnerabilities to evaporate, they remain and they are real. However, the fact that she may make unwise decisions, in the future, which cause her to fall prey to exploitation, is, ultimately, to expose her, as we all must be to some degree, to the vicissitudes of life and human transgression. But the role of this court is to protect and promote*

[1] This comes from paragraph 28, although it is phrased as "whether P wishes to request the value of her funds." A decision to "wish to request" funds is one stage removed, however, and it is clear that Hayden J intended to crystallise the decision as being the decision to request.

human autonomy not to repress it with misconceived paternalism. A life wrapped in cotton wool is a restricted and diminished one.

Responding to a request for further guidance as to such applications, Hayden J continued:

30. Where it is concluded that P lacks capacity then, inevitably, a 'best interests' decision must be taken. I do not consider that it is necessary for a deputy to make an application in every case. Sometimes, the decision will be clear, perhaps even just common sense. In some cases, however, it will be difficult and require resort to the court. In Re ACC [2020] EWCOP 9, Her Honour Judge Hilder was considering the authority to incur legal costs on behalf of P, conferred on a property and affairs deputy by the terms of a standard deputy order. At [§52], Judge Hilder considered to what extent a property and affairs deputy is authorised to incur costs on P's behalf in health and welfare proceedings. At [§52.5]:

> *"A property and affairs deputyship does not confer any authority in respect of welfare. If a welfare issues arises, there may be a body or institution more appropriately placed than the property and affairs deputy to make that application, at less cost to P".*

Judge Hilder went on to conclude that, as a property and affairs deputy's authority extends to only property and affairs matters, they are not authorised to conduct health and welfare proceedings on behalf of P. The Judge makes the converse point:

> *"In contrast, where the contemplated litigation is not in the realm of property and affairs, there is simply no line to be drawn. A property and affairs deputy's authority relates only to property and affairs; It extends no further than meeting the deputy's responsibility to draw to the court's attention that there is or may be a welfare issue for determination by seeking directions as to how such (potential) issue may be addressed. Without such application being made and granted, the deputy proceeds at risk as to costs".*

31. Miss Collinson submits that under the terms of the standard property and affairs property order (as here), the deputy has no power to make a decision that is one "predominantly affecting welfare". This, she contends, is primarily a welfare decision. I do not agree with this analysis. What is in issue is communication of the exact sum of a damages award. That strikes me as a property and affairs matter. The fact that welfare considerations flow from it does not change the nature of the matter. Many financial issues have welfare implications, taking out mortgages, finance agreements, sustaining an extensive overdraft. This view seems to me to be entirely consistent with Judge Hilder's observations, indeed, she uses the term "in the realm of property and affairs" which implicitly recognises that decisions in that sphere will sometimes have welfare implications. I do not believe, therefore, that it is necessary to extend a deputy's authority in every case. Neither, however, do I wish to be prescriptive. Precisely because the Court of Protection is such a highly fact-specific jurisdiction, it is perfectly conceivable that what might appear on

> *the surface to be a Property and Affairs issue, is on a proper construction, nothing of the kind and truly a welfare issue. In these cases, an application can be made and a deputy's authority extended where appropriate.*

In relation to the position where the question is whether an attorney should withhold equivalent information from the donor, Hayden J noted that:

> *32.* […] *A conflict of interest or a perceived conflict of interest might arise if the agent were to decide that the amount of P's funds under his control should not be disclosed to her. If an attorney under a Lasting Power considers that P should not be told the value of funds under his control, then the matter, Mr Holmes argues, requires to be referred to the Court for determination. I agree with this as, I understand, does the Official Solicitor. It has to be emphasised that the conflict of interest between the donor and donee of a Lasting Power of Attorney, identified above does not arise in the case of deputies who are appointed by the Court and not by P, required to submit annual accounts to the Public Guardian and subject to supervision.*

On the facts of the cases before him, Hayden J found that both Ps lacked the capacity to request to see the value of their award, and that it was in the best interests of one to have the sum disclosed, but not the other.

Comment

There are definite shades of the *JB* decision in the judgment of Hayden J, not just the self-direction about the importance of identifying the decision and the relevant information, but also in the recognition of those with cognitive impairments as active agents – in the JB case, deciding to engage in sex, rather than simply consenting; here, deciding to ask about the value of their award, rather than passively receiving information if others decide to tell them.

The analysis of the blurriness of the distinction between property and affairs and welfare matters is also of interest, and self-evidently correct,[2] even if, in relation to the disclosure of damages awards, it will require deputies to making their own judgment calls as to whether disclosure is clearly a financial decision with welfare implications, or whether it is, in fact, 'nothing of the kind,' but has in fact jumped tracks and is a pure welfare decision.

Short note: dispensing with notification in statutory will applications

Practice Direction Practice Direction 9E supplements Part 9 of the Court of Protection Rules and deals with applications relating to statutory wills, codicils, settlements and other dealings with P's property.

Paragraph 9 of PD 9E provides that:

> *The applicant must name as a respondent - (a) any beneficiary under an existing will or codicil who is likely to be materially or adversely affected by the application; (b) any beneficiary under a proposed will or codicil who is likely to be materially or adversely affected by the application; and (c) any prospective beneficiary under P's intestacy where P has no existing will.*

In *BH v JH* [2024] EWCOP 12, DDJ Weereratne had to decide whether to dispense with service on potential beneficiaries on an application to vary a statutory will. The decision, as a decision

[2] And of wider application: a decision about a self-funder moving into a care home is one that it is far from obvious falls neatly into either box.

of a Deputy District Judge, does not have precedent value, but we note it here because it is the first reported case where the specific issue to which it gave rise has been considered.

There were 2 classes of beneficiary affected. One class were P's carers who were potential beneficiaries under a discretionary trust. It was proposed that the size of the trust be increased so that they would stand to benefit from the changes.

The other class was a residuary class benefitting under a gift to unnamed charities. The increase in the trust reduced pro rata the potential value of the residuary gift.

The applicant (P's deputy) argued that neither class should be notified. Regarding the carers, he argued that the fact that the effect was in their favour meant that the PD did not apply and that, in any event, there were exceptional circumstances pursuant to the guidance in *Re AB* [2014] COPLR 381 and *I v D* [2016] COPLR 432, namely that if they were notified, there was potential for discord and harm to P's care regime.

Regarding the residuary beneficiaries, the applicant argued that there would be no point and that notification would be disproportionate and in some way paternalistic towards him.

The OS argued that the Practice Direction was in mandatory terms, that it applied whether the material effect was positive or negative, but she agreed that there were exceptional circumstances as described to dispense with service on the carers.

As regards the residuary beneficiaries, the Official Solicitor argued that there was no reason to dispense with service, natural justice required it and the cost was not disproportionate to the size of P's estate (£12m).

DDJ Weereratne held that the Official Solicitor was correct in all respects, dispensing with service on the carers but not in relation to residuary beneficiaries (which would be on the Attorney-General). See paragraphs 40-52 of the judgement. In particular, the judge held that, in relation to the residuary beneficiaries, the deputy had fundamentally misunderstood the rationale behind the PD, namely that it is there to serve the interests of natural justice and is not in any sense dependent on P's best interests (see paragraph 49).

That finding, in particular, led to the Official Solicitor applying for a departure from the usual order for costs in cases involving property and affairs (that is to say that all parties' costs are borne by P's estate). DDJ Weereratne gave a separate judgment on that issue [2024] EWCOP 9. By a given date before the hearing, the Official Solicitor had agreed that service on the carers could be dispensed with and had made clear her objections in relation to the beneficiaries, citing the relevant case law. DDJ Weereratne referred to the relevant rules,, namely Court of Protection Rules 2017 (COPR) 19.2: "costs of the proceedings, or of that part of the proceedings that concerns P's property and affairs, shall be paid by P or charged to P's estate."

The court noted that it has a discretion to depart from the usual rule in COPR 19.2 "if the circumstances so justify": rule 19.5(1) and that rule 19.5(1) further provides that:

> *in deciding whether departure is justified the court will have regard to all the circumstances including -*
> *(a) the conduct of the parties,*
> *(b) whether a party has succeeded on part of that party's case, even if not wholly successful; and*
> *(c) the role of any public body involved in the proceedings.*

Rule 19.5(2) provides that the conduct of the parties includes -

> *(a) the conduct before, as well as during, the proceedings;*
> *(b) whether it was reasonable for a party to raise, pursue or contest a particular matter;*
> *(c) the manner in which a party has made or responded to an application or a particular issue;*
> *(d) whether a party who has succeeded in that party's application or response to an application in whole or in part, exaggerated any matter contained in the application or response; and*
> *(e) any failure by a party to comply with a rule, practice direction or court order.*

DDJ Weereratne held that, after the Official Solicitor had agreed to dispensation with regard to the carers, the deputy should have agreed to that and a draft consent order would have been all that was required. DDJ Weereratne therefore found that the deputy's conduct thereafter was unreasonable so from that date the deputy would have to bear his own and P's costs.

Testamentary capacity and keeping the Court of Protection at bay – a cautionary tale

Biria v Biria & Ors [2024] EWHC 121 (Ch) (Chancery Division (Deputy Master Bowles))

Other proceedings - probate

Summary

This was a challenge to a will which arose in somewhat unusual circumstances. When Mr Biria was 95, he purportedly executed a will. At the date of the will, there were extant proceedings in the Court of Protection. Those proceedings had commenced on 9 April 2020, seeking an assessment of Mr Biria's capacity to manage his own affairs and expressing a concern that Mr Biria was being exploited by his son and daughter, both of whom were made parties to the proceedings. In April 2020, the Court of Protection had made a declaration that there was reason to believe that Mr Biria lacked the capacity to consent to an assessment of his capacity to manage his own affairs and had directed one of his sons (Hamid) and one of his daughter (Nasrin) – who were living with him – to use their best endeavours to make Mr Biria available for an assessment of his capacity and, further, not to interfere with that assessment. They stymied that assessment for some time, and, in May 2020 – whilst that assessment was still pending – a will was purportedly executed at the offices of a notary, disinheriting another of his sons, Ali. The will was not prepared by the notary, but was brought to the meeting by those attending, having been prepared by an American attorney.

The Court of Protection Special Visitor, a psychiatrist, was ultimately able to assess Mr Biria, and concluded that he did not have the capacity to manage his property and affairs and that he was unable, by reason of dementia, to understand, retain, use, or weigh, relevant information. That conclusion was reflected in and formed the essential basis for orders by which, ultimately, a deputy was appointed to manage Mr Biria's property and affairs. In the interim, however, Hamid had been found to be in contempt of court for having failed to comply with the Court of Protection's order requiring him to assist in securing the assessment of his father. Hamid and Nasrin - again in contravention of an order of the Court of Protection – also stymied the ability of local authority social workers to carry out a Care Act assessment of Mr Biria's needs. They continued to prevent access by the local authority and a second Special Visitor so as to be able to report upon his needs.

Mr Biria died in January 2022, and a challenge was brought to the will by Ali on the basis that Mr Biria lacked testamentary capacity, that it was invalid for the want of Mr Biria's knowledge and approval of its contents, that the will was purportedly executed under and by reason of the undue influence exercised, or exerted, over Mr Biria by Hamid and Nasrin and/or because the will was the product of false beliefs as to the character and conduct of Ali inculcated in Mr Biria by Hamid and Nasrin, such that the will fell to be set aside as a fraudulent calumny.

The American attorney declined to answer the request for a *Larke v Nugus* statement, on the basis that he was not a solicitor, nor a person authorised to practice law in the United Kingdom, and asserted that, in consequence, the questions in respect of the preparation of the disputed will, his instructions in respect of the disputed will and the circumstances surrounding its preparation were not, in his words, 'properly directed'. Accordingly, the questions raised remained unanswered and, unusually, the court was left with minimal direct information as to the process and circumstances whereby the will came into being.

As to capacity, Dr Barker, the expert who had provided the report to the Court of Protection on Mr Biria's capacity to manage his property and affairs, provided a further report to the court determining the probate action. His clear conclusion was that, as at the day of the purported will, Mr Biria lacked the capacity to execute a valid will. As Deputy Master Bowles noted:

> *96. In tendering his expert opinion, Doctor Barker, as he explained in his 27 August 2023 report, had regard to the familiar 'test' for testamentary capacity established, long ago, in Banks v Goodfellow (1870) LR 5 QB 549. He was right to do so. There has been some recent debate as to whether the Banks v Goodfellow 'test' has been modified, or superceded, by the provisions of the Mental Capacity Act 2005. In my view, it has not. I agree, with respect with Falk J, in Clitheroe v Bond [2021] EWHC 1102 (Ch), at paragraph 82, that the Banks test has not been overridden by the Mental Capacity Act 2005. I agree, further, with the views expressed, in Walker v Bodmin [2014] EWHC 71 (Ch) and James v James [2018] EWHC 43 (Ch), to the effect that the Mental Capacity Act affords a test, or tests, for capacity in respect of transactions effected, or to be effected, by living persons, whereas the Banks test is applicable for the retrospective determination of capacity in respect of a past transaction, specifically, a will.*
>
> *97. Doctor Barker's conclusions as to testamentary capacity rest upon his view that Mr Biria's dementia prevented him from satisfying two of the criteria for such capacity, set out in Banks, namely the requirement that the testator have the ability, or capacity, to understand the extent of the property of which he was disposing and the further requirement that the testator comprehend and appreciate the claims to which he ought to give effect.*

Deputy Master Bowles reminded himself that it was for the court, rather than the expert, to make the final conclusion, but endorsed Dr Barker's report and found that the will was invalid through want of testamentary capacity.

Deputy Master Bowles further found that the highly unsatisfactory circumstances under which the will was created did not afford any evidence that he knew and approved its contents, nor, therefore to allay, in any way, the court's suspicions in that regard. This was therefore a second ground to find the will invalid. In significant part because of the conduct of

Hamid and Nasrin in the course of the Court of Protection proceedings, Deputy Master Bowles found himself satisfied that the will was executed by Mr Biria at the direction and by reason of the undue influence exercised by Hamid and Nasrin. He did, however, find that the will failed on grounds of fraudulent calumny, because the allegation in question (that Ali had threatened to kill Mr Biria) did not arise from any action of Hamid or Nasrin, but rather from someone suffering from dementia.

Comment

Given both the evidence of Dr Barker and the conduct of Hamid and Nasrin in the course of the Court of Protection proceedings, it is perhaps not enormously surprising that the court reached the conclusions that it did both as Mr Biria's capacity and also the extent to which the will was created under circumstances which in truth did not represent his testamentary intent at all. One striking feature, though, is that, despite Deputy Master Bowles' observations about the relevance of the Mental Capacity Act 2005 to the question of testamentary capacity, it would appear very likely that, had Mr Biria survived any length of time, his deputy would have to have considered whether to seek to apply to have a statutory will made for him – and, at that point, the test in the MCA 2005 would have applied. The mismatch between the two positions is one that may be resolved in due course if the Law Commission's provisional recommendations in their Making a Will consultation paper are taken forward.

Short note: not leaping unduly to a conclusion of undue influence

In *Rea v Rea & Ors* [2024] EWCA Civ 169, the Court of Appeal determined the latest in a very long round of litigation over the validity of a will made in 2015. It is of interest for wider purposes for its approach to proving undue influence. Newey LJ accepted:

> *31.* […] *that undue influence can be proved without demonstrating that the circumstances are necessarily inconsistent with any alternative hypothesis. On the other hand, the circumstances must be such that undue influence is more probable than any other hypothesis. If another possibility is just as likely, undue influence will not have been established. When making that assessment, moreover, it may well be appropriate to proceed on the basis that undue influence is inherently improbable.*

On the facts of the case, the Court of Appeal reached the – unusual – conclusion that it was driven to interfere with the finding of fact of the trial judge that the testatrix had been subject to undue influence, Newey LJ finding that the evidence did not entitle him to reach that conclusion:

> *57.* […] *Undue influence in this context connotes coercion such as to "overpower the volition without convincing the judgment", where the testator's volition is "overborne and subjected to the domination of another" and the testator would say if he could speak his wishes, "this is not my wish, but I must do it". This, to my mind, is a case in which it is appropriate to proceed on the basis that such conduct is inherently unlikely. Further, there was in the present case no direct evidence of coercion and, in my view, it could not reasonably be found, in the light of the matters mentioned in the previous paragraph, that the circumstances justified such an inference. For coercion to be proved, it had to be shown to be more probable than any other possibility. I do not think there is any question of coercion having been the most probable possibility here. As was*

pointed out by Mr Robert Deacon, who appeared for Rita, the Judge needed to consider whether the circumstances were as consistent with Anna deciding to make a new will either entirely of her own accord or after being encouraged to do so by Rita. Undue influence was, to my mind, clearly no more likely than at least the latter of these hypotheses.

58. I have not forgotten that the Judge had the advantage of seeing the witnesses and found Rita an unreliable witness who had given untruthful evidence about both the circumstances in which the 2015 Will came to be made and the fact that the 2015 Will was not disclosed to anyone until after Anna's death. It appears to me that, even taken in combination with all the other factors on which the Judge relied, these matters are not such as to allow the finding of undue influence to be sustained. Apart from anything else, the aspects of Rita's evidence to which the Judge drew attention were consistent with the (inherently more probable) possibility of Rita having merely sought to persuade her mother to make the 2015 Will.

59. In short, I do not consider that the evidence before the Judge was capable of supporting a finding of undue influence. That being so, the appropriate course is, I think, to confirm the validity of the 2015 Will.

Court of Protection Property and Affairs Users group meeting minutes

The meeting minutes from the meeting of 17 January are now available. The next meeting will be on 23 April 2024.

OPG FAQs

The Office of the Public Guardian has published a series of 'your questions answered,' addressing completing forms, attorneys, witnesses and certificate providers, payments and fees, using your LPA, reporting and making changes to your LPA.

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Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click here.

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Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.

Jill Stavert: j.stavert@napier.ac.uk

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click here.

Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex is also doing a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

Adrian will be speaking at the following open events: the Royal Faculty of Procurators of Glasgow Private Client Conference (14 March, details here), the World Congress of Adult Support and Care in Buenos Aires (August 27-30, 2024, details here) and the European Law Institute Annual Conference in Dublin (10 October, details here).

Peter Edwards Law has announced its spring training schedule, here, including an introduction – MCA and Deprivation of Liberty, and introduction to using Court of Protection including s. 21A Appeals, and a Court of Protection / MCA Masterclass - Legal Update.

Advertising conferences and training events

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to the dementia charity My Life Films in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in April. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: marketing@39essex.com.

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