

Court of Protection: other recent cases

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Complex estate planning and the Court of Protection

In *Re Peter Jones [2014] EWCOP 59* the Court of Protection, in considering a statutory will application on behalf of an incapacitated wealthy businessman, held that, although he had shown no interest in providing for his estranged daughter in the past he had indicated that he would want to make provision for her in his Will. Although, as with many statutory will cases, the outcome was specific to its facts, the Court had to consider a diverse and significant portfolio of assets including land in Europe.

It was accepted that the Court did not have jurisdiction to deal with the Mediterranean land however the majority of Mr Jones' other assets had been returned to the UK and were within the scope of the statutory will before the Court. The approved structure was in two parts; a lifetime trust for Mr Jones' daughter (who was not good at handling money) to secure her comfortable accommodation and deal with her debts and provision in the statutory Will providing a substantial legacy for the daughter, taking into account the lifetime provision made for her, with the balance of the residuary estate passing to Mr Jones' wife. The Court also approved an immediate cash payment to Mr Jones' wife to be held on trust to enable a property to be built on the land in the Mediterranean for his occupation. The combination of lifetime provision and a statutory will shows that the Court's powers can be used to sanctions quite complex and imaginative estate planning arrangements.

Court of Protection: ratification of deputy's gifts

The ratification of gifts across the generation gap by the Court of Protection is a subject that is interestingly touched upon in *Re HC; The Public Guardian v CC [2015] EWCOP 29*. Following a diagnosis of dementia, HC moved in with one of her five children, CC, who subsequently was appointed deputy in charge of her £10,000 savings and £22,000 income. Concerns surrounding the financial state of CC's accounts led to a detailed accounting being required by the Office of the Public Guardian.

The Office of the Public Guardian was concerned that explanation was needed due to around £15,000 worth of care fees being charged by CC and HC having made a significant contribution to £60,000 worth of expenditure on household renovations to CC's home. The OPG criticised further expenditure and receipt of funds by CC as excessive and unnecessary given the alternative care options available to him for HC. In his defence, CC argued that the £1,500 monthly charge had been agreed with his siblings, that the care for HC was best provided in his home and that private care alternatives were more expensive. Senior Judge Lush considered the position and, in the circumstances, agreed that the payments should be approved retrospectively as gifts to CC. He commented, that deputies in a similar position to CC should seek approval for new expenditure on those in their care before the cost is incurred.

Interestingly, in working out how much a family carer should fairly be paid, the Court used the method of calculating the cost of care for personal injury claims. The calculation starts from the commercial cost and then discounts by a total of 40% which recognises that families provide care at a lower cost and that payments are not treated as income for the purpose of income tax.

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