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The Role of the Deputy during Ongoing Litigation

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- The Court's inherent jurisdiction
- Appointment of Masters of Lunacy 1842
- Renamed Court of Protection 1947
- Mental Capacity Act 2005
- New Court of Protection 2007

- Capacity is decision specific –

Masterman-Lister v Brutton & Co [2002] EWCA Civ 1889

- Assessment of Capacity

Diagnostic test – section 2(1) MCA

Functional Test - Section 3 MCA

“A person is unable to make a decision himself if he is unable to

- (a) Understand the information relevant to the decision
- (b) Retain that information
- (c) Use or weight that information as part of the process of the decision
- (d) Communicate that decision (whether by talking using sign language or any other means)

Which Deputy?

(a) Family

- Complexity
- Conflict

(b) Professional

- Assessment of costs

(c) Court of Protection Panel

When?

- (a) Funding
- (b) 52 week rule – any money resulting from a personal injury
- (c) Delays - Personal Injury Trust
- (d) Establishing extent of need and costs

- Medical evidence – all relevant opinions
- Service
- The role of the Personal Injury Defendant
 - **Re SK** [2012] EWHC 1990 (COP) (especially §37-44)
 - Approved by the President in **London Borough of Redbridge v G and others** [2014] EWCOP 1361, c.f. §50 and 53.

Deputy's Role on appointment

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- (a) Case management
- (b) Employment issues
- (c) Accommodation
- (d) Tax and benefit advice
- (e) Family issues
- (f) Disputes
- (g) Litigation support

Deputy's Role on Settlement

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- (a) Review of budget
- (b) Accommodation and Adaptations
- (c) Statutory Wills
- (d) Replacement Deputies