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The Deputy's Role

24 March 2010

Adrian Mundell



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Effective Management of a PI Claim: from a Legal and Financial Perspective

The Deputy's Role
Adrian Mundell
24 March 2010



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Current Issues

- Timescales
- Every decision needs a new application
- Fees for application
- Security Bonds (re H)
- Lack of consistency
- Time limited orders
- Differing advice

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Brief Overview of MCA

- Five principles of the Act
- Capacity
- Supporting decision making
- Decision types
- Types of Deputy

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Use of Trusts

- The walking wounded
- Benefits/ Funding protection
- Vulnerable clients
- Professional Trustee
- Cost benefit analysis

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The Five Principles of the MCA

- Capacity is to be assumed to start with
- Not incapable until all practicable attempts at 'support' have proven unsuccessful
- An unwise decision doesn't mean incapable
- Best interests
- Take the least restrictive option

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Advice on Individual Cases

adrian.mundell@kcj.co.uk
01942 768778
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Offices in Cambridge, Bury St Edmunds, Thetford and Norwich

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Family

- Initial meeting explain the role of the Court and the Deputy
- Explain the principles of the Act
- Reassure that you will speak to them
- Discuss costs recoverability
- Establish ground rules
- Agree budget
- Explain conflicts

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Investment

- Select IFA
- Relevant experience important
- Important that advisor can get on with family
- Provide full details
- Arrange meeting

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Overlap with litigation

- Close working needed between litigation solicitor and deputy
- Communication
- Support for schedule – invoices, expenditure etc
- Discuss potential conflict areas
- Manage client expectations for post settlement

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Capacity

- Capacity is decision specific
- Must use every possible means to support client in making a decision
- Section 4 MCA process – consultation
- The protected person's wishes
- Best interests v eccentricity

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Supporting Decision Making

- Functional approach
- Understanding and retaining information
- Using and weighing information
- Communication of the decision
- Unwise decisions

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Types of Deputy

- Property and Affairs
- Health and Welfare – not so common
- Numbers (July 2009 to September 2009)
 - Property and Affairs Deputies Appointed 1957
 - Health and Welfare Deputies Appointed 28
- Blurred boundaries

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When to Apply?

- The delays under the old regime are being seen in the new Court
- New orders taking about four months
- Need to meet client/family to discuss Deputy's role
- Need to obtain information to make application
- Need to get completed COP3 Assessment of Capacity Form – delays in expert or GP getting forms back

When to Apply?

- As soon as liability admitted and concerns identified about capacity, start the process
- Involve expert
- If expert agrees there is lack of capacity then start application.
- Best to have everything in place to receive an interim payment if possible

Who to Appoint?

- Do the family have the expertise?
- Is there a potential conflict of interest?
- Will they have time, or would they rather spend the time caring?
- Potential difficulties in relationships
- Larger cases – recommend Professional Deputy
- Lay deputies in cases over £1m – security bond problem
- Costs recoverable for Professional
- Deputy has to consult – ally fears from family

Get the right Order

- Identify all that you need to do and get it in the order
- House purchase
- Investment
- Send budget
- Capital expenditure
- Welfare benefits
- Anything else

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Costs Recoverability

- Witness statement
- Consider all issues that could arise
- Consider family issues
- Do you have time limited orders
- Potential employment issues
- Property – Purchase and adapt
- Investments
- Longer term needs when family not around
- Effect of the MCA on costs – consultation/support

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Costs Recoverability 2

- Get as much set up pre settlement
- First two years high costs
- Property
- Care
- Actual costs incurred – have been assessed
- Can identify family issues that could affect future costs

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