

# DGR Law News and Articles

## Court of Protection

### CIVIL LITIGATION & COURT OF PROTECTION

In addition to representing people who have suffered serious and catastrophic personal, mental and bodily injury due to someone else's negligence, I specialise in Civil Litigation, Dispute Resolution and Family Law work which is, primarily County Court and High Court cases. These include Directors Disputes, Partnership Disputes, Property and Land Disputes, Will & Probate Disputes, Debt Recovery and Family, Separation and Divorce. For these cases, the emphasis is on resolution by negotiation or mediation. Within this area of my Practice I represent people involved with cases that are determined by the Court of Protection in London.

The Court of Protection is a highly specialised Court which has recently moved to the Thomas More Building, Royal Courts of Justice, London but also has Regional Courts, where cases can be allocated, such as Southampton. The Court of Protection works closely with the Office for the Public Guardian (OPG) to deal with cases under the Mental Capacity Act 2005. For example the Court will deal with cases where a person lacks the necessary mental capacity to make decisions in relation to property, financial matters and personal welfare, ie. care and medical treatment.

There have been a number of press articles written about the Court of Protection in recent years and the "secrecy" associated with the Court and its process; however, the Court has a difficult job in deciding whether or not an individual lacks capacity and difficult issues to consider and weigh up on a day-to-day basis and I would prefer to leave the debate to others.

My professional experience has been that the Court process demands a proper and thorough investigation of a case, with good witness evidence and in some cases expert evidence from specialist psychiatrists dealing with the issue of capacity. Therefore, it is incumbent on the Solicitor to prepare the case using exacting standards before it is presented to the Court.

I have recently been asked to represent a family to challenge the appointment of an Attorney under an Enduring Power of Attorney and to apply for a Statutory Will. We successfully contested the appointment of the Attorney and succeeded in obtaining a Statutory Will to replace the former Will.

A Statutory Will is a Will made on behalf of an individual who is unable to prepare a Will themselves, due to lack of mental capacity. The situation is complicated by the fact that a person may lack capacity to manage his or her own property and affairs, but still have the necessary capacity to make a valid Will. Therefore, when considering whether a Statutory Will can be made for a person, his or her lack of capacity in respect of the making of a Will must be considered and appropriate evidence provided.

I should say that the Court process is based around completing special forms designed for the Court of Protection and drafting these demands concentration and attention to detail.

Every new case before the Court has to be dealt with on its merits and investigated properly, but I have every confidence in the Court of Protection to achieve the correct outcome where difficult issues of capacity take centre stage.

Finally, cases involving lack of capacity should be distinguished from the powers of the High Court to challenge the appointment of Personal Representatives, challenge the validity of a Will or to apply to rectify a Will. I have dealt with a number of cases where a Will is disputed on the grounds of undue influence, fraud, lack of capacity to make a Will or that the Will itself was not executed properly. These cases are known as Probate Claims and arise following the death of the Testator, whereas the Court of Protection deals with pre-probate situations.

If you have any questions regarding Court of Protection cases or Will Disputes please contact David Goldsmith, Partner and Head of Catastrophic Injury, Litigation and Dispute Resolution Services at DGR Law Solicitors, Marlborough and can be contacted on 01672-511797 or [david@dgrlaw.co.uk](mailto:david@dgrlaw.co.uk).