

Court of Protection

“Skilful and persuasive advocates”
The Legal 500



“Its experienced and talented Chancery barristers turn their hands to all aspects of the field.”

Court of Protection section, Chambers UK

Members of Radcliffe Chambers have extensive experience of the law and practice of the Court of Protection. They advise on a wide range of matters connected with the work of the Court and conduct hearings there.

Where the Court of Protection has to deal with a person's property and affairs, members of Chambers advise on and conduct proceedings in the Court relating to:

- the registration of lasting powers of attorney
- the appointment and control of deputies
- the sale or other disposition of property
- the making of statutory wills
- the making of gifts and inheritance tax planning
- the variation of trusts
- the granting of authority to deputies and attorneys to conduct litigation

Members of Chambers also advise on personal welfare issues such as:

- the choice of a residential home
- contact with a particular individual
- capacity to marry

We are able to obtain emergency injunctions and other interim orders, and to make applications at very short notice.

Attorneys and Deputies

We are able to advise on the issues that arise during the currency of a power of attorney or deputyship. We also appear in the Court of Protection in applications relating to the appointment

and removal of attorneys and deputies, and the administration of the affairs of the person for whom they have been appointed.

Some of this litigation is non-contentious, but other cases involve contested questions about the capacity of the donor to give the alleged power, the suitability of the proposed attorney or deputy, or the conduct of the attorney or deputy whilst in office.

Our members have extensive experience of such cases, and they advise and represent attorneys, deputies, and others concerned in the care of a person who lacks capacity.

Statutory Wills and Gifts

The Court of Protection may make a Will or gift on behalf of a person who lacks capacity. In some cases, this simply puts into effect the wishes of a person who is unable to take the necessary steps for himself or herself. In others, a more complicated analysis may be required, and it may be necessary to correct a defect in an existing will or gift, or to carry out inheritance tax or other tax planning.

The making of statutory Wills and gifts requires consideration of a range of matters, including the financial circumstances of the person who lacks capacity, any wishes he or she has expressed, his or her relationship with his or her family, friends and associates, and his or her attitude to taxation and financial risk.

We act both for those seeking and those opposing the making of statutory Wills and gifts. Our clients include attorneys, deputies, friends and family members.

Radcliffe Chambers

Cases of Note

The majority of Court of Protection cases are not publicly reported; but these are examples of some of the cases we have been involved in which have been reported:

London Borough of Haringey v CM [2014] EWCOP B23 – contested application for the appointment of a local authority deputy (Mark Mullen)

AK (gift application) [2014] EWCOP B11 – application for statutory gift by parents out of P's personal injury fund (Justin Holmes)

The Public Guardian v AW & Anor (Application to revoke Lasting Power of Attorney) [2014] EWCOP 28 – application to remove attorney on grounds of financial misconduct (Justin Holmes)

Day v Harris [2013] EWCA Civ 141 – validity of gifts made to himself by attorney where EPA registered (Thomas Dumont)

NT v FS (by his litigation friend, the Official Solicitor) and others [2013] EWHC 684 (COP) – the appropriate division of FS's estate on his death (Katherine McQuail)

Long v Rodman [2012] EWHC 347 (Ch) – whether a property and affairs deputy appointed by the Court of Protection should be replaced because of potential conflict of interest (Ulick Staunton)

D v JC (2012) MHLO 35 (COP) – an adult child, who had been adopted as a baby, unsuccessfully appealed to be included as a beneficiary of her biological father's statutory will on an equal footing with his other biological children with none of whom he had had a good relationship. (Katherine McQuail)

Re S [2010] EWHC 2405 (COP) – what matters to consider when deciding whether a patient had capacity to make decisions concerning litigation being conducted in his name, in particular to decide whether the litigation should be brought to a close (Ulick Staunton)

Re P [2010] EWHC 1592 (Fam) – best interest decisions on appointment of deputy and personal welfare applications (Howard Smith)

Re M (Statutory Will) [2009] EWHC 2525 (Fam) – one of the leading cases on how the term "best interests" is to be applied in practice (Howard Smith)

Re R (Execution of Statutory Wills) [2003] WTLR 1051 – statutory wills under the Mental Health Act 1983 (Robert Pearce QC, Howard Smith)

Re E (Enduring Powers of Attorney) [2001] Ch 364 – conflicting enduring powers of attorney (Robert Pearce QC)

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International

Members of Chambers practising in this area of law

Robert Pearce QC
Gordon Nurse
Thomas Dumont
Ulick Staunton
Piers Feltham
Howard Smith
Roger Mullis
Katherine McQuail
Marie-Claire Bleasdale
Justin Holmes
Kate Selway

William Moffett
Mark Mullen
Joshua Winfield
Frances Ratcliffe
Edward Hicks
Wendy Mathers
Catherine Doran
Henry Day
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