

MENTAL CAPACITY ACT 2005

In the matter of

ANN CLARKE

POSITION STATEMENT OF ANGELA WILD AND KEVIN ANTHONY

CLARKE (“THE OBJECTORS”)

1. This is the agreed joint position statement for Angela Wild and Kevin Anthony Clarke (“The Objectors”) made in relation to Ann Clarke (“Mrs Clarke”) who is their mother.
2. The Order of Mr Justice Peter Jackson dated 31st July asked us for concise statements of evidence setting out the Objectors’ case on two matters. Firstly, whether or not it is in Mrs Clarke’s best interests for the property to be sold and, secondly, how Mrs Clarke’s future income and housing needs are to be met.
3. The decision in relation to whether it is in Mrs Clarke’s best interests for the property to be sold would also have an effect on whether or not the Deputyship Order were to be discharged. The Objectors have already served witness statements in this matter on their opinion that the removal of Mrs Clarke from the Court of Protection and away from her professional Deputy would be not in accordance with her best interests.

Sale of the property

4. The Objectors are strongly of the opinion that it is in Mrs Clarke's interests for the property to be sold. They understand that, if the property is not sold, the capital sum remaining from her compensation award will run out by the end of November 2012. At that point onwards they understand Mrs Clarke will be dependent on benefits and income received from potential lodgers staying at the property. The Objectors defer to the current professional Deputy to explain to the Court the mathematics behind any calculations of income available to Mrs Clarke should the property not be sold but they understand from previous meetings that the household budget, notwithstanding the presence of lodgers, would effectively be halved by maintaining the property as it is.

5. The Objectors also suggest that it is difficult to see how having to take lodgers in to her property would be in Mrs Clarke's best interests, as this is a compromise to her privacy and therefore her standard of living.

6. The main reason put forward for the property not to be sold appears to be Mrs Clarke's wish to leave the property to her son Michael Clarke in her Will. The Objectors submit that this would be the incorrect course of action to take. Mrs Clarke was awarded a compensation award to compensate her for injuries suffered and to ensure she was looked after for the rest of her life. The Objectors understand that there was no provision in the original compensation award to purchase a property for Mrs Clarke as there was no accommodation head of damage in the schedule of loss. Therefore funds that were intended to be used for

Mrs Clarke's care and maintenance were spent on a property. As the remaining funds have now effectively run out the property needs to be sold to continue to provide Mrs Clarke with the income levels she has become accustomed to.

7. The Senior Judge of the Court of Protection has made the position of the Court clear in relation to ring-fencing a protected party's compensation award to allow for a later inheritance. The case of Re: JDS (Smyth v JDS) Court of Protection number 10334473 at paragraph 39 reads as follows:

“As I have said, the Court is generally sympathetic towards family members who take on a caring role and dedicate their lives to looking after an injured relative. It seeks to support them so far as is possible and practicable and in the best interests of the person concerned, and it does so in a variety of ways. However, it is not the function of the Court to anticipate, ring-fence or maximise any potential inheritance for the benefit of family members on the death of a protected party, because this is not the purpose for which the compensation for personal injury was intended. The position would be different, of course, if the individual concerned had substantial funds surplus to his requirements that would derive from another source, such as an inheritance or a lottery win”.

8. Mrs Clarke has almost run out of money. If her quality of life is not to be compromised further additional capital needs to be made available to her. The only way this can be achieved is through the sale of her property (or via an equity release scheme that the Objectors understand the deputy does not favour). But for

the original purchase of the property this capital would be available to her now in any event. The capital is derived from a compensation award and was intended to ensure her care and income needs were met. Her accommodation needs can be met by the deputy renting a suitable property for her using the proceeds of sale.

Income and housing needs

9. The Objectors defer to the professional Deputy to explain how Mrs Clarke's further income and housing needs are to be met if the property is sold in comparison to if the property is retained.

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Dated²¹ / ⁸ /2012

Simon Heapy of Linder Myers LLP
on behalf of the Objectors.