

# Report to the Court of Protection

(made under s.49(2) Mental Capacity Act 2005)

in the matter of:

**Anne Clarke**

Case No 10370284

Date of Birth 9 January 1940

age 72 years

31 Cherry Tree Road,  
Blackpool,  
FY4 4NS.  
Telephone 07523 287267

Date of Request: 27 April 2012

Date Papers Received: 30 April 2012

Date of Visit: 2 July 2012

Date of Report: 3 July 2012

Prepared by

Court of Protection Special Visitor, appointed under s.49(2)

Consultant Psychiatrist,

Queen's Medical Centre, Nottingham.

Dr Waite has the following qualifications:

BSc (Pharmacology)	University of Edinburgh	1973
MB ChB	University of Edinburgh	1976
MRCPsych	Royal College of Psychiatrists	1980
FRCPsych	Royal College of Psychiatrists	1984
LLM (Mental Health Law)	University of Northumbria	2001

Dr Waite has been a Consultant in the Psychiatry of Old Age since 1984; prior to this he was Clinical Lecturer in the Dept of Health Care of the Elderly, University of Nottingham. He currently works in the Medicine and Mental Health Unit, Queen's Medical Centre, Nottingham and is Consultant in charge of ECT for Nottingham.

He is lead author of *Dementia Care* (OUP 2008), a contributing author to the British Medical Association / Law Society *Assessment of Mental Capacity, Guidance for Doctors and Lawyers* (2<sup>nd</sup> edition) and author of chapters on mental capacity law in *Management for Psychiatrists* (Gaskell 2007) and *Oxford Desktop Reference: Geriatric Medicine* (OUP *in press*).

He has undertaken research into the epidemiology and treatment of mental disorders in old age. He is Consultant in charge of the ECT clinic at QMC, a member of the Royal College of Psychiatrists' Special Committee on ECT and is currently editing the 3<sup>rd</sup> edition of the College's *ECT Handbook*.

He is an author of the Royal College of Psychiatrists' training programme for Mental Health Assessors for the Deprivation of Liberty Safeguards.

## **1. Reason for the visit**

I was asked to visit Mrs Clarke by Mr Justice Peter Jackson in order to prepare a report specifically to include:

Whether e Clarke has the capacity, within the meaning of the Mental Capacity Act 2005 to:

- (i) manage her property and affairs generally;
- (ii) manage her day to day financial affairs;
- (iii) appoint Mr Michael Clarke to manage her property and financial affairs;
- (iv) transfer her property at Blackpool to Mr Michael Clarke;
- (v) make decisions about her financial affairs free from the undue influence of others.

## **2. Information and Records Studied**

- 2.1 Order of Mr Justice Peter Jackson (dated 20 March 2012)
- 2.2 Extension to order (dated 2 May 2012)
- 2.3 General visitors' reports (dated 4 Dec 2002, 25 Nov 2003, 21 Jan 2005, 8 Mar 2006, 19 Jun 2007)
- 2.4 Threads of emails of Michael Clarke (dated 5 April, 27 March 2012)
- 2.5 Bundle of papers produced by Pannone for hearing of 12 March 2012

A	<b>Preliminary Documents</b>	
	Case Summary	
	Statement of Issues	
	Position Statements	
B	<b>Applications and Orders</b>	
	<b>-Applications</b>	
	Ann Clarke's Application (unsigned)	16 <sup>th</sup> November 2011
	Acknowledgment of service from Hugh Jones	30 <sup>th</sup> November 2011

	Acknowledgment of service from Kevin Anthony Clarke	7th December 2011
	Acknowledgment of service from Anqela Wild	7th December 2011
	-Orders	
	First General Order	28th March 2001
	Extended General Order	30 <sup>th</sup> January 2006
	Order of District Judge Ralton appointing Jones as Deputy for property and affairs	Hugh 14 <sup>th</sup> January 2010
	Directions Order of District Judge Batten	20 <sup>th</sup> December 2011
	Letter from Court of Protection transferring case	15 <sup>th</sup> February 2012
	Order of District Judge Anson	2 <sup>nd</sup> March 2012
C	<b>Statements</b>	
	Statement of Anqela Wild	17th January 2012
	Statement of Kevin Anthony Clarke	17th January 2012
	Statement of Hugh Adrian Scott Jones	19th January 2012
	Statement of Michael Clarke	19th January 2012

2.6 Michael Clarke's website [www.opg.me](http://www.opg.me)

### **3. Discussions with**

Hugh Jones (Deputy) (15 May 2012)

Michael Clarke (son) (28 May, 2 July 2012)

### **4. Details of Relevant Person**

Mrs Clarke was born in England, she is of Caucasian ethnicity. She has no recorded religious affiliation.

5. **Summary of Facts** (appendix to the order of 12 March 2012)

Ann Clarke was born on 9 April 1940 and is now aged 71 years old. She has three children, Michael Clarke, Angela Wild and Kevin Clarke.

On 23 June 1995, Ann Clarke sustained serious injuries, particularly a head injury, in a road traffic accident when she ran into the path of a lorry. A claim for damages was subsequently brought against Oldham NHS Trust and was settled in April 2001 in the sum of £775,000 (net of interim payments and CRU).

When in the UK, Ann resides at her Property with Michael Clarke, and his partner. Her Property was purchased out of the damages award and is her sole remaining capital asset. She also spends time in Spain.

By a first General Order dated 28 March 2001 Hugh Jones was appointed as Ann's Receiver. He was further appointed as Deputy pursuant to an Order dated 14 January 2010.

On 16 November 2011, an application for her discharge from the Court of Protection was made pursuant to Rule 148 of the Court of Protection Rules 2007 ("the Application"). Medical reports were provided in support.

Michael supports the application on the basis that reports obtained from Dr Schelewa demonstrate that Ann has capacity, and he considers that Hugh Jones and the Court of Protection are corruptly depriving her of control of her remaining assets.

Hugh Jones objects to the Application on the basis that he does not believe Ann has

regained the capacity to manage her property and affairs. He also questions whether the medical reports provided in support of the Application show sufficient in-depth consideration of the issues which face her.

Angela and Kevin also object to the Application on the basis that if Ann were to be removed from the Court of Protection, Michael would take advantage of his mother to benefit himself. They believe that this has been the case for some time, but fear the situation would become much worse if she was discharged.

## 6. Psychiatric History

### 6.1 Family history

#### Parents

Ann's father was a serviceman during World War II, his wife was notified that he was "missing in action, believed killed." Subsequently she formed a new relationship another man. This caused some distressed when her husband ultimately returned. She stayed with her new partner and eventually married him.

#### Siblings

Lorna is the eldest of her mother's 7 children. Only her next youngest sister (Lorna) has the same father. The others (Alec, Rhoda, Kath, Brenda and Joe) are from her second marriage.

### 6.2 Early life, upbringing and education

Ann was born in Middleton in Greater Manchester, she remembers her childhood being happy. She attended secondary school there, she could not remember when she left, Dr Al-Ahmar states this was at the age of 16.

### 6.3 Employment

After leaving school she worked in the local mill. She married at the age of 16. Later she assisted her husband in an administrative role, in his various business ventures. This included managing finances for these businesses. She also undertook part-time cleaning work.

### 6.5 Relationships

Ann married George Raymond Clarke (born 1937) at the age of 16; at the time of their wedding he was working as a motor mechanic, they settled in the Chadderton area of Oldham. Later he set up various businesses, including a company selling electronic ignition systems for speedway motorbikes, a firm selling bulbs and mirrors for commercial vehicles and a business installing security shutters. The last of these was initially successful and had about 25 employees; they were able to afford to live in a large house in Ryton.

There were three children from the marriage:

Michael, (aged 53), who acts as Ann's carer and lives in Blackpool and Spain.

Angela (now Mrs Wilde), aged 50 who is married with children and breeds animals.

Kevin (aged 49) who works in the building industry.

In the early 1990s Raymond left his wife, divorce proceedings were started, during the course of these Ann became clinically depressed in 1995. She was reluctant to seek help, her family were concerned about her and sought specialist psychiatric help. It was apparently agreed that she required in-patient psychiatric care, but no bed was found for her. She returned home with Michael, but left the house and ran in front of a lorry, sustaining very serious injuries. Litigation was brought against the mental health trust involved resulting in the award referred to in para 5.

In the accident Mrs Clarke sustained multiple injuries (see para 6.7) She spent a total of 11 months in hospital. She was initially discharged to a care home in Chadderton, but (according to Michael) neither he nor Angela were happy with the quality of care there and it was agreed that the family would look after her. Initially there were great difficulties as she had flexion contractures at her hip joints leading to immobility and

subsequent incontinence. After a two stage surgical procedure to lengthen her flexor tendons she became independently mobile.

In the past sixteen years there have been several occasions when Angela has been Ann's principal carer, but for most of the time Michael has undertaken this role. There appears to have been an increasing degree of animosity between Michael and Angela over this period, I am not able to adjudicate in this matter.

## 6.6 Present Circumstances

Ann's UK residence is a bungalow in Blackpool, where she stays with Michael and his male partner. She also spends time in Spain. She is independent in personal care, she has difficulty with fastenings for her clothes so Michael selects garments without buttons catches or zips. She is mobile for short distances without aids, for longer trips she uses a pulpit frame, she also has a wheelchair. She is able to attend to her personal hygiene. She is able to make simple snacks and drinks for herself, but cannot use a cooker. She understands the risks at home; there are no gas appliances. She has some difficulties lighting her cigarettes, but is aware of the associated risks of fire, I was impressed that despite her slight clumsiness there were burn marks on the furnishings.

## 6.7 Medical history

### 6.7.1 Physical

In the mid 1970s there was tension in the Clarke household between Michael and his father Raymond; it was suggested to Ann that smoking cigarettes would help her to relax, she has not been able to stop smoking since then. She continues to smoke about 30

cigarettes daily, she like to drink Tia Maria and cola, consuming about 1 bottle of Tia Maria per week.

1995 Road traffic accident (see para 6.5)

In the accident she sustained a depressed fracture to the left temporal region of the skull which did not penetrate the meninges. A flap of bone was removed; Ann has not wished it to be replaced.

I have not seen any reports relating to the injuries, but there was evidently damage to the left eye resulting in amblyopia, a disruptive injury to the right foot, a less severe injury to the right foot and damage to the tendon of the 5<sup>th</sup> finger of the left hand.

During the prolonged stay in hospital after the accident, bilateral hip contractures developed, these have responded well to surgery.

In 2006 she was admitted to hospital for 10 days after a stroke. This resulted in deterioration in her mobility which has since resolved, and non-fluent dysphasia.

There have been a number of transient episodes of weakness since then, most recently when she was in Marbella in 2011. Michael told me that she had been investigated in hospital there, and there was no radiological evidence of fresh cerebral infarction. She was recommended to take aspirin 75 mg daily as prophylaxis against future transient cerebral ischaemic episodes.

#### 6.7.2 Psychiatric

Ann had a severe depressive episode in 1995 at the time of the injury.

There has not been a recurrence of pathological mood swings.

#### 6.8 Current medication

Aspirin 75 mg od.

## 7. **Clinical examination**

I examined Mrs Ann Clarke at her home in Blackpool on 2 July 2012 at around 11 am. Initially her son was keen that I should answer some questions (submitted by him to the Court in his email of 26 March 2012). I did not feel to dispose to spend the limited time available on matters which appeared to me to be outside my area of expertise, Michael was unhappy with my response, but this did not appear to distress Ann at all.

### 7.1 General appearance, behaviour and mood

Ann was smartly dressed in clean clothes. Her hair colour was quite striking. She smoked numerous cigarettes whilst I was with her. She seemed quite euphoric in mood, betraying no emotions even when discussing potentially distressing matters.

### 7.2 Speech

Ann spoke in short sentences, with some difficulty in finding words on confrontation, although she did use a wider lexicon in her spontaneous speech. The pattern of her speech was typical of non-fluent (expressive) dysphasia.

### 7.3 Abnormal beliefs and perceptions

I did not elicit any delusional ideas nor any hallucinations. From the accounts that I have read and other information which I have received she seems to have had no psychotic symptoms since her injury.

### 7.4 Cognition

Ann was approximately oriented in place – she knew she was in Blackpool but could not state her address. She believed the season was Autumn, the day Saturday – but did correctly state that the month was July. She did not know the year and seemed unaware of the Diamond Jubilee or the London Olympics. She could not name the current Prime

Minister or the female PM. She had impaired short and long term memory. She had reasonably preserved motor skills, she could turn on the television using a remote control, but could not adjust the volume. Where I could compare her performance with the tests undertaken by Dr Schelewa in 2010 and 2011 I did not feel that there had been great change.

## 7.5 Financial assessment

### 7.5.1 Cash

Ann was more impaired on this occasion when assessed by Dr Schelewa in 2010 (the SCIFC was not repeated in 2011). She recognised 50p and £1 coins, but could not identify a £2, 20p or 2p coins. She could not name the colours of bank notes, but when given the colours, could correctly assign them to £5, £10 and £20 notes. She believed that in a bar Tia Maria and Coke would cost £1.50 and that she would expect £2.50 change from a £5 note.

### 7.5.2 Banking

She did not recognise a debit card and could not describe the use of a cash dispenser. She did not know what a PIN number was.

### 7.5.3 Assets and liabilities

She was aware that she owned the bungalow where she was staying, but did not know of any other significant assets or liabilities.

### 7.5.4 Testamentary Capacity

Mrs Clarke understands in broad terms and simple language the extent of her assets – essentially only comprising the Blackpool bungalow – she knows the persons who have a

call on her estate (her children and grandchildren). She is free from delusions which might affect her judgement and can express her wishes clearly.

She is clear that she wishes to bequeath the bungalow to Michael, she understands that by doing so she will not leave anything to her son Kevin, her daughter Angela or her grandchildren. I believe that she would have capacity to make a will for this purpose.

#### 7.6 Diagnosis

Cognitive impairment following brain injury and ischaemic brain damage (ICD10 F07.8)

### 8. **Opinion**

#### *8.1 Can Ann Clarke manage her property and affairs generally?*

Mrs Clarke now has severely limited abilities to manage her finances. There seems to have been significant worsening of her skills in this domain since she was tested by Dr Schelewa in 2010. I believe that this chiefly results from her lack of practice in dealing with money in recent years, there may also have been some impact from the transient ischaemic attack last year. For the reasons set out in para 7.5.1 & 7.5.2 I believe that she cannot manage her property and affairs.

#### *8.2 Can she manage her day to day financial affairs?*

I believe that impairments outlined above are of sufficient magnitude to preclude Mrs Clarke being able to manage day to day financial affairs.

#### *8.3 Can she appoint Mr Michael Clarke to manage her property and financial affairs?*

It appears to me that requirement of a certificate provider for a Lasting Power of Attorney (LPA) for Property and Affairs are to establish that the donor understands the purpose of the LPA and the scope of the authority conferred, that

no fraud or undue pressure has been used to induce creation of the LPA and that there are no other reasons to prevent the LPA being created.

It is not really possible for a Court Visitor making a single assessment to judge the level of influence which Michael Clarke has over his mother. She has been in his sole care for the greater part of the time since her brain injury, to truly judge how much she voices her own independent views might require an extended period of separation from him (and from other members of her family) which I do not believe would be in her best interests.

I have read the witness statements of the Deputy and Mrs Angela Wilde who imply that Michael Clarke may not be a suitable person to be appointed as Ann Clarke's attorney, but I was left in no doubt that Ann Clarke herself trusted her son Michael at the time of my visit and wished him to act on her behalf in the management of her financial affairs.

*8.4 Can she transfer her property at Blackpool to Mr Michael Clarke?*

Mrs Clarke is not aware of the technicalities of different types of ownership – (joint tenancy or tenancy in common). I was not able to explain this to her. I did not feel that she was able to understand and use information about the possible consequences of transferring the property to Michael Clarke in her lifetime.

However I did feel that she was clear that she wished Michael to inherit the property after her death and that this would mean that there were no assets for her to bequeath to her other children and grandchildren.

*8.5 Can she make decisions about her financial affairs free from the undue influence of others?*

I have touched on this issue in para 8.3 I cannot exclude the possibility of undue influence in any humane way. Previous experts commissioned by Mr Clarke have reported Mrs Clarke's statements to them that she wishes to live with Michael. She made similar statements to me. Mrs Wilde heads para 9. of her witness statement "Care / neglect" I am not able to refute or substantiate these allegations, but if there is any substance in them they should be investigated by the local authority as part of their Safeguarding procedures; I would also recommend the appointment of an Independent Mental Capacity Advocate under the Mental Capacity Act 2005 (Independent Mental Capacity The Advocates) (Expansion of Role) Regulations 2006 SI 2883 rule 4.



**Jonathan Waite**

**05 July 2012**

## Declaration

I, Jonathan Waite, declare that

1. I understand that my overriding duty is to the court, both in preparing reports and in giving oral evidence. I have complied and will continue to comply with that duty.
2. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert are required
3. I have done my best, in preparing this report, to be accurate and complete. I have mentioned all matters which I regard as relevant to the opinions I have expressed. All of the matters on which I have expressed an opinion lie within my field of expertise.
4. I have drawn to the attention of the court all matters, of which I am aware, which might adversely affect my opinion.
5. Wherever I have no personal knowledge, I have indicated the source of factual information.
6. I have not included anything in this report which has been suggested to me by anyone, including the lawyers instructing me, without forming my own independent view of the matter.
7. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report.
8. At the time of signing the report I consider it to be complete and accurate. I will notify those instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification.
9. I understand that this report will be the evidence that I will give under oath, subject to any correction or qualification I may make before swearing to its veracity.
10. I have attached to this report a summary of my instructions.
11. That I know of no conflict of interest of any kind, other than any which I have disclosed in my report.
12. That I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.

13. That I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances which affect my answers to either of the above two points.

I confirm that insofar as the facts in my report are within my own knowledge I have made clear which they are and I believe them to be true, and the opinions I have expressed represent my true and complete professional opinion.

Signature\_\_\_\_\_

A rectangular box containing a handwritten signature in blue ink that reads "Jonathan Waite".

Date\_\_\_\_\_6 June 2012\_\_\_\_\_