

MENTAL CAPACITY ACT 2005

IN THE MATTER OF
ANN CLARKE

POSITION STATEMENT OF HUGH ADRIAN SCOTT JONES

1. I, Hugh Adrian Scott Jones of Pannone LLP, 123 Deansgate, Manchester, M3 2BU, make this statement in my capacity as Deputy for Property and Affairs for Ann Clarke appointed by an Order of the Court of Protection dated the 14th January 2010.
2. This statement is made pursuant to the Order of Mr Justice Peter Jackson dated 31st July 2012 to address:-
 - a. whether or not I believe it is in Ann's interests for her property in Blackpool to be sold; and
 - b. how her future income and housing needs will be met.
3. In formulating my response as financial Deputy, I believe the correct approach is for me to consider Ann's current capital, income and expenditure to determine whether or not her future income needs can be met without having to sell the property. If they can't, then it must surely not be in her interests to retain it and consideration must then be given as to how her future housing needs will be met if it had to be sold.
4. Whilst I fully accept that there are also matters of welfare to be considered, these are outside my remit as financial Deputy, and I would respectfully defer to the Objectors in this regard.

Current Capital

5. Ann's capital comprises of her property and cash held within the Deputyship bank account of just over £3,000.
6. The property was purchased out of Ann's personal injury damages award, but as only £40,000 was provided for accommodation in her claim, the balance of the purchase price and adaptation costs were afforded through other heads of loss.

Current Income

7. In terms of income, Ann receives Disability Living Allowance in the sum of £77.45 per week and state pension of £108.60, both of which are currently paid into the Deputyship bank account every four weeks. This equates to an annual income of just under £10,000.
8. I have no information on Mr Clarke's eligibility for benefits or details of what income (if any) he brings into the household.
9. In addition to her benefits, it is my understanding that lodgers currently occupy three of the rooms at the property. Whilst Mr Clarke has refused to provide me with any detailed information, he claims that this is capable of generating an annual income of just under £13,000, albeit he has failed to account for any of the payments so far received.

10. I have made enquiries of a local estate agent and they have confirmed that an income of £50-£100 per week, per room, is achievable (inclusive of bills), and this would accord with Mr Clarke's figures. Any payments received would of course be subject to income tax.

Current Expenditure

11. As well as utilising the income from the lodgers to supplement their day-to-day living expenses, Ann is sent approximately £9,000 per year for her personal spends and Mr Clarke is sent just under £8,000 per year in respect of the gratuitous care he provides to his mother. Payments into the household therefore currently amount to £30,000 per year.
12. All household bills are paid out of the monies currently held in the deputyship account and regular requests are received for additional one-off expenses. When the property is fully occupied, household bills amount to approximately £5,000 per year.
13. A current shortfall of income over expenditure therefore exists in the sum of approximately £12,000 per year (£35,000 – 23,000).

Future Capital, Income & Expenditure

14. By the end of November 2012, Ann's remaining capital will have been exhausted and the weekly payments to Mr Clarke will cease. There will be no money to pay household bills, maintenance of the property itself, or other one-off expenses.
15. The only income remaining would be Ann's benefits and whatever is received from the lodgers. The latter fluctuating throughout the year and in no way guaranteed.
16. By Mr Clarke's own admission, he is unable to provide for their needs on the £30,000 that is currently sent directly to them and I therefore fail to see how £18,000 will be enough. Whilst I fully accept that, to many people, this would appear more than adequate, my concerns are based on the history of spending throughout the course of my Deputyship.
17. Whilst it has been suggested that Mr Clarke will continue to meet his mother's care needs, one cannot say with any certainty that this will continue to be the case going forwards. Circumstances may arise where this is no longer possible and funds would then be required to ensure that these were met.
18. By retaining the property, Ann would be forced to live a quality of life far below that which she has become accustomed, denying her the life choices that she has previously enjoyed, including the opportunity to spend time in Spain.
19. Furthermore, it must be remembered that the purpose of the compensation award was to provide for her needs for the remainder of her life and not for the purpose of ensuring Mr Clarke's own future inheritance.
20. In this regard, the position of the court was made clear by the Senior Judge of the Court of Protection in the case of **Re: JDS (Smyth v JDS) Court of Protection No. 10334473** Paragraph 39 reads:

"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 were derived from another source, such as an inheritance or lottery win."

21. Ann does not have substantial funds surplus to her requirements. She has exceeded her life expectancy and her remaining capital has almost run out. But for the original purchase of the property, this capital would be available to her now, and as I cannot see how her future needs can continue to be met without having to sell it, I must conclude that it is in her interests for it to be sold.

Future Income and Housing Needs

22. By selling it, Ann's quality of life could be maintained and alternative rented accommodation sourced for her and Mr Clarke to live wherever they decide. At no point have I ever suggested that Ann be placed into care, nor do I consider this to be in her interests.
23. Whilst I accept that she would lose the income generated from the lodgers, there would be sufficient capital to supplement this.
24. Furthermore, if Ann were to return to live permanently in the UK, there is also the possibility that she would qualify for additional benefits premiums, as well as Housing Benefit, which would lessen the impact even further.

Signed 
Hugh Adrian Scott Jones

Dated 28/8/12

