

In the matter of
ANN CLARKE

**SUBMISSIONS AS TO COSTS BY LINDER MYERS LLP ON BEHALF OF ANGELA WILD
AND KEVIN ANTHONY CLARKE ("THE OBJECTORS")**

- 1 As per paragraph 6 of the Order of Mr Justice Peter Jackson dated 9 October 2012 we are making submissions as to our own costs on behalf of our clients above
- 2 Before we make submissions as to our costs we stress that we appreciate the lack of liquid funds available to Mrs Clarke at this present moment in time We are not therefore asking to be paid on this matter immediately as we appreciate this will cause hardship to Mrs Clarke and this is clearly not in her best interests
- 3 We are, however, asking for our costs to eventually be paid on this matter by way of a Charging Order to be placed on Mrs Clarke's Blackpool property
- 4 We were asked to become involved in this matter in December 2011 The professional deputy, Mr Jones from Pannone LLP, had recommended us to Mrs Clarke's daughter Angela Wild and son Kevin Clarke as he felt it necessary that they received their own independent representation (notwithstanding they were largely in agreement with the professional deputy as to their position) We considered this to be appropriate also Linder Myers LLP, along with Pannone LLP, are the only two Court of Protection panel deputy firms in the city centre of Manchester It was felt appropriate that the Objectors were represented by a firm who understood deputyship issues of this nature which can arise and the need for proportionality

5 Throughout this matter we have kept our costs proportional to the lack of liquid funds available to Mrs Clarke We have acted in good faith all along and at the invitation of the (then) professional deputy We believe that it would be inappropriate of the Court to depart from the usual rule in relation to costs in the Court of Protection This is contained in Part 19 of the Court of Protection Rules 2007 (at paragraph 156) which states that "Where the proceedings concern 'P's' property and affairs, the general rules are that the costs of the proceedings or that part of the proceedings that concern 'P's' property and affairs shall be paid by 'P' or charged to his estate"

6 The Court is allowed to depart from this general rule (at paragraph 159) in certain circumstances These include the following

(a) The conduct of the parties,

(b) Whether a party has succeeded on part of his case, even if he has not been wholly successful, and

(c) The role of any public body involved in the proceedings

More specifically, conduct of the parties includes

(i) conduct before, as well as during, the proceedings,

(ii) whether it was reasonable for a party to raise, pursue or contest a particular issue,

(iii) the manner in which a party is made or has responded to an application or a particular issue, and

(iv) whether a party who has succeeded in his application or response to an application, in whole or in part, exaggerates any matter contained in his application or response

6 This has been a particularly difficult and contentious matter involving a litigant in person We do not believe that either Linder Myers LLP or our clients have acted in any way unreasonably throughout this matter

- 7 We would therefore ask the Court to apply the general rule in relation to costs in this matter, and order that the Objectors' costs be charged to Mrs Clarke's estate, with a caveat that costs would only be payable when Mrs Clarke passes away as not to cause her hardship whilst she is alive

- 8 Looking at our work in progress print-out, we have spent just over 30 hours working on this particular matter. This includes Court hearings etc. The work has been mainly carried out by a "Grade 2" fee earner, (Mr Heapy) but there was some small input from a "Grade 1" fee earner and by a "Grade 3" fee earner, in Mr Heapy's absence. Also, a fair amount of initial work was carried out by our trainee solicitor (a "Grade 4" fee earner) at the time

- 9 In total (prior to any detailed assessment of costs) our rough costs are in the region of £4,400 plus VAT

- 10 We propose two courses of action for the Court. The first is that we have our costs assessed by the SCCO. The second (which we believe will save money to Mrs Clarke's estate) is that we would agree our total costs at £3,500 plus VAT. Either option would, of course, be the subject of a charging Order on the Blackpool property to only be paid from Mrs Clarke's estate when she has passed away



Simon Heapy of Linder Myers LLP

on behalf of the Objectors

Dated 17 | 10 | 2012