Hewitsons Will & Estate Disputes

LEGAL UPDATE

Absolute Client Focus

August 2018

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Local Authority entitled to propose reduction in care package

The claimant suffered from paranoid schizophrenia and upper limb arthritis. The Independent Living Fund had funded a care plan since 1999 by putting in place a care package of 51 hours a week. In 2015, the Independent Living Fund closed and the Local Authority assumed responsibility. The Local Authority's review found that the claimant's mental health had remained stable over the years and that her level of care should be gradually reduced to 18 hours per week, but with ongoing reviews.

The claimant applied for judicial review of the defendant Local Authority's proposal to reduce her care package. The claimant maintained that as matter of law it was not open to the Local Authority to reduce the care package until it had put in place a care plan under the Care Act 2014 s.25. The Local Authority's case was that the claimant had been stable since 2004 and so it was appropriate to gradually reduce her care, subject to ongoing reviews.

The claimant's application was refused. The court held that the Care and Support (Assessment) Regulations 2014 reg.3 required a Local Authority to carry out an assessment

in an appropriate and proportionate manner and that was what the Local Authority had done. The Local Authority's assessment was provisional and part of an ongoing process. It did not follow that a care plan had to be in place before a care package could be altered.

Funding and the provision of care for the elderly and vulnerable in lifetime is a rising area for disputes. The team at Hewitsons can advise on a range of issues relating to Local Authority and NHS Continuing Healthcare, including reviewing and advising upon the merits of challenging such decisions.

Case Citation: R (on the application of M) v Brent London Borough Council (2018)

Breakdown of trust leads to executors' removal

The claimants and defendant were siblings. Their sister had died in 2012 and probate was granted in 2013 appointing them all as executors under her will. There were five beneficiaries entitled to share in the Estate. The estate was made up of cash and four properties worth approximately £800,000.

By 2014 the relationship between the parties had deteriorated. They instructed solicitors to market the properties and entered a settlement agreement providing that, in the event of a dispute, only three executors were required to agree a sale price and accept an offer and the fourth would cooperate. Subsequently the claimants alleged that the defendant had not complied or engaged in administering the estate. The claimants asked the court to remove them and the defendant as executors of their sister's estate and be replaced by an independent third party.

It was clear that there had been friction and hostility between the parties for some time, despite the fact that they had initially managed to run the estate together. It appeared that the claimants ran some parts of the estate and the defendant ran others. Nothing could be finalised as they were not in contact with each other. The court was satisfied that there had been a sufficient breakdown of trust that directly impeded the administration of the estate and would continue to do so. The court exercised its discretion under the Administration of Justice Act 1985 s.50 to remove the executors appointed under the will. The most appropriate course of action was to appoint an independent third party as executor.

If you are an executor of an Estate experiencing problems actively progressing the estate administration with your co-executor, then please contact a member of our team, who will be able to advise you of the options available to you.

Case Citation: Nwosu & Ors v Nwosu (2018)

Family of Cecil Parkinson resist claim by illegitimate daughter

Flora Keays, the claimant in this case, is the daughter of the well-known Conservative politician, Cecil Parkinson. Flora was born in 1983 following an affair between Cecil and Sara Keays and is now aged 34. Flora suffers from severe physical and mental disabilities and has been cared for since birth by her mother. During lifetime Cecil paid £5,000 per quarter towards Flora's upkeep as per a court order. Following Cecil's death in 2016, his will made no provision for Flora; however a life assurance policy had been put into trust for her and others. Only one payment of £5,000 had been paid by the Trustees since Cecil's death

for Flora. As a result, Sara Keays was unable to meet the mortgage repayments on their home.

Sara Keays therefore sought to bring a claim on her daughter's behalf, as her litigation friend, for reasonable financial provision from the Estate under The Inheritance (Provision for Family & Dependants) Act 1975. This claim was defended by the executors on behalf of the beneficiaries under the will. As part of the proceedings, the executors of Cecil's estate sought to remove Sara Keays as Flora's litigation friend, arguing that she could not fairly and competently conduct proceedings because she had an adverse interest to Flora.

The court was highly critical of the stance taken by the executors in the claim, since executors are required to take a neutral stance. Instead, the executors had actively defended the claim on behalf of the beneficiaries under the will. The beneficiaries however should have been added to the proceedings and separately represented. The court were not satisfied that Sara Keays was unsuitable to act and held that she did not have an adverse interest to her daughter. Nor were the executors entitled to nominate a solicitor to be appointed as litigation friend. The claim itself for greater provision for Flora continues.

This case is a good example of how not to behave as an executor. Contact the Hewitsons team for advice on your role, duties and responsibilities as an executor or administrator.

Case Citation: Keays v Executors of the late Lord Parkinson [2018] EWHC 1006 (Ch)

Pension Scheme criticised for paying death benefits to another without consulting spouse

Up until November 2013, a wife had been the nominated beneficiary of her husband's pension. The nomination was changed two years prior to the Deceased's death by a relative, who contacted the pension fund advising of the change in nomination. However, at the time, the husband did not have the requisite capacity to change the nomination himself.

Upon the death of the husband, the pension scheme administrator paid the death benefits to the nominated relative, without making any enquiries of the Deceased's spouse, despite the change of nomination and the fact that she was his wife. The pension scheme did not gather any evidence to assist them in deciding how to distribute the death benefits.

The wife complained to the Pensions Ombudsman, who have upheld her complaint and made a direction that the pension scheme administrator should now reconsider its original decision.

Quite often there are certain death benefits that fall outside of a Deceased person's estate, which do not pass in accordance with the Will and cannot be managed or controlled by the executor. Instead, representations may have to be made to the trustees of the fund or scheme administrator. For guidance on this area, please contact a member of the team.

Case Citation: Mrs T complaint, PO-15526

Office of the Public Guardian – Mediation Pilot

With the aim of trying to reduce the number of disputes coming to the Court of Protection, where there is an attorney managing a persons affairs (either under an LPA or EPA), the Office of the Public Guardian (OPG), have launched a pilot mediation scheme.

OPG investigators will initiate the mediation, which will be provided by an independent mediation service which offers, skilled and experienced mediators across the country. As far

as possible such mediations will take place face-to-face, close to where the LPA donor and their family/friends live and will be confidential.

It is expected that mediations will occur where the donor has been assessed as lacking capacity to deal with the concerns raised; however the involvement of the donor will be important. Their wishes will be obtained wherever possible.

It is thought that mediation will most likely not be appropriate whether there is evidence of abuse or neglect. The first mediation referral is expected from July 2018, with the OPG initially bearing the cost of these pilot mediations.

The OPG's aim is maximise protection for those incapacitated individuals, whilst minimising disruption by offering a service which is timely and proportionate. Such a model supports the principles of both the Mental Capacity Act 2005 and Human Rights Act 1998, to minimise state intervention where possible, to address the issues in dispute in the best interests of the person.

The team at Hewitsons have extensive experience of resolving disputes at mediation. The majority of cases we see are resolved by some form of alternative dispute resolution, outside of the court system, saving both money and time to the client. If you have a dispute which you wish to resolve, please contact a member of the team, for advice on the options available to you.

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For advice on any of the issues discussed in the above cases, please feel free to contact a member of the team for more information.