

COURT OF PROTECTION

MENTAL CAPACITY ACT 2005

**In the matter of
HARCOURT**

BETWEEN:

THE PUBLIC GUARDIAN

Applicant

- and -

A

Respondent

Introduction

1. This application relates to an investigation by the Office of the Public Guardian (“OPG”) into the management of Mrs Harcourt’s property and financial affairs by her daughter under a Lasting Power of Attorney (“LPA”). It considers the powers of the OPG and the Court of Protection when an attorney impedes an investigation and the circumstances in which the court may revoke an LPA.

The background

2. [The judge then set out in paragraphs 2-6 the personal details of Mrs Harcourt]
3. [.....]
4. [.....]
5. [.....]
6. [.....]
7. On 15 June 2009, about two months after her husband’s death, Mrs Harcourt signed an LPA for property and affairs, in which she appointed [her daughter A] to be her sole attorney. She did not appoint a replacement attorney or impose any restrictions or conditions on the scope of the attorney’s authority, and named [her daughter B] as the only person to be notified when an application was made to register the LPA.
8. A solicitor in [locality] witnessed her signature and acted as the Part B certificate provider.
9. The OPG registered the LPA on 13 August 2009.

The application

10. C is the owner and manager of DEF Rest Home, where Mrs Harcourt has lived for the last three years. In July 2011 C contacted the Vulnerable Adults Team at GHI County Council expressing concern that Mrs Harcourt's care home fees had not been paid and that the attorney was giving her mother very little pocket money.
11. C was also uneasy about a letter Mrs Harcourt had received from Lloyds TSB confirming a loan to her of £5,000, and correspondence she had received from Capital One and Marks & Spencer Money confirming that her credit card applications had been accepted. C mentioned that the attorney visits her mother very sporadically, possibly once every two months, and that Mrs Harcourt's elder daughter in [locality] used to ring every ten days or so, but now only calls about twice a year.
12. On 4 November 2011 GHI County Council brought these concerns to the attention of the OPG, and the OPG opened an investigation.
13. As part of the investigation a Court of Protection Visitor, Christine Gaukroger, was asked to visit Mrs Harcourt at DEF Rest Home. She carried out the visit on 13 December 2011 and in her report she recommended that the OPG pursue the following course of action:
 - Require the attorney to account a.s.a.p.
 - Ask her why she is failing to pay fees and pocket money.
 - Ask her how the loans/credit card taken out in her mother's name benefits the donor.
 - Ask her to explain about the property [address] – does this belong to her mother? Did it ever belong? Undertake a Land Registry Search.
 - Contact the sister in [locality] – if appropriate.
14. On 27 January 2012 Angela Johnson, the Head of Practice and Compliance at the OPG, applied for the following order:
 - (a) An order suspending the property and affairs Lasting Power of Attorney in favour of A as sole attorney for Mrs Harcourt.
 - (b) The court freezes all accounts in the name of Mrs Harcourt (either solely or jointly with another person) including Lloyds TSB account number [.....] and account number [.....].
 - (c) Defer service on the attorney of the application and the order until 10 days after the donor's banks are notified of the Court Order.
 - (d) The Public Guardian is directed to file and serve a further COP24 in respect of his investigation into these matters within 8 weeks of the order being made.
15. The application was accompanied by a witness statement dated 27 January 2012, in which Yun Ding of the OPG stated that, among other things:
 - on 4 November 2011 the care home arrears were £4,717.30;
 - a Marks & Spencer card, Capital One Credit Card and a Lloyds Bank overdraft had been taken out in Mrs Harcourt's name;
 - there were sums unaccounted for including transfers of £3,927 to "J" and "K"; and
 - there had been frequent, sometimes daily, cash withdrawals of £300 since August 2009.
16. Yun Ding subsequently filed three further witness statements on 14 February 2012, 16 March 2012 and 10 May 2012.

Directions order of 1 February 2012

17. [The judge then set out the terms of a directions order made by District Judge Relph on 1 February 2012]

The attorney's application

18. On 20 February 2012 A filed an application notice (COP9) requesting an extension of time and on 7 March 2012 she filed an acknowledgment of service, in which she stated that she opposed the OPG's application. She said:

"I believe I am still the most appropriate person to act as Lasting Power of Attorney (LPA) for my Mum's affairs.

I am the only relative/close family that she has in the UK and strongly feel that I have a duty to care and look after her in her old age, now that my father is no longer alive to do so.

Although I maintain I am best placed to look after my Mum I would welcome any advice, guidance and support that the OPG is able to provide me with on an ongoing basis. If the OPG were able to do this then it will serve to enable me to carry out the LPA to a higher standard in the future.

I need a hearing date in April 2012 or later. I have used up all my holiday for the year ending 31.3.2012 and so am not able to get time off work until after 1.4.2012."

Further requests for an adjournment

19. On 12 March 2012 I made a directions order extending the deadline for compliance with District Judge Relph's order by six weeks from 22 February 2012 until 30 March 2012. I also vacated the hearing that was due to take place on 29 March 2012 and relisted it for 12 April 2012.
20. On 12 April 2012 Marion Bowgen of the OPG and A attended a hearing before me, and I made an order giving A a further extension of time (until Friday 8 June 2012) in which to comply with District Judge Relph's order, and listed the matter for hearing again on Tuesday 19 June 2012.
21. On 18 June 2012, on the application of A, I made an order in which I vacated the hearing that was due to take place the following day and rescheduled it for Thursday 19 July 2012.
22. On 15 July 2012, four days before the rescheduled hearing, A filed an application notice requesting yet another adjournment for an indefinite period of time. She said:

"I have found it impossible to complete the outstanding direction I have from the court order dated 1/2/12 due to the significant amount of time that I have spent since the last court hearing trying to obtain confirmation of Lloyds TSB's compliance with the variation of the court order, issued on 12/4/12.

Despite the amount of time spent on this issue by both parties it remains unresolved in that payments to Sun Life Insurance have not recommenced and also that Mum is still not receiving all of her state benefits into her bank account.

I appreciate that the court and OPG may feel that I should not be concerned over such issues, but I do not agree with this. In the absence of anybody else I feel the need to continue to look after Mum's affairs.

Even though there are teams of people at the court and OPG I was the only person aware of Lloyds TSB's non-compliance and had to bring this to the OPG's attention.

This lack of monitoring by either the court or the OPG has meant continual involvement by me and this, together with my full time job, is not something I feel I should have to undertake. In my second COP24 dated 11/6/12 I stated that I did not believe a further hearing to be beneficial until all issues resolved. For me this includes ensuring Mum's life cover has been reinstated and she is receiving all income due.

23. The Office of the Public Guardian resisted any further adjournment, and the hearing took place on Thursday 19 July 2012 in A's absence. Marion Bowgen attended on behalf of the OPG.

The donor's capacity

24. People who have capacity can make decisions for themselves. So, for example, the donor of an LPA who does not lack capacity can ask the attorney to produce accounts, receipts, invoices, bank statements and other financial records, and give an explanation of any concerns that may arise following an examination these documents.

25. Where the donor of an LPA no longer has the capacity to make decisions of this kind, the Court of Protection can make these decisions on their behalf, provided it is satisfied that it is in their best interests to do so.

26. The first question, therefore, is whether Mrs Harcourt has the capacity:-
(a) to require her attorney to produce accounts and financial records;
(b) to examine the accounts and records (if any); and
(c) to call for an explanation of any queries that may arise.

27. I appreciate that there may be a discrete test for capacity to perform each of these three functions, but for present purposes I shall treat them all as a single process.

28. The Court of Protection Visitor, Christine Gaukroger, who visited Mrs Harcourt on 13 December 2011, stated in her report:

"In my view Mrs Harcourt lacks the capacity to make decisions about her finances. She could not tell me about any bank account. She has no knowledge or memory of taking out any loan or credit cards. She believes L [C's husband] looks after her pension even though she tells me she does not live at DEF Rest Home so could not explain why he would. Therefore it follows she cannot deal with any concerns raised about the way her affairs are handled, particularly as the attorney rarely visits any more. As she has no recollection of signing an LPA, and I rather suspect she does not know what this is, she would be unable to revoke it."

29. Dr M, is a Consultant Psychiatrist in Older People Services at OPQ Hospital. In a letter to the OPG dated 2 February 2012, Dr M said as follows:

"I assessed this lady in my outpatient clinic at [address] on 31st January 2012 at the request of the Office of the Public Guardian to carry out a mental capacity assessment on her ability to manage her finances. She came accompanied by C, the manager from DEF Rest Home.

[Mrs Harcourt] was not able to explain to me what her income is. She thought the home manager manages her money and she was unaware of her expenses. She did not know whether she had any savings. She did not know the meaning of power of attorney and was unaware that she had given power of attorney to her daughter. According to her notes, she is suffering from chronic schizophrenia and cognitive impairment most probably due to vascular dementia.

In my opinion she does not have capacity to manage her finances. She also does not have capacity to decide on her power of attorney.

30. Although I accept Dr M's evidence, I should formally record that A disputes these findings. In her witness statement dated 9 April 2012 she said:

"I would like it to be recorded that my Mum was taken to the [clinic] without my knowledge for a mental capacity assessment on 31st January 2012. Again this appears to be a knee-jerk reaction to the OPG's investigations and not part of a routine package of care for Mum. If it is routine care, what previous data is being used to compare this assessment against? Once again Mum was accompanied to the assessment by C only. It does not seem correct that the person whose concerns instigated the OPG's investigations should then be solely involved and present in all subsequent assessments of my mother? This seems to be a conflict of interests in this respect and the lack of independence here concerns me greatly."

The Public Guardian's powers in relation to Lasting Powers of Attorney

31. The statutory provisions that authorise the Public Guardian to carry out an investigation of this kind are as follows.

32. Section 57 of the Mental Capacity Act 2005 states that there shall be an officer, known as the Public Guardian, who is to be appointed by the Lord Chancellor.

33. Section 58(1) of the Act sets out the functions of the Public Guardian. These include:

- 58(1)(a) establishing and maintaining a register of lasting powers of attorney.
- 58(1)(d)(i) directing a Court of Protection Visitor to visit the donee of a lasting power of attorney.
- 58(1)(d)(iii) directing a Court of Protection Visitor to visit the person granting the power of attorney.
- 58(1)(f) receiving reports from donees of lasting powers of attorney.
- 58(1)(g) reporting to the Court of Protection on such matters relating to proceedings under the Act as the court requires.
- 58(1)(h) dealing with representations (including complaints) about the way in which a donee of a lasting power of attorney is exercising his powers.

34. Section 58(3) provides that "the Lord Chancellor may by regulations make provision in connection with the discharge by the Public Guardian of his functions."

35. The relevant regulations are the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (SI 2007 No. 1253), regulation 46 of which provides that:

- (1) This regulation applies where it appears to the Public Guardian that there are circumstances suggesting that the donee of a lasting power of attorney may –
 - (a) have behaved, or may be behaving, in a way that contravenes his authority or is not in the best interests of the donor of the power,
 - (b) be proposing to behave in a way that would contravene that authority or would not be in the donor's best interests, or

(c) have failed to comply with the requirements of an order made, or directions given, by the court.

(2) The Public Guardian may require the donee –

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced –

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Public Guardian may require –

- (a) any information to be verified in such manner, or
- (b) any document produced to be authenticated in such manner, as he may reasonably require.

(5) “Specified” means specified in notice in writing given to the donee by the Public Guardian.

36. The OPG has no powers of enforcement and, if it considers it necessary or expedient to freeze the donor’s accounts, or suspend the attorney’s powers, or revoke the LPA, it must apply to the Court of Protection for an order to that effect.

The Court of Protection’s powers in relation to Lasting Powers of Attorney

37. Sections 22 and 23 of the Mental Capacity Act 2005 set out the powers of the Court of Protection in relation to Lasting Powers of Attorney. The Act refers to the donor of an LPA as “P” and the attorney appointed by the donor as “the donee”.

38. Section 23(3)(b) states that:

“The court may, if P lacks capacity to do so –

- (a) give directions to the donee with respect to the rendering by him of reports or accounts and the production of records kept by him for that purpose;
- (b) require the donee to supply information or produce documents or things in his possession as donee.”

39. Essentially, the Lasting Powers of Attorney scheme is based on trust and envisages minimal intervention by public authorities. Even where a donor lacks the capacity to ask the attorney to provide accounts and records, the court would not normally exercise its supervisory powers under section 23, unless it had reason to do so, possibly because of concerns raised by the OPG. The court’s powers in this respect simply duplicate those of a capable donor.

40. Section 22(3)(b) states that: “subsection (4) applies if the court is satisfied -

“(b) that the donee (or, if more than one, any of them) of a lasting power of attorney –

- (i) has behaved, or is behaving, in a way that contravenes his authority or is not in P’s best interests, or
- (ii) proposes to behave in a way that would contravene his authority or would not be in P’s best interests.”

41. Section 22(4) provides that:

“The court may –

- (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered, or
- (b) if P lacks capacity to do so, revoke the instrument or the lasting power of attorney.”

Best interests

42. “Best interests” is not defined in the Mental Capacity Act 2005, but section 4 provides the following checklist of the factors that anyone doing the act or making the decision must consider when deciding what is in an incapacitated person’s best interests

- (1) In determining for the purposes of this Act what is in a person’s best interests, the person making the determination must not make it merely on the basis of -
 - (a) the person’s age or appearance or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.
- (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
- (3) He must consider -
 - (a) whether it is likely that the person will at some time have the capacity in relation to the matter in question, and
 - (b) if it appears likely that he will, when that is likely to be.
- (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
- (5)
- (6) He must consider, so far as is reasonably ascertainable -
 - (a) the person’s past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
 - (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
 - (c) the other factors that he would be likely to consider if he were able to do so.
- (7) He must take into account, if it is practicable and appropriate to consult them, the views of -
 - (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
 - (b) anyone engaged in caring for the person or interested in his welfare,
 - (c) any donee of a lasting power of attorney granted by the person, and
 - (d) any deputy appointed by the court.
- (8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which—
 - (a) are exercisable under a lasting power of attorney, or
 - (b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.
- (9) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned.
- (10)

- (11) “Relevant circumstances” are those—
- (a) of which the person making the determination is aware, and
 - (b) which it would be reasonable to regard as relevant.

The law regarding compliance

43. The common law of agency imposes a number of fiduciary duties on attorneys, including two that relate specifically to their accountability. First, an attorney is expected to keep and be constantly ready to produce correct accounts of all his dealings and transactions on the donor’s behalf: *Gray v Haig* (1855) 20 Beav 219. And secondly, the attorney has a duty to produce to the donor, or to anyone appointed by the donor, all books and documents he has relating to the donor’s affairs: *Dadswell v Jacobs* (1887) 34 Ch D 278.

44. In *Gray v Haig*, the agent had destroyed any accounts he had kept, and the Master of the Rolls, Sir Samuel Romilly, concluded his judgment as follows:

“I cannot conclude this case without expressing my regret that I have felt it my duty to make a decision on those points which will lead to so stringent a decree against Mr Gray. It cannot, however, be too generally known or understood that amongst all persons dealing with each other in the character of principal and agent, how severely the court deals with any irregularity on the part of the agent, how strictly it requires that he who is the person trusted shall act, in all matters relating to such agency, for the benefit of his principal, and how imperative it is upon him to preserve correct accounts of all his dealings and transactions in that respect, and that the loss, and still more the destruction, of such evidence by the agent, falls most heavily upon himself.”

45. *Dadswell v Jacobs* was, in fact, an exception to the general rule regarding the production of documents. The Court of Appeal (Lords Justices Cotton, Lindley and Lopes) affirmed the decision of Mr Justice Chitty that, although a principal has a general right to the production of documents in the hands of his agent to anyone he appoints, he cannot insist on their production to an improper person. In this particular case, the principal had required the production of documents to the clerk of a former business partner of the agent who was currently engaged in hostile litigation against the agent.

46. To a large extent these common law duties have been replicated by section 23(3) of the Mental Capacity Act and paragraph 7.67 of the Code of Practice, which expressly states that:

“Property and affairs attorneys must keep accounts of transactions carried out on the donor’s behalf. Sometimes the Court of Protection will ask to see accounts. If the attorney is not a financial expert and the donor’s accounts are relatively straightforward, a record of the donor’s income and expenditure (for example, through bank statements) may be enough. The more complicated the donor’s affairs, the more detailed the accounts may need to be.”

47. Paragraph 7.65 of the Code of Practice provides that:

“Under sections 22 and 23 of the Act, the Court of Protection has wide-ranging powers to decide on issues relating to the operation or validity of an LPA. It can also:

- give extra authority to attorneys
- order them to produce records (for example, financial accounts), or
- order them to provide specific information or documentation to the court.

Attorneys must comply with any decision or order that the court makes (*my emphasis*).”

48. Section 42(1)(c) of the Mental Capacity Act 2005 provides that “the Lord Chancellor must prepare and issue one or more codes of practice ... for the guidance of donees of lasting powers of attorney” and section 42(4)(a) states that:

“It is the duty of a person to have regard to any relevant code if he is acting in relation to a person who lacks capacity and is doing so in one or more of the following ways – (a) as the donee of a lasting power of attorney.”

49. Section 42(5) of the Act states that:

“If it appears to a court or tribunal conducting any criminal or civil proceedings that –
(a) a provision of the code, or
(b) a failure to comply with a code,
is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.”

Decision

50. For the purposes of section 23(3) of the Mental Capacity Act I am satisfied that Mrs Harcourt lacks the capacity to give directions to the attorney with regard to the production of reports, accounts, records and any other information relating to the management of her property and financial affairs.
51. I am also satisfied that she lacks the capacity to examine any financial records or, more realistically, to instruct someone else, such as a book-keeper, auditor or forensic accountant, to examine the accounts on her behalf and raise requisitions on them.
52. Accordingly, the court has discretion to intervene on the donor’s behalf to require the attorney to provide accounts and supporting documentation.
53. In cases of this kind it is never particularly easy to apply the best interests checklist set out in section 4 of the Act. Nonetheless, any difficulty encountered in applying the checklist does mean that decisions such as requiring an attorney to account, investigating an attorney’s conduct, or suspending or terminating an attorney’s appointment are not in the donor’s best interests.
54. For the purposes of section 4(3) of the Act, I am satisfied that it is unlikely that Mrs Harcourt will ever regain sufficient capacity to be able to manage her financial affairs and revoke the LPA herself, should she wish to do so.
55. For the purposes of section 4(4) the Court of Protection Visitor sought, so far as reasonably practicable, to permit and encourage Mrs Harcourt to participate as fully as possible in the decision-making process, but unfortunately to no avail.
56. As regards section 4(6), I am conscious that it was Mrs Harcourt’s past wish, when she had capacity, that her daughter should be her attorney and manage her property and financial affairs. As far as her present wishes and feelings are concerned, she believes that the care home manager, C, or her husband, L, is looking after her pension for her and seems quite content with that belief. I am not aware of the possible impact upon her (if any) if she were to be told that her daughter may not have been acting in her best interests and that she could even be a victim of crime.

57. As regards section 4(7) and the views of others who are engaged in caring for Mrs Harcourt or who are interested in her welfare, I have taken into account the views of A, who believes that she is still the most appropriate person to look after her mother's finances. I am unaware of the views of Mrs Harcourt's elder daughter in [locality], who has not taken any part in these proceedings. I have also taken into account the views of C, who is keen to ensure that the care home fees are paid on time, that Mrs Harcourt gets an adequate personal allowance, and that Mrs Harcourt is treated with respect.
58. Section 4(2) of the Act requires me to consider "all the relevant circumstances" and section 4(11) states that relevant circumstances include "those which it would be reasonable to regard as relevant."
59. I consider it is reasonable to regard as relevant the fact that A is an auditor. She is not a typical member of the family acting as an attorney, but a person whose job involves checking the accuracy of financial records. In the context of paragraph 7.67 of the Code of Practice, she could be described as a "financial expert." It would be reasonable to expect a higher standard of care from her in terms of an awareness of her fiduciary duties and the need for exactitude in presenting accounts and promptness in delivering them. Another relevant circumstance is that it would be reasonable to expect that this particular donor's finances are relatively straightforward.
60. The factor of magnetic importance in determining what is in Mrs Harcourt's best interests is that her property and financial affairs should be managed competently, honestly and for her benefit.
61. Although the OPG has been unable to complete its investigation because of the attorney's reluctance to co-operate, what it has managed to unearth so far has resulted in a successful challenge to her competence and integrity. Even if she has behaved honestly, she has not managed her mother's finances well. Otherwise, there would be no outstanding arrears of care home fees or complaints that Mrs Harcourt is not receiving an adequate personal allowance.
62. In my judgment, the attorney is deliberately obstructing any investigation into the donor's financial affairs by the OPG and she has failed to comply with an order of the court.
63. By refusing to co-operate with the court and the OPG for the purpose of resolving the outstanding issues regarding the manner in which she has conducted her mother's affairs, the attorney is not behaving in Mrs Harcourt's best interests.
64. For the purpose of section 42(5) of the Act the attorney's failure to comply with the directions of the court, and thereby her failure to comply with a provision of the code of practice, is a relevant factor that must be taken into account in deciding the matter.
65. For the purpose of section 22(4)(b), I am satisfied that Mrs Harcourt lacks capacity to revoke the LPA and I propose to revoke it on her behalf but, before doing so, I must consider section 1(6) of the Act, which states as follows:
- "Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action."
66. The purpose for which a decision of the court is needed is to enable Mrs Harcourt's financial affairs to be managed competently, honestly and for her benefit. Prior to the suspension of her powers, the attorney was not managing the donor's affairs satisfactorily. The donor did not appoint a replacement attorney; although, surprisingly, a finding of the court that an attorney is

behaving in a way that contravenes his authority or is not in the donor's best interests is not, in fact, an event that would trigger the appointment of a replacement attorney under section 13(6) of the Act. Accordingly, a deputy needs to be appointed to manage Mrs Harcourt's financial affairs, and the overall objective cannot be achieved as effectively in a less restrictive manner.

Article 8 rights

67. The Human Rights Act 1998, section 3(1) requires the court, so far as it is possible to do so, to read and give effect to the Mental Capacity Act 2005 in a way that is compatible with the European Convention on Human Rights and Fundamental Freedoms 1950. The principal right engaged in this case is Article 8, the right to respect for private and family life.

68. Article 6, the right to a fair trial, is also engaged, but I am satisfied that attorney has been given ample opportunity to produce proper accounts and to explain her actions. She has had six months to do so, during which time, at her request, three adjournments and extensions of time have been granted: on 12 March, 12 April and 18 June 2012. A fourth application, made on 15 July 2012, for an indefinite adjournment was refused. Her lack of candour has generated deeper concerns that she has something to conceal and that she may have financially abused her mother. Mrs Harcourt also has Article 6 rights, and it is in her interests that these outstanding issues are resolved as soon as possible.

69. Article 8 states that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

70. In *K v LBX and others* [2012] COPLR 411, at paragraph 35, Lord Justice Thorpe said:

“I conclude that the safe approach of the trial judge in Mental Capacity Act cases is to ascertain the best interests of the incapacitated adult on the application of the section 4 checklist. The judge should then ask whether the resulting conclusion amounts to a violation of Article 8 rights and whether that violation is nonetheless necessary and proportionate.”

71. In the absence of appropriate safeguards, the revocation by the court of a Lasting Power of Attorney, which a donor executed when they had capacity and in which they chose a family member to be their attorney, would be a violation of their Article 8 rights. For this reason the Mental Capacity Act has been drafted in a labyrinthine manner to ensure that any decision by the court to revoke an LPA cannot be taken lightly.

72. In this case, I believe that the revocation of the LPA in order to facilitate the appointment of a deputy is a necessary and proportionate response for the protection of Mrs Harcourt's right to have her financial affairs managed competently, honestly and for her benefit, and for the possible prevention of crime.

Revocation of Lasting Power of Attorney

73. Accordingly, I revoke the Lasting Power of Attorney and direct the Public Guardian to cancel its registration.

DENZIL LUSH
Senior Judge
31 July 2012