

COP NO. 13455198

IN THE COURT OF PROTECTION  
SITTING AT LEEDS COMBINED COURT CENTRE  
BEFORE DISTRICT JUDGE GEDDES

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005  
AND IN THE MATTER OF OT

B E T W E E N :

KKL EXECUTOR & TRUSTEE COMPANY LIMITED

Applicant

And

LYNSEY JANE HARRISON

Respondent

JONATHAN ARKUSH Counsel appeared for KKL Executor & Trustee Company Limited

SARAH HARRISON Counsel appeared for Lynsey Jane Harrison

Hearing date: 26 March 2020 Judgment handed down 1 May 2020

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JUDGMENT

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1. This is an application for the appointment of a deputy to manage the property and affairs of OT. OT is an 81-year-old lady suffering from advanced senile dementia. OT is now living and being looked after in a residential care home setting although when this application was first lodged in around May 2019 she was still living in her own home.

2. I have read the bundle which includes statements in support of KKL from AB dated 23 May 2019, 23 May 2019, 21 November 2019, DG dated 16 January 2020, ANB dated 21 January 2020 and CA dated 22 January 2020, 28 January 2020 and 11 February 2020 and in support of Mrs Lynsey Harrison from herself dated 19 September 2019 and 12 February 2020, Claire Louise King dated 27 August 2019 and SAH dated 22 January 2020. No witness was required for cross-examination and the facts they attest to are therefore taken to be unchallenged.
3. I have heard submissions from Counsel on both sides during the course of a full day via Skype for Business in the light of the current public health emergency caused by Covid-19. I am grateful to the parties and their counsel for making themselves available in the circumstances.
4. It is common ground between the parties that OT lacks capacity to manage her own property and affairs. The application by KKL Executor & Trustee Company Limited (“KKL”) is supported by a COP3 completed by a GP. He states that the diagnosis of senile dementia was made in September 2015 by the local Memory Clinic. He assessed OT on 26/3/2019 when “she had no understanding of her poor physical and mental health and I made an immediate referral to Social Services”.
5. There is further support for the determination that OT lacks capacity in the COP3 supporting the cross-application of Ms Lynsey Harrison which was completed by OT’s social worker SAH. Dementia is a progressive condition and there is no likelihood that OT would regain capacity and no steps which I consider should be taken to help her become capacitous in this regard.
6. In these circumstances I am satisfied that OT lacks capacity to manage her property and affairs for the purpose of section 2 of the Mental Capacity Act 2005 (“the Act”) and that, as such the Court of Protection has jurisdiction to consider making orders in her best interests. I will make that declaration.
7. I turn therefore to the decision which I have to make. The application on both sides is for a deputy to be appointed under section 19 of the Act. It is common ground that a deputy should be appointed. Both the applicant and the respondent are capable of acting as a deputy pursuant to the restriction in section 19(1)(b). The only question here is which should be preferred. If the court considers neither should be appointed it is open to the court to appoint a panel deputy.
8. It is common ground that I should make my decision in accordance with the provisions of section 4 of the Act, in particular those set out at s.4(6):
  - a. The person’s past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity); and
  - 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.
9. KKL is a trust corporation working closely with (both in terms of being the subsidiary of and working from the same office with) a charity called JNF Charitable Trust (“JNF UK”). The charity has a long history having been established in 1901, having been associated with the formation of the state of Israel and continuing through its work to support poor communities and environmental projects within Israel. KKL was itself incorporated in 1948 and provides services focussed on will writing, executorship and lasting powers of attorney as well as a pastoral service which includes home visits and help with making personal arrangements for care either directly or by referral to its network of contacts.
10. Ms Lynsey Harrison is a partner in Clarion Solicitors. She is a professional deputy approached by OT’s social worker SAH under an approved scheme used by Leeds City Council for referrals required on behalf of vulnerable people for legal advice or deputyship.
11. This is an unusual dispute in that one would expect professionals on each side to have been able to come to an agreement about what was in OT’s best interests. Despite this, and despite having had the opportunity to explore the issues at a Dispute Resolution Hearing, the applications remain hotly contested. There are allegations on each side of an aggressive or combative approach being taken.
12. The position of KKL is that it should be appointed and in default a panel solicitor. The position of the Respondent is that it should be appointed and in default a panel solicitor.
13. There is no family member known to be closely interested in OT’s welfare, although there is reference to a niece who has started to call OT, was mooted as a potential beneficiary of a possible future will but who does not visit. The niece has not been served with either application. I note in addition to this that her 2005 Will named three great-nephews as legatees of equal value to her sister NE and their connection to OT might need further investigation in the future.
14. OT is unmarried and childless. She lived with her sister NE until NE’s death in February 2019. Unfortunately OT was in hospital at the time of her sister’s death and returned home without the support of NE who had acted as her carer. It was in these circumstances that in March 2019 the GP made his referral for an assessment of OT’s care needs and SAH was allocated.
15. OT had a friend or neighbour acting as an informal carer named GY. There appears to have been conflict between GY and KKL, with each accusing the other of financial abuse of OT. It is common ground that there are suspicious transactions amounting to in excess of £40,000 on OT’s bank statements and the suggestion that these transactions are evidence of financial exploitation of OT by a former carer (it is

unclear to me whether this is alleged to be GY herself or someone else). I am told that the police investigation into earlier possible abuses has been closed. It appears that a referral was made by the police to Trading Standards in respect of KKL but I do not know what, if anything came out of that investigation.

16. It is fair to reflect, therefore, that the background context is one in which both GY and the Social Worker had expressed suspicion of KKL's motives and surprise at what was felt to be persistent attempts to access OT when she was vulnerable and apparently incapacitous – in particular with a view to obtaining from her authority under a Power of Attorney. This suspicion was not unreasonable in the sense that neither the neighbour nor the Social Worker was aware of the history of involvement by OT with KKL whilst capacitous - involvement which is demonstrated by the making of three successive Wills appointing KKL as executors. The first of these Wills goes back to 2005, some 10 years before OT's diagnosis of senile dementia. Secondly they were likely unaware of KKL's pastoral aims and the way in which these aims had been delivered in respect of NE and OT over some years and thirdly they might rightly consider any attempt to persuade OT to enter into a power of attorney misplaced at the time. It was with this background together with the other matters that SAH sets out in her statement at paragraph 12 that prompted the referral to Ms Harrison.
17. KKL as a company having known OT for some years it is also not surprising that its officers or employees might feel affronted by being prevented from visiting OT having travelled from London, side-lined as they saw it by the police and social services at the meeting at her home in April 2019 and generally having their motivation questioned as they saw it quite unreasonably.
18. I am told by Counsel for the Applicant and accept that JNF UK is a charity which has held a special place in the hearts and lives of very many Jewish people for many decades. There is nothing surprising, therefore, about a choice to benefit that charity by a legacy or even as the residuary beneficiary of the Will of any person sympathetic to the charity's aims and objectives or of a person like OT who is a member of and appears to have identified with the Jewish community.
19. The objection raised by Ms Harrison to KKL being appointed is founded on three main limbs. The first is its lack of independence from JNF UK and the potential for a conflict of interest to arise between OT's interests and the interests of JNF UK as the main and residuary beneficiary of OT's latest will. The second is KKL's lack of experience as a deputy and the third is KKL's geographical distance and their apparent conflict with others with whom the deputy would need to work in OT's best interests pursuant to section 4(7) of the Act.
20. In support of their own application and in opposition to Ms Harrison being appointed KKL point to what they say should be their higher rank in the preferences of the court pursuant to the authorities *Re AS [2013] COPLR 29* and *Re B [2011] EWCOP 3805*

to which I will return in a moment and their experience as Attorneys and historically as Receivers. They will not charge for their services to OT's benefit.

21. Whilst accepting the ability of Ms Harrison to act professionally and with integrity they also claim there is a conflict of interest associated with her ability to charge a fee for her work as a professional deputy and to pay solicitors costs to her own firm for legal services.
22. I will deal with KKL's objections to Ms Harrison first. It is obvious that a professional deputy will require a fee, but the costs of such deputies are fixed, can be assessed if required and are subject to the oversight of the Senior Courts costs office. I reject three specific criticisms raised either in KKL's evidence or in the submissions of Mr Arkush:
  - a. That the arrangement under which Leeds City Council refers vulnerable people to a small pool of approved solicitors is somehow "cosy" or improper. There is nothing wrong with such a system in my judgment and no evidence to substantiate the hint that it is somehow against OT's interests.
  - b. That the inclusion within the application and draft order of the words "*to authorise the deputy to pay Clarion Solicitors Limited the costs of this application and if this amount sought exceeds the fixed costs allowed the deputy is authorised to agree their costs and pay them from the funds belonging to OT. In default of agreement or if the deputy or solicitor would prefer the costs to be assessed and to be carried out on the standard basis*" is a "*cosy arrangement regarding costs that is buried in the small print in her application*". Appreciating some licence for advocacy given that this is taken from Counsel's skeleton argument this is nevertheless (literally) factually wrong (this element of the order is printed in exactly the same uppercase print as the other orders sought in the application) and reflects standard wording within the templates produced by the Court of Protection. It is perhaps right to say, however, that where the deputy is a partner in the solicitors' firm whose fees stand to be agreed it might be wise for them to agree either to stay within the fixed regime or to have an assessment or, if appropriate, for the court to restrict the licence to agree costs in a similar way.
  - c. That it is somehow surprising that Ms Harrison is not being funded by Leeds City Council to make this application or to oppose the application of KKL. This is not surprising at all. It certainly does not raise "*serious questions*" as asserted by Mr Arkush in his skeleton argument. The role of Leeds Social Care was limited to making the referral through Lawdesk. They are not the client of Ms Harrison, nor is OT. There is a risk to Clarion Solicitors of taking such referrals in that if their application were rejected they might be left to bear their own costs of bringing the application which they do so purportedly in OT's interests. Of course, in this limited sense they have an interest in either the success of the application or at least in not being criticised for

bringing the application to the point of disapplication of the general rule about costs contained in rule 19.2 of the Court of Protection Rules 2017 namely that *“Where the proceedings concern P’s property and affairs the general rule is that the costs of the proceedings... shall be paid by P or charged to P’s estate”*.

23. It will be a matter for submissions on costs whether or not the conduct of either party has been unreasonable or should be marked with the court’s disapproval by disapplying the usual rule. So long as the proposed deputy is acting in good faith, however, I would not consider their expectation of having their costs paid in accordance with the usual rule out of P’s estate could be considered *“cynical”*.
24. Mr Arkush accuses Ms Harrison or her firm of being *“aggressive”* or *“dogged”* in their approach to this case. I make the same point as I make above in relation to costs, but if the point is aimed at the substance of Ms Harrison’s suitability as a deputy it is simply not evidenced. Having given Mr Arkush the opportunity to moderate his submission in his regard I pressed him for evidence of *“aggression”* within the substantial bundle of papers I have before me. He referred me to just one page of that bundle which was a position statement filed on behalf of his own client in which there is an account of a meeting between KKL and Ms Harrison in which KKL were handed a copy of Claire Louise King’s statement dated 27 August 2019 which they had not previously seen *“She [i.e. Ms Harrison] realised that this has disadvantaged KKL. This added to the already tight deadline as KKL received notice from the court of next Wednesday’s hearing with a copy of Judge Bell’s order in the DX only on 19 November. We therefore asked the Respondent on 21 November to join KKL in a joint application for an adjournment of next Wednesday’s hearing but this was rejected with the Respondent claiming it was unlikely to succeed.”* I do not consider this to be evidence of aggression and I am surprised that it was cited to me in support of this contention.
25. KKL argue that if Ms Harrison is appointed she has already (in the statement of CK) hinted at a possible complaint being made against them to the Charities Commission for any breach of the Fundraising Code of Conduct, the possibility of review of the latest Will to see if a statutory will application should be made and at the possibility of litigation to recover any funds which might have been misappropriated from the carer. The argument is framed in terms of this being motivated by generating unnecessary work and ramping up the recovery of costs from OT’s estate.
26. The point made on Ms Harrison’s behalf - which I accept - is that it is the *duty* of the deputy to investigate such issues and, if it will benefit OT (balancing the usual risks of litigation and the cost/benefits (including personal as well as financial benefits or disadvantages) of taking any step) then the deputy should be ready and willing to take such steps as may be necessary to promote OT’s interests.
27. KKL’s approach was focused far more on promoting the meeting of OT’s immediate material and cultural needs and, perhaps not surprisingly, they argue strongly against

any need to consider a statutory will. I will return to this when I consider objections raised against KKL.

28. The only other point raised against Ms Harrison's application are the fact that she has not visited OT or acquainted herself personally with OT. Ms Harrison rightly points to the fact that she does not yet represent OT. If personal acquaintance is going to be the difference between the deputies, then clearly Ms Harrison will start at a disadvantage when compared with KKL, whose personnel have met OT and some of them on more than one occasion and over a number of years.
29. In short, it is my judgment that nothing raised by KKL or on its behalf by Mr Arkush would suggest that Ms Harrison would be anything other than a perfectly suitable deputy for OT with no more potential for tension between the charging of fees and the promotion of OT's best interests than any other professional deputy including a panel deputy.
30. I turn now to consider the objections to appointing KKL as deputy and the factors which speak for and against their application when compared with the alternative of appointing Ms Harrison, in particular by reference to section 4 of the Act and to the list of preferences set out in Senior Judge Lush.
31. Turning first to OT's past and present wishes and feelings. The only written evidence from OT herself of wishes and feelings are the three Wills, the most recent of which was completed in 2017. I cannot place weight on the attendance note of 12 March 2019 which suggests that OT might have wished to appoint KKL as her Attorney under a Lasting Power of Attorney as that note itself attests to OT being "forgetful and slightly confused", was prompted in respect of them acting in this role and the evidence being that OT had had a diagnosis of dementia for about 4 years by then.
32. There is evidence from attendance notes of KKL pre-dating a loss of capacity that KKL were in touch with OT and had had congenial meetings with her after her first approach to them had resulted in the 2005 Will.
33. What weight should be put on the fact that whilst capacitous OT approached KKL for will writing services and chose them to act as executors for each of three Wills made some years apart? It is argued on behalf of KKL that considerable weight should be given to this factor as it is evidence of OT's trust in KKL to manage her affairs after her death. That trust was not just expressed once but on two further occasions when the will was adjusted. KKL points to authorities in which the appointment of a family member as executor is taken to be evidence of the trust the testator had in that person. I agree that ordinarily this would be a matter of significance and one which would ordinarily weigh in favour of the person so chosen.
34. It is argued by Ms Harrison that on the contrary in this case no weight can be put on this factor given the possibility that the Wills were drawn in breach of the Code of Fundraising Practice ("the Code"). She has produced a recent report from the

Fundraising Regulator that examines the relationship between KKL and JNF UK in the context of a complaint made by the applicant to proceedings under the Inheritance (Provision for Family and Dependents) Act 1975. The complaint was that KKL had wrongly influenced the complainant's spouse to leave a legacy to JNF UK and secondly that the charity does not have appropriate safeguards in place to manage their relationship with KKL.

35. As of the date of the decision 11 March 2020 the regulator notes that five directors of KKL were also trustees of JNF [UK] including the chair of trustees. Three were acting in the same roles for both organisations in 2016 and where other roles had changed the predecessors had acted as trustees for JNF and KKL at the same time. One person had been appointed as a trustee of JNF and a director of KKL on the same day in April 2017. The regulator comments that this is "striking given that the two organisations are separate legal entities." They add "Finally, we note that JNF have engaged with us on behalf of KKL when we asked them to provide information to assist our investigation." Pausing there, it is submitted by Ms Sarah Harrison that the same confusion has arisen in these proceedings where KKL and JNF have been used almost interchangeably. She points to some confusion even in submissions made at this hearing and although Mr Arkush rejects the criticism I had on one occasion to correct him myself when I wished to clarify that a submission was made on behalf of KKL as the Applicant and his client. In any event, Mr Arkush rightly states that there is no secret about the close relationship both legally and physically between the two organisations.
36. The complaint to the Fundraising Regulator was that the circumstances in which a 2016 Will were drawn up involved multiple breaches of section 18 of the Code in that JNF UK "failed to manage a conflict of interests, to keep proper records and to maintain proper oversight of the activities of their subsidiary, which they said presented a serious risk to the reputation of the charity...fundraising methods used to obtain the testator's legacy to the charity were inappropriate and that the charity's will writing service constitutes "a significant risk to public trust and confidence"
37. **In relation to that case** the regulator found
  - a. KKL to be fundraisers for JNF and therefore a clear breach of section 18.3.3(b) of the Code which states "Fundraisers MUST ensure that they are absent at all times during the preparation, drafting and signing of the Will"; and
  - b. That there was neither sufficient nor meaningful separation between KKL and JNF and therefore a clear breach of section 18.3.3(a) of the code which states "Organisations MUST NOT draft or be directly involved in drafting Wills in favour of the organisation"
  - c. That having kept no contemporaneous records regarding their decision to act as executors and having failed to advise the testator to obtain independent advice they did not carefully consider the implications of the closeness of their position to the testator's affairs and the potential risks that this posed to the



charity which breached section 18.3(b) of the Code “If a potential legator asks the organisation or any of its officers or employees to act as executor, the organisation MUST carefully consider whether to agree, bearing in mind the duties and responsibilities of acting as executor and potential risks to the organisation.”;

- d. A breach of section 18.3.5(a) associated with the offer of a free service from KKL in return for a legacy being left to JNF UK, that section reading “Fundraisers MUST NOT make it a condition that the organisation is included in the Will and MUST NOT exert undue influence on potential legators”.
38. In relation to this case Mr Arkush dismisses the relevance of this decision, which he described as a “slip”. He points out that the first of OT’s Wills was drafted before the Code was in place. He says that the Regulator has required of KKL an Action Plan which has resulted in KKL changing its approach entirely.
  39. I agree with Miss Sarah Harrison that the fact that KKL’s appointment as executor may have been a breach of the Code in this case must at the very least significantly lessen any force in the argument that the choice shows OT trusted them to manage her affairs. The whole point of the Code is to protect the public and charities from bad practice.
  40. Furthermore it must be relevant to this case that KKL prepared and drafted OT’s Will, were appointed as an executor of OT’s Will and that the residuary beneficiary of the Will is JNF UK. In this case and as legacy to NE has lapsed JNF UK stand to inherit around £500,000 on OT’s death. The amount of the estate is clearly relevant to the merits of at least investigating whether any of the above facts amounted to a breach of the Code in this case and, if so, or for other reasons, a statutory Will might be required.
  41. KKL offered an undertaking to spend whatever might be needed to ensure that OT was properly looked after during her lifetime. That offer was intended to reassure but it misses the point. Of course as her deputy KKL would be expected to release funds to ensure OT was well looked after but the bigger point of whether there should be an investigation and application for a statutory Will has not been addressed by KKL other than by denying it is necessary or proportionate. In my judgment KKL have a clear interest in maintaining the current Will because it benefits JNF UK and this interest has clear potential to be in conflict with OT’s best interests. This is a conflict of interest going far beyond quibbles over spending on small items during her lifetime (described by Mr Arkush as probably running to just a few hundred pounds a year over and above care home fees)
  42. KKL would not charge a fee for its services as a deputy whereas the appointment of Ms Harrison might cost OT up to £3,000 annually. KKL would clearly be preferred on that ground.

43. Why should KKL be appointed if there is a conflict of interest? Mr Arkush's argument was that even if I thought there was a conflict of interest (which KKL denies) I should nevertheless prefer KKL under section 4 because I should liken them to family members and, as with many authorities dealing with family members who have a potential conflict of interest, accept or manage the risk of any conflict, in particular by accepting the undertaking above.
44. It is well recognised that within the Court of Protection potential or actual conflicts of interests frequently occur and are permitted to exist, especially in the case of family members who may also be executors and beneficiaries of Wills but also, for example, in the case of Local Authorities who have an interest in the continued funding of care home fees.
45. There is obvious benefit in the appointment of a family member or close friend if it is in OT's best interests to do so. Such a person (as per Re M [2013] COPLR 91) will be familiar with OT's affairs and wishes and methods of communication. They are more likely to be able to meet the obligations of a deputy to consult with OT and enable her to participate as fully as possible. It is cheaper than appointing a professional.
46. I have referred to Re B above. It is a decision of Senior Judge Lush. It concerned the appointment of a son as deputy in preference to a panel solicitor. Generally speaking the order of preference was said to be:
- a. P's spouse or partner;
  - b. Any other relative who takes a personal interest in P's affairs;
  - c. A close friend
  - d. A professional adviser, such as the family's solicitor or accountant
  - e. A local authority's social services department; and finally
  - f. A panel deputy, as deputy of last resort.
47. Nevertheless it has been repeatedly emphasised that this does not mean in any particular case that any particular person must or should be appointed. The discretion to appoint someone lower or higher on the list (or not on the list at all I suppose) is entirely that of the court having regard to the particular circumstances of the case.
48. The factors which might go into a balance sheet approach such as that adopted in Re M [above] include ability and willingness to act, qualifications, place of residence, security, conduct before and during the proceedings, nature of relationship with P, P's wishes and feelings, views of others, effect of hostility, conflicts of interest and the terms of P's Will.
49. To what extent does KKL fit into any of the above categories of person to be preferred and in particular should I conclude that they should enjoy the same precedence as a family member or close friend and, if not, should I consider they fall

into the category of professional adviser and in either case be preferred to Ms Harrison, who is a stranger to OT?

50. The Wills show contact between KKL and OT going back to 2005 and the evidence of CA demonstrates this relationship. The evidence of the **pastoral** relationship between KKL and OT is contained to an extent in her statement and in the statement of DG dated 17 January 2020. He first visited OT in 2013. Exhibited to his statement is evidence of either visits or conversations in April 2013, August 2015 (when OT seems to have confused KKL with her Housing Association) and March and April 2019 (leading to this application in May 2019). It appears that in addition to this KKL sends birthday cards to its clients. Exhibited to CA's statement is evidence of advice being given in relation to the burial plot together with a visit to the sisters in January 2018.
51. The evidence from the attendance notes demonstrates pleasant interactions between KKL's staff and OT during these visits and letters. In engaging with OT about Jewish festivals or bringing her gifts of traditional food I fully accept from the evidence that the staff of KKL have brought OT pleasure on their visits. I cannot imagine why such interactions between KKL and its clients and generous benefactors to JNF UK would not be pleasant and warm but I have struggled to reconcile the **evidence** with the submission made on KKL's behalf that they had a "close relationship" with OT or that "many pastoral visits" had been undertaken over the years" let alone the "warm and friendly relationship that existed between OT and CA and DG, and how much she valued and enjoyed their visits to her".
52. I fully accept that the fact that OT approached KKL and chose them over many years to write and rewrite her Will shows both that she trusted the company to act in her interests and is likely evidence that she identified with JNF UK's aims and objectives. This is relevant to her values, and to her wishes for the purpose of section 4 of the Act but the evidence simply does not allow me to accept the submission that they should be treated – in particular where there is clearly potential for a conflict of interest as I have found – as if they are family or close friends of OT.
53. In my judgment they may well fit into the description of professional adviser. The difficulty with preferring KKL to Ms Harrison on this basis is their lack of independence from JNF UK. A solicitor or accountant who knows their client well from years of managing their personal affairs is clearly an appropriate deputy but would be expected to maintain independence. It would be unthinkable and a clear breach of their code of conduct to facilitate the writing of a Will or to act as deputy or executor of a Will under which they stood to gain.
54. It is a fact that in these proceedings no attendance notes or files have been disclosed relating to the preparation of any of the three Wills and I cannot therefore comment on the way in which they came into being. In particular, in respect of the latest Will I have no evidence either way in relation to how KKL satisfied themselves of OT's capacity in the light of her diagnosis by then of at least 2 years standing let alone any

contemporaneous evidence to show how KKL sought to protect OT, themselves or JNF UK from any potential conflict of interest.

55. Two other points are raised against KKL by Ms Harrison. The first is their inexperience as deputies. It is a fact that this would be their first deputyship although I am told that they hold Powers of Attorney for many people. I **have** discerned some inexperience in their approach to these proceedings including their failure to comply with PD9B in relation to the notification of other people who have an interest and their misconceived views on elements of Ms Harrison's application in relation to costs. Their evidence in relation to moving OT to a Jewish care home does not disclose an understanding of the collaborative approach which would have to be taken to such a decision. Ms Harrison on the other hand is an experienced Court of Protection practitioner who although also inexperienced in acting as a deputy herself is a member of a team acting in over 70 deputyships.
56. The second point is their alleged inability to work with others who are interested in OT's welfare. It is a fact that they have complained about the social worker and the care home. I do not believe this is sufficient to say that they would not be able to work with other people.
57. To summarise the advantages and disadvantages of each application are as follows:  
In favour of KKL and against Ms Harrison
  - a. KKL have an existing professional relationship with OT going back for at least 14 years with a pastoral relationship also existing especially in later years, not an advantage shared by Ms Harrison;
  - b. OT chose them to write her Wills, and to be executors over a long period during which she had capacity;
  - c. OT appears to have enjoyed their visits;
  - d. OT has been suspicious and resistant to building a relationship with her Social Worker and has never met Ms Harrison;
  - e. OT appears to have shared the values KKL holds dear and although there is no reason cultural and religious values cannot be promoted by Ms Harrison (where appropriate), KKL must hold the edge here as sharing those values;
  - f. KKL would not charge for their services unlike Ms Harrison.
  - g. Ms Harrison will charge for her services and instructs her own firm in relation to legal proceedings, creating a possible conflict of interest.
58. On the other hand, and against KKL and in favour of Ms Harrison are the following features;
  - a. KKL's geographic distance;
  - b. KKL's inexperience as deputies compared with Ms Harrison;
  - c. The potential conflict of interest between OT and KKL's parent company JNF UK with which KKL is intimately concerned;
  - d. The possibility that KKL's involvement with the writing of OT's latest Will and their acting as her executor was in breach of the Fundraisers Code or, even

if this is incorrect, the need to investigate this point with a possible view to a complaint to the regulator and/or an application for a statutory Will

- e. The possible conflict of interest between OT and Ms Harrison is manageable under a well-established process and is a regular and accepted part of Court of Protection proceedings.
59. In my judgement the magnetic features have to be the need to investigate whether KKL's conduct of OT's affairs to date has been in breach of the Fundraisers Code and the clear potential for a future conflict as a result of JNF UK being the sole beneficiary of OT's estate. Nothing in Mr Arkush's submissions addressed those points to my satisfaction. The undertaking offered was certainly not enough to reassure me that OT's interests could be adequately protected if KKL were appointed as OT's deputy. On the other hand by requiring an assessment of Ms Harrison's costs if they exceed the fixed rate regime I can mitigate or even eliminate any concern arising from her relations with Clarion solicitors in respect of this application.
60. For all these reasons I will dismiss the application of KKL and allow the application of Ms Harrison.
61. There does not appear to be an application to depart from the usual order that costs be borne out of P's estate.

HANDED DOWN 1 MAY 2020