Neutral Citation Number: [2020] EWCOP 38

Case No: 12922022

COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2020

Before :

THE HONOURABLE MR JUSTICE HAYDEN
VICE PRESIDENT OF THE COURT OF PROTECTION

- -

Between :

Cumbria County Council	**Applicant**
- and -	
A	**Respondent**

- -
- -

Mr Paul Greatorex (instructed by **Cumbria County Council**) for the **Applicant**
Mr Lee Parkhill (instructed by **Miss Mary MacGregor, Solicitor, the Office of the Public Guardian**) for the **Respondent**

Hearing dates: 15th June 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE HAYDEN

This judgment was delivered following a remote hearing conducted on a video conferencing platform and was attended by members of the public and the press. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the names and addresses of the parties and the protected person must not be published. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Hayden :

1. Mr Andrew Cusforth, the Applicant, a professional deputy, seeks to be appointed as Property and Affairs Deputy in seven cases presently before the court. Currently, the authorised officer of the Council, Cumbria County Council ('the Council'), acts as deputy for the individuals concerned. The Council supports the applications. Indeed, the applications have been generated in consequence of the Council devising criteria which led it to identify these cases as ones in which it no longer wished to act as deputy. This information is set out by Mr Brian Lawson, one of the Councils officers, in his statement dated 28th May 2018. The following passage requires to be highlighted:

> "*Cumbria County Council act[s] as property and affairs deputy subject to the following criteria*
> *Enduring mental illness*
> *A contract or involvement with the Council*
> *No other willing or able applicant.*
> *Following the implementation of the standard of (sic) professional deputies it was identified that there were cases managed by the Council which did not meet the above criteria. The prime group being cases that now were eligible for NHS Continuing Care.*
> *The Council therefore wishes to relinquish the property and affairs deputyship in this case..."*

2. On 18th July 2019, the Senior Judge, HHJ Hilder, directed that the Public Guardian should file a report, pursuant to Section 49 of the Mental Capacity Act 2005 (MCA). This provision sets out the Court's powers to call for reports. It is useful to set it out in full:

> "49. (1) This section applies where, in proceedings brought in respect of a person ("P") under Part 1, the court is considering a question relating to P.
> (2) The court may require a report to be made to it by the Public Guardian or by a Court of Protection Visitor.
>
> (3) The court may require a local authority, or an NHS body, to arrange for a report to be made—
>
> (a)by one of its officers or employees, or
>
> (b)by such other person (other than the Public Guardian or a Court of Protection Visitor) as the authority, or the NHS body, considers appropriate.
>
> (4) The report must deal with such matters relating to P as the court may direct.
>
> (5) Court of Protection Rules may specify matters which, unless the court directs otherwise, must also be dealt with in the report.
>
> (6) The report may be made in writing or orally, as the court may direct.

(7) In complying with a requirement, the Public Guardian or a Court of Protection Visitor may, at all reasonable times, examine and take copies of—

(a)any health record,

(b)any record of, or held by, a local authority and compiled in connection with a social services function, and

(c)any record held by a person registered under Part 2 of the Care Standards Act 2000 (c. 14) [F1, Chapter 2 of Part 1 of the Health and Social Care Act 2008 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016],

so far as the record relates to P.

(8) If the Public Guardian or a Court of Protection Visitor is making a visit in the course of complying with a requirement, he may interview P in private.

(9) If a Court of Protection Visitor who is a Special Visitor is making a visit in the course of complying with a requirement, he may if the court so directs carry out in private a medical, psychiatric or psychological examination of P's capacity and condition.

(10) "NHS body" has the meaning given in section 148 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(11) "Requirement" means a requirement imposed under subsection (2) or

3. Judge Hilder identified the intended scope and ambit of the report as follows:

"a. For each of the persons identified in the schedule to the order, a comparison of the likely costs of deputyship (for the next three years) if fees remain chargeable at the public authority rate or are charged at the solicitors' rate;

b. The Public Guardian's position regarding the extent of the Council's obligations to each of the persons listed in the schedule in respect of provision of deputyship functions (and, in particular, the appropriate forum for determination of disagreement on that issue);

c. The Public Guardian's position as to the criteria used by the Deputy to identify those appointments in respect of which it seeks discharge (and, in particular, whether such criteria are discriminatory);

d. The Public Guardian's position as to whether the Deputy, being a Local Authority deputy which no longer wishes to act, is "entitled to be discharged"; and

> *e. For each of the persons identified in the schedule to this order, the Public Guardian's position as to whether the orders sought are in the best interests of that person."*

4. In September 2019, the Council filed a document setting out the criteria the Council purports to apply when determining whether to act as deputy. The criteria are appended to a statement filed in these proceedings headed '*Appointee and Deputyship Procedure'*. Mr Parkhill who appears on behalf of the Public Guardian has summarised the identified criteria succinctly and accurately thus:

> *"a. The person must have a care and support service funded or provided by Cumbria County Council;*
> *b. The person must lack capacity to manage their own financial affairs and the referral is in their best interests;*
> *c. There is nobody else already authorised to act;*
> *d. There is nobody else able to act;*
> *e. That there is no solicitor able to act; and*
> *f. That an appointeeship would not be more appropriate."*

5. On 31st October 2019, the Public Guardian filed a report and a Position Statement. In summary, the Public Guardian contended that generally, if a deputy no longer consents to act, the court cannot decline an application to discharge the deputy. However, it was suggested that the court *"could explore the withdrawal of a deputy's consent."* An additional question was raised as to whether there had been compliance with s. 149 of the Equality Act 2010 when adopting the criteria.

6. Within the body of the Public Guardian's report, responding to Judge Hilder's identified questions (see para 3 above), is contained a comparison of the costs to P, depending upon whether the Local Authority acted as deputy or the Applicant. In the identified comparator (RB), the cost to her, of the Council acting as deputy, for 3 years, was £2,598. If the Applicant were to be appointed, the cost over three years is likely to be £6,055 i.e. more than twice the cost.

7. On 10th December 2019, HHJ Hilder joined the Council and the Public Guardian as parties. The Council was directed to file various documents, including a statement setting out its position on the question of whether this court had the authority to investigate the Local Authority's compliance with s. 149 of the Equality Act 2010. The court also listed a Case Management Hearing on 3rd February 2020.

8. In compliance with the directions, the Council filed a statement, skeleton argument and a COP9 application. Each of these documents is dated 10th January 2020. The Council submitted that the court did not have the power to compel it to continue as deputy when it no longer wished to do so. It was further argued that s. 113 and s. 114 of the Equality 2010 Act prevent this court considering whether there had been compliance with s. 149 of that Act. Robustly, the Council's COP9 document sought an order vacating the case management hearing, and granting the Applicant's applications, forthwith. It is convenient to set out the applicable provisions:

> *"**149. Public sector equality duty***

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a)eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b)advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c)foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b)take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c)encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a)tackle prejudice, and

(b)promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are—

age;
disability;
gender reassignment;

pregnancy and maternity;
race;
religion or belief;
sex;
sexual orientation.

(8) A reference to conduct that is prohibited by or under this Act includes a reference to—

(a)a breach of an equality clause or rule;

(b)a breach of a non-discrimination rule.

(9) Schedule 18 (exceptions) has effect.

113. Proceedings

(1) Proceedings relating to a contravention of this Act must be brought in accordance with this Part.

(2) Subsection (1) does not apply to proceedings under Part 1 of the Equality Act 2006.

(3) Subsection (1) does not prevent—

(a)a claim for judicial review;

(b)proceedings under the Immigration Acts;

(c)proceedings under the Special Immigration Appeals Commission Act 1997;

(d)in Scotland, an application to the supervisory jurisdiction of the Court of Session.

(4) This section is subject to any express provision of this Act conferring jurisdiction on a court or tribunal.

(5) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(6) Chapters 2 and 3 do not apply to proceedings relating to an equality clause or rule except in so far as Chapter 4 provides for that.

(7) This section does not apply to—

(a)proceedings for an offence under this Act;

(b)proceedings relating to a penalty under Part 12 (disabled persons: transport).

114. Jurisdiction

> *(1) [F1The county court] or, in Scotland, the sheriff has jurisdiction to determine a claim relating to—*
>
> *(a)a contravention of Part 3 (services and public functions);*
>
> *(b)a contravention of Part 4 (premises);*
>
> *(c)a contravention of Part 6 (education);*
>
> *(d)a contravention of Part 7 (associations);*
>
> *(e)a contravention of section 108, 111 or 112 that relates to Part 3, 4, 6 or 7.*
>
> *(2) Subsection (1)(a) does not apply to a claim within section 115.*
>
> *(3) Subsection (1)(c) does not apply to a claim within section 116.*
>
> *(4) Subsection (1)(d) does not apply to a contravention of section 106.*
>
> *(5) For the purposes of proceedings on a claim within subsection (1)(a)—*
>
> *(a)a decision in proceedings on a claim mentioned in section 115(1) that an act is a contravention of Part 3 is binding;*
>
> *(b)it does not matter whether the act occurs outside the United Kingdom.*
>
> *(6) The county court or sheriff—*
>
> *(a)must not grant an interim injunction or interdict unless satisfied that no criminal matter would be prejudiced by doing so;*
>
> *(b)must grant an application to stay or sist proceedings under subsection (1) on grounds of prejudice to a criminal matter unless satisfied the matter will not be prejudiced.*
>
> *(7) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so.*
>
> *(8) In proceedings in Scotland on a claim within subsection (1), the power under rule 44.3 of Schedule 1 to the Sheriff Court (Scotland) Act 1907 (appointment of assessors) must be exercised unless the sheriff is satisfied that there are good reasons for not doing so.*
>
> *(9) The remuneration of an assessor appointed by virtue of subsection (8) is to be at a rate determined by the Lord President of the Court of Session.*

9. On the question of whether the Council should produce records giving evidence of compliance with s. 149, there was a similarly robust response:

> *"As set out below, the Council does not accept that this court has any jurisdiction in respect of s. 149 and so does not rely on any records in this regard."*

10. At the case management hearing, on 6th February 2020, HHJ Hilder dismissed the Council's application dated 10th January 2020 and transferred the proceedings to me. On 21st May 2020, the Council completed an '*Equality Impact Assessment Form'* in respect of the cases before the court. The form states that its purpose is:

> *"To address any equality issue arising from the application to the Court of Protection to be discharged as Deputy for Property and Affairs in favour of an approved Panel Deputy"*

11. In his skeleton argument Mr Parkhill makes the following observations in respect of this form:

> *"The court is not, today, being asked to determine whether the Council has complied with s. 149. However, the Council suggests that this assessment is relevant to the question of whether the court can, or should, consider the s. 149 question, see skeleton at para. 21.*
>
> *The Equality Impact Assessment Form can carry very little weight, for two reasons. First, it is well established that the duty must be considered in advance of a relevant decision, not as a 'rearguard action' following a decision, see, per Moses LJ, in* ***R (Kaur & Shah) v London Borough of Ealing & Anor*** *[2008] EWHC 2062 (Admin). Second, and in any event, the Equality Impact Assessment Form makes no reference to s. 149, or to the terms of the public sector equality duty. The form deals (very briefly) with 'discrimination', which is a separate matter from the s. 149 duty."*

12. It is to be noted that at the hearing of the 6th February 2020, the parties agreed a schedule of issues which they considered I needed to resolve. These included:

> *"(1) whether, and if so to what extent, in determining the applications in these proceedings, the court can and should take into account the public law duties of the Council and whether they have been met;*
>
> *(2) whether the Court should make the orders sought in these proceedings to appoint the Applicant as deputy in place of the Council, and if not what further directions the Court should make."*

13. It would appear that these draft directions have not been approved and have not been issued. Mr Parkhill suggests that they would benefit from alteration. I very much agree. Exchanges with Counsel have identified the following to be the key issues:

i. What should be the approach of the Court when a deputy who has previously consented to act now wishes to discontinue?

ii. To what extent should the Court consider the Council's compliance, or otherwise, with Section 149 of the Equality Act 2010 when considering a deputy's application to withdraw?

14. It is important to identify that when a deputy indicates an intention to withdraw consent to act, this requires an application to be made to the court. In such circumstances it is, to my mind, axiomatic that the withdrawal of the deputy's consent to act is not, in itself, determinative of the decision to discharge. The decision is for the Court. Whilst the 2005 Act makes no provision for the removal of the deputy, s.19 identifies the circumstances in which they can be appointed and the range and extent of their duties:

> *"**19Appointment of deputies***
>
> *(1) A deputy appointed by the court must be—*
>
> *(a)an individual who has reached 18, or*
>
> *(b)as respects powers in relation to property and affairs, an individual who has reached 18 or a trust corporation.*
>
> *(2) The court may appoint an individual by appointing the holder for the time being of a specified office or position.*
>
> ***(3) A person may not be appointed as a deputy without his consent.***
>
> *(4) The court may appoint two or more deputies to act—*
>
> *(a)jointly,*
>
> *(b)jointly and severally, or*
>
> *(c)jointly in respect of some matters and jointly and severally in respect of others.*
>
> *(5) When appointing a deputy or deputies, the court may at the same time appoint one or more other persons to succeed the existing deputy or those deputies—*
>
> *(a)in such circumstances, or on the happening of such events, as may be specified by the court;*
>
> *(b)for such period as may be so specified.*
>
> *(6)A deputy is to be treated as P's agent in relation to anything done or decided by him within the scope of his appointment and in accordance with this Part.*
>
> *(7) The deputy is entitled—*

> *(a)to be reimbursed out of P's property for his reasonable expenses in discharging his functions, and*
>
> *(b)if the court so directs when appointing him, to remuneration out of P's property for discharging them.*
>
> *(8) The court may confer on a deputy powers to—*
>
> *(a)take possession or control of all or any specified part of P's property;*
>
> *(b)exercise all or any specified powers in respect of it, including such powers of investment as the court may determine.*
>
> *(9) The court may require a deputy—*
>
> *(a)to give to the Public Guardian such security as the court thinks fit for the due discharge of his functions, and*
>
> *(b)to submit to the Public Guardian such reports at such times or at such intervals as the court may direct.*

15. I have emphasised s.19 (3) above because that provision makes it unambiguously clear that consent is a prerequisite to appointment. Mr Greatorex extrapolates from this that once the deputy withdraws consent there can be no obstacle to automatic discharge. In **Louise Bradbury & others v Ian Paterson & others [2014] EWHC 3992 (QB)**, Foskett J considered whether orders discharging the Official Solicitor as the defendant's litigation friend should be set aside. The Official Solicitor had applied to be discharged because he no longer had security for his costs. It is suggested that there is an analogy to be drawn with the discharge of deputies.

16. The Practice Direction to CPR 21 provides that a person's consent to act as litigation friend must be established, on the evidence, before the court makes an appointment:

> *"3.3 The evidence in support must satisfy the court that the proposed litigation friend –*
>
> *(1) consents to act,*

17. Foskett J made the following observations:

> *"28. It does seem to me that [counsel for the Official Solicitor] submission on the construction of the rules is correct. She supplements that submission by contending that it is clear that any litigation friend must (a) consent at the outset to his appointment (see paragraph 23 above) and (b) continue to consent throughout the duration of that appointment. She says that, apart from anything else, a litigation friend who is unwilling to continue to act is, by definition, a person who is most unlikely to continue to satisfy the criteria set out in CPR 21.4(3) (which applies also to those appointed by court order: CPR*

> *21.6(5)) of being a person who can "fairly and competently conduct the proceedings on behalf of the ... protected party" and "has no interest adverse to that of ... the protected party." A litigation friend who is being required to act on an unwilling basis will, she submits, almost by definition have an interest adverse to the protected party because his primary interest will be in bringing the litigation to an end as speedily as possible regardless of whether this is in the interests of the protected party."*

18. I am bound to say that I am not as attracted to that argument as it is suggested that Foskett J must have been. I do not consider that an Official Solicitor who unsuccessfully applies to be discharged will thereafter hold an interest adverse to the protected party, driven by financial considerations motivated to bring litigation to an end. This does not do justice to the high level of professionalism and integrity within the Official Solicitor's office. In both Personal Welfare cases and Property and Affairs I have not the slightest doubt that if the Official Solicitor were required by the court to continue to act, she and her team would do so with instinctive professionalism within the framework of the MCA, which emphasises P's best interests.

19. Foskett J continues:

> *"She also says, looking at matters more widely than the position of the Official Solicitor, that the reading of CPR 21.7(1) for which Mr de Navarro contends would "have a chilling effect on the ability of litigation friends to accept invitations to act." She suggests that this would be particularly so where a case involves public funding where the criteria for such funding change on a regular basis and where, in any event, reassessment by the Legal Aid Agency of those who are publicly funded "but are on the cusp of having sufficient means not to be eligible" for such funding not infrequently leads to revaluation and the withdrawal of funding. She suggests that no litigation friend who needed to instruct lawyers to act for him would be prepared to act unless he had a cast iron guarantee that the costs of doing so would be met whilst acting as a litigation friend."*

20. Ultimately, it seems to me that Foskett J drew back from these submissions. He addresses them in this way, foreshadowing my own response above:

> *"29. Those submissions have some considerable force in the generality of things, though I would doubt that the Official Solicitor, as an officer of the court, would act contrary to the interests of a protected party in such a situation. Nonetheless, because of the funding constraints to which he is now exposed (see paragraphs 33-37 below), the position of enforced continuation as a litigation friend would undoubtedly be unwelcome and uncomfortable."*

21. Finally, it is important to clarify that Foskett J did not conclude that where the Official Solicitor withdraws consent to act, the court would necessarily be required automatically to terminate the appointment:

> *"31. [Counsel for the Official Solicitor] was anxious to emphasise that she was not suggesting on the Official Solicitor's behalf that a court can or should automatically grant an application under CPR 21.7(1)(b) : it should only do so when the evidence justifies the grant of the application and there may be circumstances in which it would be inappropriate to grant it. I agree that the court's discretion is a full one, though in reality there may be little room to manoeuvre when presented with such an application."*

22. I consider that the conclusions above, by parity of analysis, apply equally to deputies who seek to be discharged. The discharge of the deputy who no longer wishes to act is not automatic but an exercise of the court's discretion. Such discretion will always require to be exercised reasonably and will inevitably be influenced by P's own best interest. Though I did not regard Mr Greatorex as yielding to this analysis, he nonetheless recognised the force of it. Indeed, both Counsel prepared helpful supplemental submissions addressing the kind of circumstances in which the Local Authority deputy might be discharged.

23. Mr Parkhill has been able to obtain the relevant statistics in England and Wales which give context to this issue. In England, there are 343 Councils. However, 192 of those are District Councils, which do not have social care functions. In Wales, there are 22 unitary authorities. Therefore, across England and Wales, there are 173 local authorities with social care functions. As at May 2020, there were 169 local authority deputies for property and affairs in England and Wales. It is important to record that each of these Local Authorities provide an invaluable public service for individuals, frequently of modest means, who have lost the capacity to conduct their own affairs. There are currently 58,660 Property and Affairs deputyships. The 169 local authority deputies act for 22,775 individuals, i.e. Local Authorities account for 39% of all deputyships. Both the number of Local Authority deputies, and the number of deputyships managed by local authorities has been increasing, gradually in the last 2 years. All deputies are supervised by the Public Guardian. The Public Guardian will apply to remove those deputies who fail to comply with the terms of their appointment or act contrary to P's best interests.

24. Mr Parkhill, in the course of exchanges, identified a number of circumstances in which it might be appropriate to discharge a Local Authority deputy and appoint a professional deputy. He has helpfully and succinctly reprised these in his supplemental submission. Thus:

> *"a. Value of P's estate. If there is no person willing to act as deputy without charge, then:*
>
> *i. where P has modest assets, it will generally be desirable for a local authority to act, rather than a professional deputy, owing to the difference in rates charged; and*
>
> *ii. where P has high value assets, it will often be desirable, and not disproportionate, for a professional deputy to act*
>
> *b. Complexity of P's estate (e.g. £100,000 in property or shares may be more difficult to manage than £200,000 in a bank account);*
>
> *c. Personal dynamics, e.g. between the deputy and P, or between the deputy and members of P's family;*

> *d. Unmanageable conflict of interest, e.g. where P has a potential claim against the authority, and where that claim cannot properly be investigated by the local authority deputy; and*
> *e. P's expressed wishes and feelings showing opposition to the authority acting as deputy."*

25. These are not intended to be exhaustive but merely illustrative of the many factors that might fall to be considered in these highly fact sensitive cases. It is probably correct to say that whilst most Local Authorities are disinclined to manage high value and complex estates there are no doubt some who will do. I have been told that whilst the Public Guardian receives annual reports in respect of every estate managed by deputies, there is no collected data in respect of the average value of those estates.

26. Mr Greatorex acknowledges the relevance of the factors set out above. He also makes the following supplemental submission:

> *"CCC submits that the existing deputy's reasons for no longer consenting to act must also be relevant, not least because in some cases they will mean that little or no scrutiny of factors (1)-(4) above would be necessary or appropriate. This can be seen from the example given by Counsel for the OPG of a solicitor deputy winding up his practice and retiring – this was said to be a straightforward case that should obviously be approved by the court because the reasons were obviously good ones and/or it is inconceivable that the court would force such an individual to continue acting as deputy, regardless of the complexity etc. of the case. Other examples would be where the existing deputy has died or become incapacitated in some other way, or has obviously become unsuitable (e.g. proven mismanagement or a criminal conviction). It is accepted that in such cases the court will still need to be satisfied that the proposed replacement deputy is suitable (in the same way as it would before appointing any deputy) and factors (1)-(4) are likely to be relevant to that.*

27. Notwithstanding his engagement in the above analysis, Mr Greatorex submits:

> *"However, it would not be a proportionate use of the court's time and resources to inquire into factor (1)-(4) for the purposes of deciding whether to release the existing deputy because forcing such a person to continue is obviously not an option."*

28. For completeness and because it counterbalances the above, I should also record that Mr Greatorex continues:

> *"But even where the existing deputy's reasons are not decisive, it is submitted that they are still relevant and have to be taken into account. Where, as here, a deputy makes clear that a case (or group of cases) is occupying a disproportionate amount of time or outside of the skills of its staff with the result that a strain is places on those staff and their ability to deal with other cases is adversely affected, it cannot be said*

> *those reasons are irrelevant when deciding whether it should nonetheless to be forced to continue."*

29. Welfare and Property deputies undertake an intensely valuable role. Self-evidently, it is a responsibility which requires the highest ethical standards. The deputy's duty is to the protected party but it is important to identify that there is a broader, though less tangible, benefit to society as a whole in protecting the financial and welfare needs of vulnerable adults.

30. It follows, from the reasoning set out above, that where a deputy wishes to discontinue in the role, an application must be made to the court. The decision is one for the court, acting within the parameters of reasonable discretion. Frequently, the reasons for the application will be obvious e.g. retirement or ill health. On other occasions the basis for the application will be less straightforward and the court will have to evaluate the strength of it through the prism of P's welfare interests. Those factors identified in the passages above i.e. the complexity of P's estate; conflicts of interests; P's own wishes and feelings; the value of the estate etc, may be relevant considerations in any particular case. There can be no presumption of the outcome of the application, nor any fettering of the court's discretion. The guide will always be P's best interests, including his financial interests.

31. As I foreshadowed in the course of the hearing, I consider that the question of whether this court can review the Council's compliance with s.149 Equality Act 2010, is a misconceived enquiry. I intend no discourtesy to Counsel in expressing myself in this way. I can see that both advocates have given considerable thought to the question. However, it is manifestly the case that this court is not able, within its statutory remit, to grant any public law remedy. This should not be taken as inferring that the court is required to disregard any failure by a public body to protect from discrimination, merely that it has no power to remedy it.

32. In pursuit of its objectives, the Equality Act identifies 9 protected characteristics, as set out in paragraph 8 above. Equality is fundamentally concerned with the removal of barriers to ensure that people from all sections of the public have fair and equal opportunity to access services. Diversity is a word that is intended to convey the importance of respecting and genuinely valuing people's differences when securing equality for them, in a way which is both appropriate and most effective. The Equality Act replaced the previous raft of antidiscrimination legislation with a single Act, intending to generate wider understanding of the principles of diversity and equality and thereby to secure greater protection. The statutory framework of the Act reflects society's enhanced understanding that when people are treated fairly and given real equality of opportunity both they and society more generally become happier and more productive.

33. The Mental Capacity Act 2005 and the jurisprudence of the Court of Protection reflect precisely the same philosophy as that underpinning the Equality Act. The central ethos of both legal frameworks is entirely consonant. The MCA aims, ultimately, to promote equality for the incapacitous to the same degree as their capacitous coevals. It imposes an obligation actively to promote capacitous decision taking and it erects a presumption of capacity in order most effectively to promote personal autonomy.

34. When the court comes to consider an application by a deputy to be discharged from the role it will, as I have analysed above, arrive at its decision by focusing on the impact on P of either granting or refusing the application. When approaching its task, the court will consider whether the application is consistent with the objectives of the MCA i.e. whether or not the application is motivated to promote P's best interests in accordance with the principles that I have identified. If the application appears to be driven by arbitrary or discriminatory criteria devised, for example to save costs, then the court (if it identifies them) will take them in to account to whatever degree is appropriate when coming to its decision. This will not be in consequence of a public law style review of compliance with Equality legislation, but rather the application of the principles of the MCA. The issue here is not one of jurisdiction (see **N v A CCG [2017] UKSC 22**), but of how the application should be approached within the framework of the Mental Capacity Act 2005. It is unnecessary to say more on the point.