

39 Essex Chambers- Court of Protection Seminar Masterclass on deputies

International Issues... and some practical tips and wrinkles

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International issues for P and A deputyships

Common scenarios:

- P here, assets there
- Assets here, P there
- Mix of the 2?
- Local order in place?
- P moving between here and there?

Relevant law and practice – E and W

- MCA 2005, ss16 and 18 (cf especially 16(4)) and s 63
- Schedule 3 – International Protection of Adults
Especially paragraphs 5, 7, 11, 19, 20 and 22
- Law Society Guidance 2014

Internationally

- Hague Convention 35 on International Protection of Adults
- **Example** – S103 US Adult Guardianship and Protective Proceedings Jurisdiction Act

Practical issues

- Where may your order work?
- Where may it not?
- Wording to use

The deputy is authorised to take such steps as are necessary or expedient in accordance with the laws of such foreign jurisdiction to take possession or control of the property and affairs of P in any jurisdiction outside England and Wales and, without prejudice to his general authority to administer any and all bank assets held by P, to give transfer and closing instructions on P's behalf.

- Other tips and wrinkles

Other things...

- Does it have to be a deputyship? Using a single order
- Schedule 3 application procedure – new COP Rule and PD 24A (from 6.4.17)
 - Forms needed ...
 - ... and not needed
 - What goes in COP24?
 - Need for a hearing

A case study- and an order

1.Solicitor is hereby authorised and directed to investigate the assets, property, land, savings, income expenditure and liabilities of P and to report in writing to the Court of Protection on the same by [date].

2.Any person, bank or other financial institution in the United Kingdom or Convention country which possesses information about the property, finances affairs of P is hereby authorised and required to provide that information to the said solicitor within 7 days of receipt of a copy of this Order.

3.The said solicitor is authorised to pay the reasonable costs incurred by any person, bank or other financial institution in providing information required, or requested by this order.

4. For the purpose of giving effect to this order the said solicitor is authorised to execute or sign any necessary deeds or documents.

5. The hourly rates of solicitor and of any solicitors, legal executives, paralegals and agents engaged at or by firm LLP in connection with the preparation of the above report shall be their usual hourly rates for the time being and shall be chargeable to the estate of P.

6. The court may from time to time set a limit on the costs which may be incurred by the said solicitor in connection with the preparation of the above report and any such limit(s) communicated in writing to Firm shall be complied with.