

Court Of Protection

& *Deputyship Services*

Sternberg Reed is a large firm of solicitors in East London/Essex with offices in Barking, Romford and Grays. The legal services we provide cover many aspects of law including Court of Protection cases.

We have a large Personal Injury and Clinical Negligence Team which regularly recovers substantial awards of damages for clients. Some of those clients have sustained brain injuries which render them unable to manage their affairs. In some cases the awards for damages run into millions of pounds.

Large awards of damages usually include payments that have been made to make sure that the injured person has sufficient funds to last them throughout their lives.

The Court of Protection will appoint a person to act as a Deputy to oversee the management of the funds and to ensure that the routine day-to-day needs of the individual are met. A Deputy can be a professional person such as a solicitor or a lay person such as family member.

The duties of Deputies (formerly Receivers) are now quite onerous as a result of the provisions of the Mental Capacity Act 2005 which came into force on the 1st October 2007. More people who have, until now, acted as Receivers for family members are turning to professionals for help.

We provide the service of acting as Deputies. In that capacity we work with the injured person, family members and case managers to determine a budget for routine expenses such as care, aids and appliances etc. We prepare annual accounts and tax returns.

Under the new Act the responsibility to oversee investment of the funds was transferred to the Deputies whereas the Court of Protection previously undertook that role. We have close contacts with financial advisors who specialise in the investment of money lodged with the Court of Protection. The aim is to provide the best return on the money and to keep tax liabilities to a minimum.

An extension of our Court of Protection work is to provide the service of preparing Wills which can be made to reflect what the protected person would like to do with their assets if they could give instructions. We also deal with the purchase of property under a specially created Trust for the protected person.



It is not only when awards of damages have been made that Deputies need to be appointed. Unfortunately situations arise where people lose their capacity to give instructions through illness and this is another area where a professional Deputy can help. There may be a need to consult with the protected person and family members to determine where the person would be best looked after and make the appropriate financial arrangements.

A person who is becoming progressively unwell may wish to delegate authority to another person to act as their Attorney and make decisions on their behalf. The Mental Capacity Act made changes to the law regarding Powers of Attorney and again this is something where professional help is desirable.

We are happy to accept referrals from individuals, other solicitors and organisations. See the back page for our contact details. ■



David's Case

David was born prematurely but in a healthy condition. An incident occurred whilst he was in the special care baby unit and David sustained a brain injury caused by lack of oxygen. He is profoundly disabled, unable to walk, is doubly incontinent and has learning difficulties.

For seven years David's case languished with solicitors who were inexperienced in clinical negligence matters and due to little progress being made the Legal Services Commission asked us to take over conduct of the case because of our experience in dealing with cases involving brain damaged children.

The case was re-investigated. The Hospital Trust denied liability throughout the case and just two weeks before the trial settlement was agreed in the sum of £2.5m.

The award of damages has made a huge difference to the lives of David and his family as he will now be cared for throughout his life and his parents can secure help from other agencies. Money will be available to purchase a property for the family with specific facilities for David and a live-in-carer.

Our involvement did not end with the award of damages. Prior to the money being paid David's father had to be appointed as his Receiver/Deputy by the Court of Protection. Being somebody's Receiver/Deputy is an onerous task because accounts need to be prepared and investment of the money arranged. The lawyer involved with David's compensation case was asked to take over as Deputy and replaced David's father in that role.

Since being appointed the lawyer has agreed a monthly budget with the Court, met with financial advisors, family members and a Case Manager and given instructions regarding appropriate investment of the damages. Year End Accounts have been prepared and approved by the Court.

Our Probate Department has prepared a Statutory Will for David to ensure that his money is properly distributed in the event of his death.

Within the settlement a sum of money was claimed to pay for a property to be purchased for David and this was done through our Conveyancing Department by creating a Trust who purchased the property on David's behalf. ■



Mr Goulden's Case

Mr. Goulden consulted the firm when he was diagnosed with the early stages of dementia. He knew that the dementia would become more acute over time and he needed to appoint somebody to manage his affairs. We obtained confirmation from Mr. Goulden's GP that he still had capacity to make a Power of Attorney.

We drew up a Lasting Power of Attorney (Property & Affairs) appointing Mr. Goulden's wife to be his attorney. She can now access his bank accounts, pay bills for him, collect his pension and do any other tasks required to manage his property and affairs. The couple's sons have been appointed as replacement attorneys so that if Mrs. Goulden became ill or dies before her husband, Mr. Goulden's needs would still be met.

Two types of Lasting Power of Attorney can be made. The Property and Affairs Power used by Mr. Goulden is the most common but a Personal Welfare Power can also be prepared. This authorises the attorneys to make decisions about the donor's nursing care, accommodation and medical treatment.

One or both types of Lasting Power can be made and up to four attorneys can be appointed.

We can also prepare Advance Directives (often called Living Wills) which advise your family that you do not wish to receive life sustaining treatment if you are severely disabled or unlikely to recover capacity. ■



Mental Capacity Act

In October 2007 there was a really significant change in the Law insofar as it relates to the ability of individuals to manage their affairs. That change came about as a result of the implementation of the Mental Capacity Act 2005.

On 1st October 2007 when the Act came into force it changed the way that we look at mental capacity. Prior to the Act the requirement to establish mental incapacity was to show that an individual "could not manage their affairs".

The new Act reversed the test of capacity/incapacity and established five main principles as follows.

1. A person must be assumed to have capacity unless it is established that he/she lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help him/her to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because he/she makes an unwise decision
4. An act done, or a decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in his/her "best interests".
5. Before the act is done, or decision 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 persons rights and freedom of action.

The effect of the Act is to place a much higher duty on Deputies (formerly Receivers) to ensure that the interests of Protected Parties (formerly Patients) are looked after. In particular the need to establish capacity to litigate and to ensure that money is appropriately invested.

Prior to the Act it was fairly straightforward for lay people to act as Receivers but now with the new requirements of the Act a more professional approach is necessary. ■

Paying For Our Services

In cases where damages have been recovered for personal injury or clinical negligence provision would have been made within the settlement for Court of Protection fees and Lawyer's fees to be paid and the monies paid out of the protected person's funds. In cases involving private clients our fees will normally be paid out of the person's own funds that are being managed.

Work done in Court of Protection cases is assessed by the Court to make sure the fees are at a reasonable level and are paid on an annual basis out of the client's funds.

Our charges for preparing Powers of Attorney are done on an individual basis but are usually about £150 plus VAT and paid for at the time of preparation.

Legal Aid is not available for this type of work. ■

Glossary Of Useful Terms

Administrator	A person appointed by Probate, in the absence of a Will, to manage the closure of an individual's financial affairs.
Attorney	Someone appointed under either a Lasting Power of Attorney or an Enduring Power of Attorney who has legal right to make decisions on behalf of the person who made the Power of Attorney.
Best Interests	Any decisions made or anything done for a person who lacks capacity must be in the person's best interests.
Capacity	The ability to make a decision about a particular matter at the time that the decision needs to be made.
CFO	Court funds office.
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decision.
Deputy	A court-approved individual appointed to make decisions on behalf of a person lacking mental capacity, for health, welfare, financial and property matters.
Enduring Power of Attorney	A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an Attorney to deal with a person's property and financial affairs.
Executor	A person who executes the wishes expressed in a Will.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act appoints an Attorney to make decisions about the protected persons personal welfare including healthcare or deal with the person's property and affairs.
Lodgement	Money paid into the Court Funds Office.
MCA	Mental Capacity Act.
OPG	Office of the Public Guardian.
PGO	Public Guardianship Office.
Property and Affairs	Any possessions owned by a person such as a house, jewellery or other possession, the money they have in income, savings or investment and any expenditure. Deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.
Protected Person	Formerly known as "Patient".
Receiver	A court-approved individual appointed to make decisions on behalf of a person lacking mental capacity for financial and property affairs now referred to as a Deputy.
Statutory Will	When a Protected Person is unable to decide for themselves how their Estate should be distributed a Statutory Will is prepared on instructions received from family and friends as to how that person would wish to distribute their Estate if they had the capacity to decide.



About our firm

Community
Legal Service



INVESTOR IN PEOPLE

We have had an office in Barking since Geoffrey Sternberg started as a sole practitioner over 30 years ago. There are now twenty partners and more than fifty lawyers. We are a large well established practice, acting for clients with a wide range of legal problems. We have offices in Barking, Romford and Grays.

In 1995 the firm was awarded ISO 9001, which is the European quality accreditation for the service standards provided to our clients. In 1999, we received the Investor in People Award, to acknowledge that we continue to train and update our staff within specific areas of law to provide the best possible service to our clients.

We are regularly audited by all three organisations to make sure that our very high standards are maintained.

The firm offers a full range of legal services details of which can be found on our website www.sternberg-reed.co.uk.

Other types of work undertaken:

- House Purchase and Sale
- Matrimonial Law
- Commercial
- Housing Law
- Wills
- Employment Law
- Probate
- Licensing Law
- Personal Injury
- Professional Negligence
- Childcare
- Clinical Negligence
- Criminal Law
- Civil Litigation
- Prison Law
- Community Care

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