

Deputies beware!



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Deputies beware!

Gratuitous Care Payments

Investments

Gratuitous Care Payments

The context



Gratuitous Care Payments

The context



Gratuitous Care Payments

The problem

- Source of a Deputy's authority
- s4 MCA 2005
- Agency / conflict
- Gifts?
- Reality of day to day life and many hats

Gratuitous Care Payments

The seeds of clarity

- *Re HC* [2015] – Discounted commercial rate
- *Re A* [2015] – School fees retrospective approval
- *Re HNL* [2015] – Expert evidence
- *Re WP* [2015] – Method and approval £150/month

Gratuitous Care Payments

The Guidance

May 2016 – OPG Guidance

(<https://www.gov.uk/government/publications/public-guardian-practice-note-family-care-payments>)

Applicable - *'family care arrangements'*

Non contractual payments

Gratuitous Care Payments Summary

- Before making any family payments, the deputy must consider:
 - (1) is it in P's best interests
 - (2) is there are conflict?
- Evidencing decision making process

Gratuitous Care Payments

Defining 'family care'

- no contractual relationship
- providing the care by way of natural love and affection
- care is informal in nature (and not by way of a job description)
- no formally agreed hours, breaks or holidays
- no one responsible for service delivery

Gratuitous Care Payments Factors

SPEAR FARCE

Gratuitous Care Payments Factors (non exhaustive list)

- **Saving** Should represent a saving on the cost of professional care
- **Proportionate** Properly reflect the input
- **Excellence** Good standard and complement the professional care
- **Account** Take into account any other contributions
- **Required** Reasonably required to P's needs

- **Four** Section 4; no short cuts!
- **Affordability** P needs to be able to afford it
- **Review** Keep payments under regular review
- **Consultation** Consider who should be consulted
- **Experts** Consider the level of care recommended by experts

Gratuitous Care Payments

Calculating the sums

1. Estate sufficient and family mostly care
2. Estate sufficient and professional care
3. Estate is limited

Gratuitous Care Payments

What do I do?

- Professional Deputy
- Lay Deputy

Gratuitous Care Payments Professional Deputy

- Make decisions (within your Order)
- Follow principles and OPG guidance
- Document it
- Protective application?
- Beware of the OPG

Gratuitous Care Payments Lay Deputy

- Application addresses conflict
- Consider 'close' connections

Gratuitous Care Payments Lay Deputy

- Application addresses conflict
- Consider 'close' connections

Investments



Investments Where it really began

2013



London | Geneva | Zurich | Milan | Padua | British Virgin Islands | Sydney | Hong Kong | Singapore | Tokyo | Dubai
New York | New Haven | Greenwich | Los Angeles | Rancho Santa Fe | San Diego | San Francisco

withersworldwide

Investments

STEP steps in

http://www.step.org/sites/default/files/Policy/Deputyship_Guidelines.pdf

- Separate bank accounts
- Properties
 - Buying
 - Occupying
 - Renovations
- Gifts
- Expenses
- Accounts

Investments

Getting it wrong - cost consequences



Investments

Discretionary management

We are not attorneys

‘Page 28’ and the OPG (2015)

Investments

Discretionary management

- Agency and non delegation
- Conduct?
- s11 and 15 Trustee Act 2000
- Judicial support? *Northamptonshire CC v RG*

Investments

Discretionary management

- Where next?