

IN THE MATTER OF

LMS

BETWEEN:

FSS

Applicant

-and-

(1) LMS

(BY HER LITIGATION FRIEND, THE OFFICIAL SOLICITOR TO THE SENIOR COURTS)

(2) MS

(3) TW

(4) JR

(5) RR

Respondents

JUDGMENT

All statutory references are to the Mental Capacity Act 2005, unless otherwise stated.

Mr McKean of counsel for the Applicant, Mr Holland of counsel for the First Respondent.

1. This is an application for an order under the Mental Capacity Act 2005 permitting the settlement of LMS's property into a trust.
2. LMS is 21-years old. She has Sotos syndrome and associated with this is a significant degree of Autism and some degree of learning disability. She attends the MCC, a specialist residential college for young learning-disabled people. Dr Peter Birtles, a general practitioner, assessed LMS on 11 July 2020 as lacking capacity to make sound financial decisions because she is unable to understand the concept and importance of money. In a separate letter dated 9 January 2020, Dr Birtles confirms that in his opinion LMS lacks

capacity to agree to the deed of variation sought in this application. On the basis of Dr Birtles' assessment, I find that the presumption of capacity set out at section 1(2) of the Act is displaced.

3. LMS did have capacity to execute a lasting power of attorney ("LPA") on 1 September 2019 appointing her parents as attorneys. A solicitor certified that LMS understood the purpose of the LPA and the scope of the authority conferred under it; the LPA was registered by the Public Guardian on 5 November 2019.
4. The Applicant, FSS, is LMS's mother. The Second to Fifth Respondents are family members of LMS. They all support the application but took no part in the hearing.
5. LMS's grandfather died on 22 January 2018. He had made a will on 9 June 2015 and pursuant to clause 3.2.1(a) 30% of his residuary estate is to be held for LMS subject to her attaining the age of 25. I am advised that this will amount to approximately £170,000.
6. This application seeks to place that sum of money into a disabled person's trust to be held by LMS's parents for the benefit of LMS.
7. LMS currently receives a means-tested benefit, Employment and Support Allowance. Her placement at MCC is funded by the local authority and the residential component of that funding is also means-tested. It is agreed by the Applicant and First Respondent that when LMS receives her inheritance from her grandfather her capital will preclude her from receiving those means-tested benefits.
8. The Applicant contends that the proposed deed will allow LMS to continue to receive means-tested benefits; the First Respondent disputes that. The First Respondent considers that if LMS's inheritance is placed into the proposed disabled person's trust it will amount to a deprivation of capital such that LMS will still not be entitled to means-tested benefits.
9. The Applicant was represented by Mr McKean of counsel and the First Respondent by Mr Holland of counsel. I am grateful to both counsel for their carefully prepared position statements and their clear oral submissions. They deserve particular thanks for dealing with the occasional technological problems caused by having the hearing take place remotely by way of MS Teams due to the Covid-19 pandemic.

Legal Principles

10. Section 18(1)(h) of the 2005 Act specifically empowers the court to settle the property of a person who lacks capacity to do so.
11. My decision has to be in LMS's best interests (section 1(5)). Section 4 provides a checklist of matters that I must consider when making that best interests decision. I must consider so far as is reasonably ascertainable LMS's past and present wishes and feelings and the beliefs

and values that would be likely to influence her if she had capacity and the other factors that LMS would be likely to consider if she were able to do so.

12. In my view the possibility of retaining eligibility to means-tested benefits and thereby retaining her inheritance from her grandfather is a factor that LMS would consider if she were able to do so.

13. Pursuant to sub-sections 4(7)(b) and (c), if it is practicable and appropriate to consult them I must take into account the views of LMS's parents both as people who care for LMS and are interested in her welfare and as her donees under the LPA. Both parents support this application.

14. In relation to LMS's eligibility for means-tested benefits, the Employment and Support Allowance Regulations 2008 contain the following:

Regulation 106(1) imposes a notional income rule. *'A claimant is to be treated as possessing income of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance.'*

Regulation 115(1) imposes a notional capital rule. *'A claimant is to be treated as possessing capital of which the claimant has deprived himself or herself for the purpose of securing entitlement to an employment and support allowance or increasing the amount of that allowance, or for the purpose of securing entitlement to, or increasing the amount of, income support or a jobseeker's allowance [...];'* and

Income and capital, for the purposes of income-related allowances, includes notional income (regulation 90(2)) and notional capital (regulation 115(1)).

15. In relation to funding LMS's place at MCC, the Care and Support (Charging and Assessment of Resources) Regulations 2014 contain the following:

Regulation 17(1) imposes a notional income rule: *'The adult is to be treated as possessing income of which the adult has deprived themselves for the purpose of decreasing the amount they may be liable to pay towards the cost of meeting their needs for care and support, or their needs for support.'*

Regulation 22(1) imposes a notional capital rule: *'The adult is to be treated as possessing capital of which the adult has deprived themselves for the purpose of decreasing the amount that they may be liable to pay towards the cost of meeting their needs for care and support, or their needs for support [...];'* and

16. Regulation 13(2) calculates income as follows: *'For the purposes of paragraph (1) income includes capital treated as income under regulation 16 and notional income under regulation 17.'*
17. The principles applicable to determining whether a disposal of capital is a deliberate act for the purposes of means-tested benefits were considered by Mr Howell QC then a Social Security Commissioner in R(H)1/06 at paragraphs 20 to 23:
20. *'I direct the new tribunal that as quite correctly assumed by the previous chairman and not disputed on this appeal, the correct test to be applied in determining whether the claimant is shown to have deprived himself of capital for the purpose of securing entitlement to housing benefit is the well-established one applied on similar wording in the main social security legislation, namely whether the securing of such entitlement is shown to have been a "significant operative purpose" of the claimant's relevant actions in disposing of his capital.*
21. *That test is not of course a substitute for the language of the regulation itself, which requires that the purpose of securing such entitlement must be affirmatively established in relation to the particular claimant and his or her actions in each case in order for the "notional capital" provisions to apply. It has however evolved by long use and acceptance as perhaps the best way that can be got of expressing the perfectly valid point that a person's actions may well have more than one purpose, and the existence of one does not necessarily negate another. Thus in order for the regulation to apply the securing of benefit does not have to be the claimant's sole, or even his predominant, motive or purpose; and it is not a "wholly and exclusively" test. The point is neatly put in the decision of Mr J G Monroe who was I think the first Commissioner to use the expression, in paragraph 10 of case R(SB) 40/85 when he said:*
"It is not necessary that the purpose of securing, or increasing the amount of, supplementary benefit shall be the sole purpose, though it must be a significant operative purpose. For instance one can visualise a case of a man possessed of say £1,000 over the statutory limit whose resources fall short of his requirements to an extent that this £1,000 would make up the deficiency for 12 months. He might conclude that if he forthwith spent the £1,000 on carpeting his home from wall to wall he could start drawing supplementary benefit at once and thus be no worse off income-wise and have the benefit of the carpeting. It would be legitimate to conclude that if such was his purpose he had deprived himself of the £1,000 for the purpose of securing supplementary benefit, notwithstanding that another purpose was to have the house carpeted."
22. *Whether the securing of entitlement to benefit was, in this sense, among the purposes which led any particular claimant to act as he did is a question that must be determined by the*

tribunal of fact in the circumstances of each individual case, the test as already noted being one of subjective purpose: see in the housing benefit context *R (Beeson) v Dorset County Council* [2001] EWHC Admin 986, 30 November 2001, per Richards J at paragraphs 9, 37 (not challenged on this point in the Court of Appeal). In the great majority of cases this must be a matter of drawing such inferences as the tribunal of fact thinks fit from the surrounding circumstances, such as the claimant's state of knowledge of the rules, the nature and timing of the disposals he makes and the timing and manner of his claims for benefit; since direct evidence to show such a purpose is in the nature of things unlikely. Such a task is however a perfectly normal one for a tribunal of fact to have to undertake, and this is of course by no means the only instance in the law when the purpose for which a thing is done may not be express, and has to be ascertained "as a matter of substance and of fact": re *South African Supply and Cold Storage Company* [1904] 2 Ch 268, per Buckley J at p282. In using the word "significant" Mr Monroe may perhaps have had in mind what was said by Lord Morris of Borth-y-Gest in *Sweet v Parsley* [1970] AC 132, 155A:

"In my opinion, the words 'premises ... used for the purposes of ...' denote a purpose which is other than quite incidental or casual or fortuitous: they denote a purpose which is or has become either a significant one or a recognised one though certainly not necessarily an only one."

It is to that end that a tribunal must assess all the evidence and determine whether such a purpose on the part of the particular claimant before them can be inferred.

23. Finally, the existing caselaw in Commissioners' decisions on the same wording as that used in regulation 43 of the housing benefit regulations, and in particular the "significant operative purpose" test, was expressly affirmed by a strongly constituted Tribunal of Commissioners in case **R(IS) 1/91** at paragraph 22.'

18. The Court of Protection has considered the circumstances in which it is appropriate to direct a settlement of P's property rather than have that property administered within the MCA 2005 framework in two reported decisions: *Re HM* [2011] EWHC B30 (COP) and *Watt v ABC* [2016] EWCOP 2532. Both of those decisions arose in the context of receipt of a substantial personal injury award by P and the court had to determine whether to appoint a deputy or to direct a settlement.

19. In his position statement on behalf of the First Respondent, Mr Holland summarised the decision of HHJ Marshall QC in *Re HM* as follows:

'the key test was whether, in all the particular circumstances, P's best interests could be better served by settling her property than under the MCA 2005 regime. HHJ Marshall QC

went on to identify a number of potentially relevant factors (in addition to those recorded in the MCA 2005), including a number which are relevant to the present case:

- a. The ability to deal with the totality of P's affairs. In general a trust and a deputyship (or, in this case, an attorneyship) should be seen as mutually exclusive. HHJ Marshall QC considered that the simplicity in the administration of P's affairs was a point in favour of a deputyship.
- b. Possibility of joint office.
- c. The different duties of a deputy and a trustee. A deputy (in exactly the same way as an attorney) has a statutory obligation to act in P's best interests pursuant to the MCA 2005. A trustee does not but has a fiduciary duty to manage the trust and exercise discretions for the benefit of the beneficiaries.
- d. Supervision. A deputy is subject to supervision by the OPG (as is an attorney, albeit that the regime does differ) and may be the subject of a report by a Court of Protection Visitor (as may an attorney). Although trustees are subject to supervision by the High Court, this is dependent on issues being brought to the court's attention. HHJ Marshall QC considered that the automatic supervision regime under the MCA 2005 was a reason to prefer a deputyship. If a trust was to be authorised it should be drafted so as to preserve control by the Court of Protection (e.g. by being revocable and having power to appoint and remove trustees exercisable by P).
- e. Tax and means-tested benefits. There is no proposed tax benefit to the Application. In *Re HM*, the court was concerned with a personal injury award (which, HHJ Marshall QC concluded was to be disregarded for the purposes of calculating means-tested benefits whether held by a deputy or in trust).
- f. Comparative cost and expense.
- g. Administrative efficiency. HHJ Marshall QC indicated that the change in regime effected by the MCA 2005 meant suggestions that a trust was more efficient than a deputyship and relying on the Court of Protection were no longer justified.

h. Family involvement. There was always a need to avoid conflicts of interests but the relevance of this would depend on the individual circumstances of each case.

20. In *Watt v ABC*, Charles J criticised the suggestion that *Re HM* had created a starting point in favour of deputyship. He accepted that where P does have capacity to make some decisions the statutory scheme of deputyship, where the deputy is only authorised to make decisions if P lacks capacity to make them, has advantages over an irrevocable trust, which would not permit P to make any decisions except in relation to sums which were distributed.

21. In *Re Bathurst* [2018] EWHC 21 (Ch) HHJ Barker QC (sitting as a Deputy High Court Judge) was concerned with the construction of a statutory codicil authorised pursuant to s.18(1)(i) MCA 2005. Section 21(1)(2) of the Administration of Justice Act 1982 governs the circumstances in which evidence of a “*testator’s intention*” is admissible in the construction of a will or codicil. HHJ Barker QC was required to determine to whose intention the statute referred in relation to a statutory codicil. After dismissing a number of possibilities, he concluded as follows (at para 57) “*That leaves the [Court of Protection], which has taken on the task otherwise falling to the testator but is subject to the criteria specified by statute governing its intention. I agree. The short answer is that the court is the person forming the intention as to the testamentary document and that intention is made following the approach under s.4 MCA 2005 and applying the best interests principle.*”

Capacity

22. I find that LMS does lack capacity to enter into the proposed deed on the basis of the evidence of Dr Birtles contained in his letter of 9 January 2020. I accept that LMS is unlikely to acquire capacity to manage her property and affairs as indicated by Dr Birtles in the COP3 Assessment of Capacity.

23. It may seem odd that Dr Birtles considers that LMS had capacity to enter into the LPA yet she lacks capacity to enter into the deed. However, capacity is issue specific. The matters which have to be understood, retained, weighed and communicated in relation to the LPA are different to those matters in relation to the deed.

The Applicant’s submissions

24. The Applicant submits that the proposed deed would not amount to a deprivation of capital for three reasons:

- i) The significant operative purpose of the variation is not to deprive the First Respondent of capital;

- ii) The First Respondent cannot be said to understand the capital rules or intend to frustrate them; and / or
 - iii) Any deprivation would not be a voluntary act or choice of the First Respondent.
25. The Applicant relies on the decision of McBride J in *In the matter of the will trusts of Sarah McCullagh* [2018] NICH 15. Being a decision of the Chancery Division of Northern Ireland, it is not binding on my decision, but, as the First Respondent accepts, is likely to be persuasive. The deceased was the mother of a disabled man and by her will created two will trusts. It was agreed by the parties in that case that any income from the trusts would be taken into account in the assessment of the son's means tested benefit and his contribution to his residential care costs would increase pro rate to the income he received.
26. McBride J was persuaded that the proposed variation to the will trusts was to the benefit of the son. At paragraph 48 she stated, *'it is of significant weight that the proposed scheme protects the patient's means-tested benefits. What this means, in practice, is that any monies made available to the patient by the trustees can be used for additional benefits towards his comfort, welfare and other needs.'*
27. She found that the proposed variation would not amount to a deprivation of capital. At paragraph 50 she said, *'In this present case, I am satisfied that the purpose of the proposed scheme is to provide for the patient's comfort and welfare in the way the settlor of the Will Trusts intended. Whilst one of the effects of the proposed variation is that the monies will not be available to reduce the contribution made by the Health and Social Services Trust towards the patient's residential fees, I am satisfied that this is not the significant operative purpose of the proposed variation. Rather, I am satisfied that its significant operative purpose is to better effect the settlor's intention that the patient should benefit from his inheritance. In these circumstances, I am satisfied that the proposed scheme is not one designed to deprive the resident of income in order to reduce his accommodation charges.'* At paragraph 55 she found the proposed variation did not offend public policy because Parliament had provided that disabled person's trusts can be created for the purpose of ring-fencing a disabled person's means tested benefits.
28. The Applicant submits that I should find that it was the intention of LMS's grandfather that LMS should benefit from her inheritance. If I allow the application on the basis that it would 'better effect' the intentions of her grandfather then that would be the significant operative purpose of the proposed settlement rather than to deprive LMS of capital.
29. Further the Applicant submits that it is a requirement of the deprivation of capital rules that the subjective purpose of the individual must be to deprive herself of capital. The Applicant

submits that LMS has not applied her mind to the decision and indeed lacks capacity to do so. She has no knowledge of the capital limits for means-tested benefits and payments so cannot be found to have deprived herself of capital.

30. The Applicant disputes the First Respondent's submissions that if I authorise the settlement I would be doing so on behalf of LMS and that it would be my intention that would form the necessary subjective intention. The order of the Court of Protection would not be a voluntary act on behalf of LMS, particularly where her litigation friend, the Official Solicitor, opposes the act. The Court of Protection makes decisions on behalf of a person who lacks capacity to make the decision; it does not, in law, become that individual or their agent.
31. Finally, the Applicant submits that I should allow the application even if I find that there is only a slim chance of LMS being able to continue to receive means-tested benefits because even a slim chance is of benefit to her when she is certain to lose those benefits if the settlement is not approved.

The First Respondent's submissions

32. The Official Solicitor is unpersuaded that the proposed deed is in LMS's best interests. She explains that she has reached her position with considerable reluctance in circumstances where the outcome sought by the Applicant could have been achieved if LMS's grandfather's will had been drafted differently. She stresses that any suggestion by the Applicant that the Official Solicitor has raised a prospect of financial abuse of LMS by the Applicant is unfounded.
33. The Official Solicitor submits that were it not for the effect on LMS's eligibility for means-tested benefits the proposed deed would clearly not be in LMS's best interests.
34. There are real differences between the duties which a trustee owes to an object of a discretionary power and the principles of the MCA 2005. There is a significant difference between the supervisory regime applied to deputies and attorneys under the MCA 2005 and the ability of the High Court to exercise its supervisory jurisdiction over trusts. Although *Watt v ABC* establishes there is not presumption in favour of a deputyship as opposed to a trust, in this case LMS has made a capacious decision to execute an LPA; a decision to settle the majority of her capital into a trust effectively undermines her decision.
35. The Official Solicitor considers that *Re McCullagh* may be distinguished from the instant case because it was concerned with a variation to an existing trust rather than the replacement of a statutory framework designed to protect the interests of those lacking capacity with an ordinary trust. She accepts that if I could find an 'intention' that would allow the

application, other than the intention to retain eligibility for means-tested benefits, then that might be sufficient to outweigh the disadvantages set out in paragraph 31 above.

36. The Official Solicitor considers that LMS's grandfather's will file, which I admitted as evidence, does not support any intention on his part other than that LMS should receive her inheritance outright. His decision appears to have been taken in the knowledge that it may affect LMS's future entitlement to means-tested benefits.
37. The Official Solicitor submits that where LMS lacks capacity to make a decision to dispose of her capital then the intention of the court in making the decision on LMS's behalf is the relevant intention for the purposes of the deprivation of liberty rules. In *Re Bathurst* the court's intention was found to be the relevant intention when considering the 'testator's intention' in relation to a statutory codicil. The Official Solicitor says there can be no justification for adopting a different approach in this case.

Discussion

38. I agree with the Official Solicitor that unless the proposed deed would allow LMS to claim means-tested benefits and receive means-tested educational funding it would not be in her best interests.
39. Whilst *Watt v ABC* establishes there is no presumption in favour of a deputyship/LPA there are a number of reasons why I consider the proposed deed (absent any financial benefit to LMS) would not be in LMS's best interests. Firstly, and most importantly, LMS made a capacitous decision that her property and affairs should be managed by her attorneys under the LPA. The proposed deed is contrary to LMS's wishes as expressed through her execution of the LPA. Secondly, the trustees of the proposed trust would not be bound to apply the principles of the 2005 Act to their decisions. Thirdly, the regime of supervision by the Public Guardian of LPA attorneys does not apply to trustees (I do not intend to suggest in any way that the proposed trustees are likely to act other than in LMS's best interests). Fourthly, the proposed deed would mean LMS's capital being managed under the trust and her income under the LPA which does not seem to be the most efficient method of management of her property and affairs.
40. The question then is whether I can properly authorise the proposed trust in a manner that still allows LMS to receive her means-tested benefits.
41. In *Re Sarah McCullagh*, McBride J found it was possible to approve a proposed arrangement in a way that did not disqualify the beneficiary under two will trusts from entitlement to means-tested benefits. She did so on the basis that the significant operative purpose of the proposed scheme was to better effect the settlor's intention to provide for her son's

comfort and welfare rather than to enable her son to claim means-tested benefits. The Applicant submits that I can and should reach the same conclusion in this case.

42. I have considered carefully the limited evidence in relation to LMS's grandfather's intention when executing his will. The Applicant submits that the intention of LMS's grandfather was that LMS should benefit financially from his will. His will was drafted poorly such that his intention will be defeated by the effects of LMS's inheritance on her entitlement to means-tested benefits. His clear intention to benefit LMS will fail unless the proposed deed is authorised.
43. The Official Solicitor notes that when LMS's grandfather met with solicitors to discuss his will he was advised that LMS was, '*not capable of earning her own income as she is autistic. She is in more need than other granddaughter*'. It is evident from the will file that LMS's entitlement to means-tested benefits was discussed at that initial meeting. At a further meeting LMS's grandfather said that the Applicant had not provided him details of LMS's benefit arrangements so he was '*leaving his will as it was*'. The Official Solicitor submits that the only intention that may be discerned from the will file and the will itself is that LMS's grandfather intended her to receive her provision outright and that he did so in the knowledge that it may adversely affect her entitlement to benefits.
44. I agree with the Official Solicitor that *Re Sarah McCullagh* does not create any general rule and that the determination of whether a disposal is made with the statutory purpose is highly fact sensitive.
45. In assessing LMS's grandfather's intention on the particular facts of this case, I consider it important firstly that the possible effect of the inheritance on LMS's entitlement to benefits was discussed, secondly that he attempted to gain information from the Applicant as to what that effect may be and thirdly that he left his will 'as it was' because he had not received information to confirm that LMS would lose benefits because of her inheritance. I discern from the will file that he intended LMS to benefit financially from her inheritance and that he would have altered his will had he received information confirming an adverse effect on LMS's benefits as the will was initially drafted.
46. It follows that I am persuaded that the proposed deed should be authorised on the basis that it will better effect LMS's grandfather's intention that his will would financially benefit LMS. Although the Court of Protection does not have jurisdiction to determine whether LMS will be entitled to means-tested benefits and funding, it is able to discern and record its own intention in authorising the deed on behalf of LMS. I am satisfied that the continuing eligibility of LMS to means-tested benefits and funding is not the significant operative

purpose of the proposed deed and that is not the court's motive in authorising the deed on behalf of LMS. Rather it is intended to better effect the intention of LMS's grandfather.

47. I accept the reasoning of McBride J at paragraph 51 of *Re Sarah McCullagh* that it does not offend public policy for me to authorise a disabled person's trust that has the effect of maintaining her entitlement to means-tested benefits.
48. It is with some reluctance that I find myself disagreeing with the view of the Official Solicitor in this matter. She and her staff provide expert advice to the Court of Protection in many property and affairs matters. I consider that she was right in this case not to simply agree to the proposed deed and recommend its authorisation to the court. I consider that the discernment of LMS's grandfather's intention and the question of whether his intention could provide a reason for authorising the proposed deed were both matters for a judge of the Court of Protection to decide.
49. In her position statement, the Official Solicitor submitted that if the proposed deed were to be authorised, it should first be amended to include safeguards to ensure that LMS, either on her own behalf if she has the requisite capacity or by the Court of Protection on her behalf if she lacks such capacity, is able to exercise a degree of control and oversight of the administration of the assets comprised in the trust fund. The Applicant accepted at the hearing that such amendments should be made. As such, I intend to authorise the proposed deed subject to the inclusion of a clause vesting the power of removing and appointing trustees in LMS and further an amendment to the default trusts providing that after the death of LMS any assets remaining in the trust fund should be held for such persons as LMS may by her will appoint and subject thereto for her children and remoter issue absolutely. If no such persons are living then for her grandfather's other grandchildren and remoter issue absolutely.
50. If I had not been persuaded that the proposed deed should be authorised on the basis that it will better effect LMS's grandfather's intention, I consider that my intention would be the relevant intention for the purposes of the deprivation of capital rules in relation to both welfare benefits and education funding. The decision in *Re Bathurst* that the court's intention was the relevant intention when considering the 'testator's intention' in relation to a statutory codicil in my view must apply. I consider that the Official Solicitor is right when she says there can be no justification for adopting a different approach in this case.
51. Section 16 of the 2005 Act allows the court to make a decision or to appoint a deputy to make a decision. If the Applicant were right that the intention of the court cannot amount to the subjective intention of the protected party when considering deprivation of capital, it

must follow that neither could the intention of a deputy. That would mean that a deputy could deliberately use a protected party's capital solely with the intention of gaining an entitlement to means-tested benefits (whether that coincided with the expressed wishes and feelings of the protected party or not) but that the deprivation of capital rules would not apply. That does appear to me to offend public policy.

52. I do not need to deal with the Applicant's submission that I should allow the application even if I find that there is only a chance that LMS will retain her eligibility for means-tested benefits given my findings and decision above.
53. I did not hear any argument on costs, but I considered that the normal costs rule in property and affairs matters should apply in this case.
54. Since the hearing I have considered correspondence from the parties in which they both agree that the normal costs rule in property and affairs matters should apply, but differ on one matter. The Official Solicitor proposes wording to be included in both the order and the deed indicating that the shortfall for any assessed costs from LMS's current assets is to be met from sums to be received by LMS from her grandfather's estate and the remainder is to be settled on the disabled person's trust. The Applicant opposes the proposed amendment and submits that the normal costs order should apply with the Official Solicitor to consider enforcement of her costs if there is a shortfall.
55. As I stated at paragraph 48 above, I consider that the Official Solicitor was right in this case not to simply agree to the proposed deed. I further consider that it was in LMS's best interests to be represented by the Official Solicitor, even though I have been persuaded by the Applicant's arguments. I do, therefore, consider that the Official Solicitor's proposed wording should be included in both the order and the deed.
56. I am grateful to Mr Holland and Mr McKean for their offer to settle the final order and the wording of the deed.

John Beckley 11/09/20

Incorporating parties proposed corrections and amendments John Beckley 09/10/20