

**Court of Protection**

First Avenue House,  
42 - 49 High Holborn,  
London,  
WC1V 6NP

**DESCRIPTION**

*This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 13:21 on 23<sup>rd</sup> December 2022*

**Judgment given on 15 November 2022**

**Before**

**HER HONOUR JUDGE HILDER**

**IRWIN MITCHELL TRUST CORPORATION LTD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**MENTAL CAPACITY ACT 2005**

**In the matter of  
SG**

**ORDER**

**WHEREAS**

1. By order made on 11<sup>th</sup> May 2017 Irwin Mitchell Trust Corporation Ltd (“the Deputy”) was appointed as property and affairs deputy for SG.
2. Paragraph 2(c) of the deputyship order explicitly prohibits the Deputy from selling freehold or leasehold property in which SG has a beneficial interest without obtaining further authority from the court.
3. By order made on 10<sup>th</sup> September 2021 (“the Trustee Act order”) SG’s wife, as continuing trustee in relation to trusts affecting the property in which they lived (“The Property”), was



granted permission pursuant to section 36(9) of the Trustee Act 1925 to appoint a new trustee in place of SG.

4. The Deputy then sent to the Court a letter dated 18<sup>th</sup> August 2022 (“the letter”), informing the Court of difficulties which arose in the process of selling The Property.
5. The Court does not ordinarily engage in correspondence but on this occasion considered that it would be disproportionate to require the filing of a formal application to address issues raised in the letter and (pursuant to Rule 3.4 of the Court of Protection Rules 2017) dispensed with any requirement for such.
6. By order made on 20<sup>th</sup> September 2022 the Court set out the following recitals:
  - a. The Property was registered at HM Land Registry in the names of SG and [his wife];
  - b. SG no longer has capacity to manage his property and affairs (and, by inference, to exercise the functions of trustee);
  - c. The Trustee Act order is sufficient to allow Irwin Mitchell Trust Corporation Ltd to be appointed by [SG’s wife as the continuing trustee] as replacement trustee of The Property instead of SG;
  - d. If The Property is sold by SG’s wife and Irwin Mitchell Trust Corporation Ltd as trustees, Irwin Mitchell Trust Corporation would not be acting in breach of paragraph 2(c) of the deputyship order because it would be acting as trustee pursuant to authority obtained from the Court in the Trustee Act order, and not as deputy;
  - e. as trustee, Irwin Mitchell Trust Corporation Ltd would be accountable for SG’s interest in the proceeds of sale to itself as Deputy and thence to the Public Guardian (and the Court usually considers any need to adjust the security requirement when considering the Trustee Act application);
  - f. The Property was sold in April 2022;
  - g. HM Land registry has issued a “Warning” dated 13<sup>th</sup> August 2022 that it will not complete the sale without specific confirmation from the Court of Protection that “authority under paragraph 2(c) of [the deputyship order] is no longer required to sell...”;
  - h. it appears to be a matter of common confusion between deputies and HM Land Registry whether or not a Trustee Act order is sufficient to satisfy the “further authority” requirement in a deputyship order, and it would be beneficial to resolve this confusion.
7. By paragraph 7 of the order made on 20<sup>th</sup> September 2022” for the avoidance of doubt” the Court made provision to address the request for clarification and enable completion of sale of The Property.
8. Pursuant to further directions in the order made on 20<sup>th</sup> September 2022, intended to address the “common confusion,” the Court has now received:
  - a. a position statement from HM Land Registry dated 1<sup>st</sup> November 2022; and
  - b. a position statement from the Public Guardian dated 9<sup>th</sup> November 2022.
9. The Court notes from the HM Land Registry’s position statement:



- a. the more detailed explanation of why the “Warning” was issued in this particular matter, involving contradictory letters from the Deputy as to the meaning and effect of a court-approved trust deed relating to the Property (which the Court accepts, no criticism of HMLR having been intended);
  - b. HMLR’s agreement that it would be beneficial to resolve the “common confusion” identified.
10. Both HM Land Registry and the Public Guardian agree that:
- a. the Trustee Act gives trustees authority to sell property which is distinct from any authority given in a deputyship appointment;
  - b. the process of considering a Trustee Act application to the Court of Protection is sufficient to ensure scrutiny by the Court of arrangements which may lead to sale of property in which a protected person has a beneficial interest;
  - c. an order made pursuant to the Trustee Act is sufficiently clear “further authority” for trustees to sell property even when the deputy is prohibited from selling the property;
  - d. in circumstances where there is error or lack of clarity in a trust deed, HMLR may seek further clarification.

## **IT IS ORDERED THAT**

11. These proceedings are hereby concluded.
12. This order (in this anonymised form) may be published.
13. This order was made without a hearing. Any person affected by it may apply to the Court within 21 days of the order being served for its reconsideration pursuant to Rule 13.4 of the Court of Protection Rules 2017.

