

IN THE COURT OF PROTECTION

IN THE MATTER OF AECO

Before:

HHJ CRONIN

Between:

THE PUBLIC GUARDIAN

- and -

JO

Matthew Wyard for the Public Guardian

JO in person

JUDGMENT

This judgment was delivered in public, but a Transparency Order dated 31 July 2024 is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of AECO and JO must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

HHJ Cronin:

1. I had the pleasure of meeting AECO yesterday when she came with her mother and her brother to the hearing of the public guardian's application to discharge her mother, JO, as her deputy for property and affairs. Rather than prolong the hearing, I announced my decision and said that I would provide my reasons in writing. This is my judgment.
2. JO was not represented at the hearing and told me that she might think about legal advice after the hearing. She did not seek any opportunity to take any further advice or obtain representation before me.
3. AECO has a diagnosis of Retts Syndrome and she has a number of mental and physical disabilities. A great deal of her care has always been provided by her mother and her brother and she has always been entitled to benefits for her support. It is not in dispute that she lacks capacity to manage her property and affairs.
4. JO has been her deputy since 24.6.14. The public guardian raised some concerns about her conduct of her deputyship and finally applied to have her discharged as a deputy on 23.8.23. DJ Mullins made an order suspending her appointment and appointing a panel deputy on an interim basis on 9.10.23. DJ Taylor gave directions and made a transparency order on 31.7.24. These directions provided for evidence to be filed by both parties: the evidence of the public guardian is contained in three witness statements by Donna Hunter and there are three statements from JO.
5. The public guardian raised six issues about JO's conduct of her deputyship. These are:
 - 1) failures of reporting;
 - 2) failure to pay the supervision fee as it fell due;
 - 3) mixing money;

- 4) the occupation of AECO's property;
 - 5) concerning transactions including transfers to JO and her son;
 - 6) lack of cooperation with professionals and the public guardian.
6. The public guardian asked the court to revoke the appointment of JO as deputy on the basis that she has contravened the authority conferred on her and that it is not in AECO's best interests for her to continue as deputy under s16(7) and s16(8) of the Mental Capacity Act 2005. My Wyard, on behalf of the Public Guardian, drew my attention to the decision in CL v Swansea Bay University Health Board [2024] EWCOP 22, confirming that the court has an unfettered power to remove a deputy where it is in a protected party's best interest to do so. JO had objected to the application and indicated her wish to continue as deputy in her written statements.
7. I determined at the outset of the hearing that it was right to hear the case and make the decision at the hearing yesterday. JO did not seek any opportunity to take advice or obtain representation before the decision was made: she told me she had had the papers although she had not brought them with her. She told me that she was not concerned with Wards Solicitors (the firm in which the panel deputy appointed on AECO's behalf is a partner) being the deputy but she did not think that they (herself and her children) had a workable relationship with her.
8. Mr Wyard explained the public guardian's case by reference to his position statement and the bundle.
9. JO then answered my questions about the public guardian's points. She told me early in the hearing that she is deaf, although she has had a hearing test recently and her hearing was supposed to be not bad. She preferred to come and speak to me by standing

right in front of me and sometimes went back to her seat. She seemed not to have any difficulty hearing Mr Wyard and she was able to interrupt when something was said that she disagreed with. She also told me that she was dyslexic: nevertheless, she had provided three long statements, all well expressed and properly spelled. She was, to an extent, distracted by a sense that she had been criticised by somebody from Wards Solicitors because there had been a safeguarding reference: this hearing did not directly concern matters of safeguarding or welfare, apart from the extent to which any decision on behalf of a protected party must consider that party's welfare, and the use of a protected party's property and finances can be a safeguarding issue. JO clearly thought that her practical care of AECO had been criticised: that does not appear to be the case and was not an issue which I had to deal with at this hearing.

10. During the course of the hearing, and as was apparent from the papers, it was explained that AECO has her own property, which is part owned, part rented from Advance Housing Association and the deposit for this property came from a loan taken out by JO. JO and her son have the use of JO's separate property which has been undergoing renovation for a period of some years in order to provide an accessible bathroom and a lift so that AECO can visit comfortably. In the meantime, JO and her son have stayed in AECO's property and stored their belongings there. The loan for the building works is paid by JO from her salary which is paid to her from direct payments for caring for AECO.

11. I asked JO about the public guardian's six arguments.

1) JO did not file annual supervision reports on time for the period 2017-2021. The most recent report for the period was not filed on time and did not contain all the documentation sought by the public guardian. She accepted this argument. The

reports were due for the years 2018, 2019, 2020 and 2021 on 14.11.19, 18.8.20, 15.10.20 and 14.2.21, so that two were more than a year late and the last 7 months late.

- 2) JO did not pay the annual supervision fees for 2021, 2022 or 2023 on time, despite reminders including a letter sent in September 2023, so that at one point she was behind by more than two years. She told me that she thought that somebody at the public guardian had said she did not have to pay them because AECO was in receipt of benefits. She accepted that she had not paid the fees as required.
- 3) Mixing money. JO did not open a deputy's bank account for AECO and told me that her bank did not know what one was. She had been told by the public guardian in August 2014 that she should open one and reminded by letter dated 7.8.14, and again on 30.10.17. A general visitor met JO on 23.10.19 and emphasised the need to open the account and pointed out that the deputyship might be discharged if she did not do so. She was advised by email on 1.4.22 to call the Lloyds Bank Centralised Team to help her to do this, but she has never done so. JO has received AECO's money and made payments on her behalf through her own account, so that the funds are mixed, and she agreed with the blunt statement that it was impossible to say whose money was whose. She said she was not arguing with the fact that the court could not tell what money belongs to whom and that "they already know I got into a muddle with the money."
- 4) JO and her son have stayed for extended periods in AECO's property since early 2020. Initially, this was to support AECO during lockdown but JO said that now their own home is not fit to be occupied because of the building work which is ongoing. This concern was that there is always a cost to occupation of any property

and there has been no contribution made by JO or her son to the additional costs of their occupation. Although her written evidence contested this point, JO accepted in her evidence to me that she probably owes AECO about £10,000 in this respect.

5) Concerning transactions: I did not have the full set of JO's bank statements and did not think it proportionate to spend court time on the analysis of those that I had. It would appear that large sums have been paid to JO and to her son. I anticipate that it will be necessary to consider these transactions in detail at another stage and it was not necessary to my overall decision to go any further under this heading.

6) Lack of cooperation with professionals and the public guardian. As I have already set out, JO accepts that she failed to file reports or pay supervision fees or open a deputy account despite reminders both in writing and in person when she was visited. She has not provided the public guardian with information requested in relation to this investigation and she has not provided any better information to the interim deputy.

12. Taking into account all of the evidence filed and the submissions and explanations offered in court, I come to the following conclusions:

1. JO failed to file reports as required and they were always very late.
2. JO failed to pay the supervision fees.
3. JO allowed AECO's funds to become mixed with her own.
4. JO and her son occupied AECO's property without contributing to the costs incurred and putting the property at risk as I will set out below.

5. At first sight, there are transactions which require further investigation but I make no specific finding here.
6. JO has failed to co-operate with the reasonable requests of the public guardian and the interim deputy.
13. The simple consequence of these failures is that AECO's money has been lost: the deputy reports that there is now a monthly surplus of income over outgoings which is not recorded or saved anywhere and the expenses of running the property have been higher than they should have been. The delay in filing the reports has led to delay in discovering the failures. In addition, the occupation of AECO's home may have prejudiced AECO's entitlement to housing benefit because of having lodgers who should be expected to contribute to costs and/or pay rent, and it is likely to be in breach of her tenancy agreement with Advance Housing who part-own the property.
14. In my judgment, JO has not been able to fulfil the duties of a deputy for property and affairs. Her failures as set out above and the consequences of them set out in paragraph 13 lead me to the firm conclusion that it is in AECO's best interests to remove JO as deputy.
15. There is no doubt that AECO needs to have a deputy to manage her property and affairs and in any event that was agreed between the parties.
16. The court will always prefer to have a family member as deputy where there is a family member who is able and willing to take on that responsibility. JO expressed her concerns about being able to work with the interim deputy, but in my judgment the interim deputy is an experienced Court of Protection Deputy who will have the skills to manage the case in AECO's interests and what is required of JO is that she cooperates

rather than collaborates with the deputy. It would not be sensible to appoint a further professional deputy because that would incur significant duplication of work. In this case, there is no other candidate but a professional and so I confirm the appointment of Jenny Pierce as deputy for property and affairs on a final basis.

HHJ Cronin

4th February 2025