

Our Ref: BK/KEL0001/13

Your Ref: 654789

30 September 2021

Mr M Consultant
Medical Consultant
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Dear Sirs,

Re: Focused Workflow Deputyship Application

We are instructed on behalf of Mr First Test Applicant to prepare an application to the Court of Protection for his appointment of as the Deputy for Personal Welfare of Mr Ben Mark Kellett so that he can make decisions on behalf of Mr Kellett on the grounds that he lack capacity to make those decisions and we understand that Mr Kellett is your patient.

An application to the Court of Protection is required to be supported by evidence as to capacity by Form COP3 which is enclosed for your completion.

Under the provisions of the Mental Capacity Act 2005 a person is deemed to have capacity unless it can be proved otherwise. Capacity is not a global concept but one that is geared to the specific decision to be made. Thus it is conceivable that a person may have capacity to make a specific decision but not another. In those circumstances it is necessary to establish the following factors:

1. what decisions have to be made
2. does the patient lack the ability to make those decisions

The form has two parts, A and B. Part A is for completion by our client and you will see that it has been partially completed. This will give you some idea about the basis of the application and the decisions that need to be made on your patient's behalf. As you will see the application asks for specific information as to the decisions that have to be made. In this instance we do not believe that your patient has capacity to deal with any matters relating to their property and affairs. We do not believe that he has the capacity to deal with a wide ranging set of circumstances such as managing a bank account and paying bills. We have

considered whether your patient could deal with such matters if he had assistance of a general nature but do not believe that this would be of any help.

Having regard to the decisions to be made in accordance with Part A we would be obliged if you could confirm that your patient lacks capacity to make those decisions due to 'an impairment of, or a disturbance in the functioning of, the mind or brain'. This is part of the legal test of capacity and if you refer to Note 4 of the Form you will see that this is set out in more detail. If you require clarification on any of these points please contact us.

Turning to Part B we hope that the contents are self explanatory but it may be helpful if we expand on some elements of the form as follows:

- Section 7.1 requires you to provide a specific medical diagnosis/condition. Note 4 expands on the completion of this section. However, you are also required to be specific in regard to the decisions that the patient is unable to make and you might find it helpful to refer back to sections 3 and 4 of Part A.
- Section 7.2 deals with those matters that are set out in the Mental Capacity Act for making a decision and should be read in conjunction with Note 5.
- Section 7.3 requires a clear statement of the evidence that leads you to a conclusion that the patient has a lack of capacity. This may be revealed by the results of test scores or other methodology that you may use.
- Section 7.5 reiterates the point that a person, irrespective of their lack of capacity, may have views on the decision(s) in question and those views can be taken into consideration when determining what is in their best interests, depending on whether they can be communicated.
- When determining a person's best interests it is important to consider whether they may regain capacity in respect of the decision(s) to be made and section 7.6 requires your opinion on this.

We appreciate that you may feel that you are unable to deal with the form yourself and should that be the case we would be obliged if you could notify us as soon as possible. We are quite happy for you to pass the matter on to a colleague of your choice should you feel that is appropriate.

As you will be aware there is no prescribed fee for the completion of the form and it would be helpful if you could contact us to discuss your reasonable fee before dealing with the form.

If there is likely to be a delay in dealing with this matter it would be helpful if you could let us know as the application to the Court of Protection cannot be made without form COP3.

Yours Faithfully,

Ben Kellett
PRACTICE LTD

