

# 5 Stone Buildings

---

## Appointing Welfare Deputies: *Re Lawson, Mottram & Hopton*

David Rees QC

---

4 November, 2019

[www.5sblaw.co.uk](http://www.5sblaw.co.uk)

## Appointment of Deputies

- S16 MCA 2005
- (a) a decision by the court is to be preferred to the appointment of a deputy to make a decision, and
- (b) the powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.

## Is a Deputy needed?

*Deputies for personal welfare decisions will only be required in the most difficult cases where:*

- *important and necessary actions cannot be carried out without the court's authority, or*
- *there is no other way of settling the matter in the best interests of the person who lacks capacity to make particular welfare decisions.*

MCA 2005 Code of Practice(Para 8.38)

## Previous Cases

- *LB Havering v LD & KD* - [2010] EWHC 3876 (COP) -HHJ Turner QC
- *Re P* - [2010] EWHC 1592 (Fam) - Hedley J
- *G v E* - [2010] EWHC 2512 (COP) Baker J
- *SBC v PBA* -[2011] EWHC 2580 - Roderic Wood J
- *Watt v ABC* [2016] EWCOP 2532 - Charles J

## *Re Lawson, Mottram & Hopton*

- Decision of Hayden J - Vice-President Court of Protection
- 3 applicants - parents of young adults with learning disabilities
- Preliminary issue:

*“What is the correct approach to determining whether a welfare deputy should be appointed? In particular should such appointments only be made ‘in the most difficult cases’ and if so, what does that mean in practice?”*

## Principles:

- Apply the words of the MCA 2005
- Have respect for adult autonomy
- In most cases the Court will not appoint a welfare deputy. However, this reflects the application of the s4 best interests test - it is not a presumption, bias or starting point
- The Code of Practice is only guidance
- P's wishes and feelings are not determinative