

Court of Protection: When relationships break down

Discharging a deputy is not a step that would be taken lightly and professional deputies should not expect to step aside merely because they consider it to be necessary.

Outer Temple Chambers
(Chambers of
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QC, **Sarah**
Crowther QC and
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Kambli indicates that the Court of Protection will explore alternative measures before agreeing to a deputy's application to be discharged. Alex Cisneros discusses the court's approach and its effect

Discharging a deputy is not a step that would be taken lightly and professional deputies should not expect to step aside merely because they consider it to be necessary.

The facts of *Kambli v The Public Guardian* [2021] are not unusual. An intellectually disabled person's family may not always agree with the decisions made by professionals on that person's behalf. Any such conflict will invariably be difficult for both the family and the professional and may lead to the Court of Protection becoming involved.

In this case, the protected party's family had a fractious relationship with the applicant, Mr Kambli, who was the professional deputy appointed to manage MBR's financial affairs. The court was disappointed, but not surprised, by this situation because MBR's two previous professional deputies had faced similar problems with his family.

Despite its best efforts to find a workable solution between the family and Mr Kambli, the court could only ultimately deploy the relatively blunt mechanism of discharging the deputyship. The senior judge's attempts to find an alternative solution highlights the court's appetite for more conciliatory approaches in these cases. Ultimately though, the case reminds us of the reality that even judges cannot force people to get on.

Background to *Kambli*

The case concerned an application by Mr Kambli to be discharged as professional deputy for MBR. This was because there had been a complete breakdown in his relationship with MBR's family, particularly MBR's father.

MBR was a 15-year-old child who sustained cerebral palsy due to medical negligence shortly after his birth. As a result, he has very limited vision and hearing and cannot communicate verbally. In 2014, MBR received a significant award of damages arising out of the medical negligence dispute from his birth. He now owns an adapted property which he lives in with his parents, four siblings and paternal grandparents.

The first deputy to be appointed to manage MBR's finances was Wrigleys Trustees Ltd. It was initially appointed on 10 February 2012 and managed his finances, including his significant damages award, until 2016. However in 2016, MBR's mother (NKR) made an

application to discharge this deputy following a dispute about how MBR's money was being managed. The application was concluded by consent and the court agreed to make an order on 21 November 2017 which discharged the appointment of Wrigleys Trustees. The court determined that it would be in MBR's best interests for his finances to be managed by another professional deputy, and so appointed the Thomson Snell & Passmore Trust Corporation.

Unfortunately, Thomson Snell & Passmore Trust Corporation also faced difficulties in dealing with MBR's family and, on 19 February 2018, NKR made another application to discharge the newly appointed deputy. In this application, she asked the court to consider appointing her and a direct access barrister as MBR's deputy.

This application led to the senior judge of the Court of Protection giving a reported judgment (*NKR v The Thomson Snell and Passmore Trust Corporation Ltd* [2019]) in which she set out the legal framework that the court will use when deciding on the identity of a deputy. The court considered that NKR and the barrister's appointment would not be in MBR's best interests and, on 21 March 2019, appointed the applicant to this case (Mr Kambli) as deputy.

The current case: *Kambli*

By the time this case came to court, MBR had already had three professional deputies appointed and the court approached the case from that context, rightly identifying that every time that a new deputy was appointed it 'inevitably incurs costs'.

The judge considered Mr Kambli's reasons for wanting to retire as MBR's deputy and his detailed witness statement, which explained the difficulties that he faced from MBR's father. Mr Kambli commented particularly that MBR's father is:

... intent on breaking down any relationship he has with a deputy by 'deputy shopping' until he finds a deputy that will accede to his demands.

Despite Mr Kambli's concerns, HHJ Hilder reiterated that a deputy will not be discharged automatically when they ask. She drew on Hayden J's comments in *Cumbria County Council v. A* [2020] at para 14:

... it is, to my mind, axiomatic that the withdrawal of the deputy's consent to act is not, in itself, determinative of the decision to discharge. The decision is for the Court.

It was in this context therefore that the judge considered alternative ways in which the situation might be salvaged. She explored two options; first the judge invited the Public Guardian to explain what support he could offer to help professional deputies who found themselves in situations such as this, and, secondly, the judge proposed a working-together agreement document to try and reach an amicable and respectful working relationship.

The Public Guardian produced a statement from a case manager in the professional deputy team. The statement notes that a case manager could be appointed who would act as an informal mediator 'until an amicable resolution has been found'. Mr Kambli said however that he had already tried to work collaboratively with MBR's father and was not confident that an additional third party from the Office of the Public Guardian would assist.

In respect of the court's other suggestion, for a working-together agreement document to be prepared between the parties, this also appeared to be unrealistic. The court commented that MBR's father provided a 'less than constructive response' to this document and made various amendments which lead the court to accept that 'Mr. Kambli's unwillingness to act even if an agreement were to be reached looks more realistic than obstructive'.

The court ultimately concluded that there was no option but to discharge Mr Kambli as deputy as he could no longer discharge the functions of deputy given the circumstances. The judge then turned to consider who should replace Mr Kambli. The judge reiterated that it was 'obvious that [MBR's father] is unsuitable to be appointed as deputy' and that NKR was also unable to discharge the functions of deputyship with sufficient independence. However, the court was also unwilling to simply appoint a fourth panel deputy as the judge was alive to the reality of that inevitably breaking down again.

The judge therefore decided to appoint two other family members jointly to act as MBR's deputy. Both of these family members had 'professional/working experience and obligations which suggest that they can and will understand the responsibilities of deputyship'. The court was satisfied that the risks to MBR could be 'mitigated by appointing them jointly, limiting their authority and setting appropriate security'.

The family members were therefore appointed for the period of one year, with a relatively high security (£400,000) and on the understanding that they should make an application on form COP9 if a dispute arose with MBR's father 'which is not resolved to their satisfaction within three months'.

Comment

Whereas professionals may be tempted to 'throw in the towel' if faced with difficult circumstances as in this case, the court has signalled that it will not discharge deputies just because they ask. The court in this case gave a strong indication that discharging a deputy is not a step that would be taken lightly and that professional deputies should not expect to step aside merely because they consider it to be necessary.

Therefore, even where the job of the deputy has become unworkable (whether financially or because of other difficulties), a professional may be required to continue acting. It is surprising that professional deputies would find that the burden falls on them to justify their withdrawal. This is despite the fact that a professional deputy (eg a lawyer) is unlikely to make an application to be discharged unless the situation is dire and unless all other options have already been explored.

When faced with an application to discharge a deputyship, the court will attempt to first 'probe the actual circumstances, with a view to salvaging working relationships if possible'. This inevitably carries a cost and suggests that deputies will not already have tried to

engage with family members in a conciliatory way. The court is likely simply to repeat the process that a deputy has already attempted to satisfy itself that there really is no alternative to discharging the deputy. This carries a cost and potentially an emotional burden on all involved.

However, if the court has accepted that the current deputyship is not working, it can be creative in how it appoints a new deputy so that the issues are not repeated. Practitioners should remember that the Court of Protection has wide-ranging powers to make bespoke deputyship orders to fit the particular circumstances. This can be extremely useful in difficult cases such as this.

The facts of this case are not unusual but the scrutiny with which the court approached the deputy's application to withdraw may have caused other professional deputies some concern. Locking professionals into complex or difficult deputyships may deter others from taking on those types of roles. It is already difficult to find suitable deputies in some cases and reducing the pool of available deputies is unlikely to be a step which would be in the best interests of protected parties.

It is hoped therefore that the court's approach in this case was only necessary in the context of the multiple previous deputyship orders and will not be replicated in all similar applications.

Cases Referenced

- Cumbria County Council v A [2020] EWCOP 38
- Kambli v The Public Guardian [2021] EWCOP 53; [2022] WTLR 221 CoP
- NKR & anor v The Thomson Snell and Passmore Trust Corporation Ltd [2019] EWCOP 15

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