

Court of Protection guidance on the management of personal injury awards

In the recent case of *Watt v ABC [2016] EWCOP 2532*, the Court of Protection (the Court) provided guidance on the correct approach for cases where the management regime for a personal injury award made to a person lacking capacity over their property and financial affairs is in question.

The case

The respondent (ABC) suffered a brain injury and, following proceedings in the Queen's Bench Division, he was awarded damages of approximately £1.5 million. The question before the Court was whether the award should be managed by ABC's Deputy, or whether it should be paid into a personal injury trust.

In making the application, ABC's Deputy relied on the case of *SM v HM [2012] COPLR 187* when submitting that there was a strong presumption in favour of the award being managed by a Deputy.

The decision

The Court considered the following in deciding which management regime should administer the award:

- the type of trust being proposed
- any powers to be given to the Deputy and any restrictions to be placed on the Deputy
- what ABC had the capacity to do with support

The Court found that as ABC had capacity to make some financial affairs decisions with support, the appointment of a Deputy was preferable to a personal injury trust (due to it offering ABC greater autonomy and flexibility). In particular, the Court emphasised that it was beneficial for ABC that the Deputy would only make decisions for ABC when he would lack capacity to make them himself. This decision was made despite the costs of management by a Deputy being greater than those of a trustee.

Guidance for future cases

The Court helpfully provided a summary of points which should be considered in future cases:

- the management regime for a large award of damages must be considered as early as is practicable
- consideration of the management regime should not start on the basis that there is a strong presumption that the [Court will appoint a Deputy](#) to manage the award
- when considering the management regime, the following should be taken into account:
 - what the incapacitated person does and does not have capacity to do now, and the likelihood of this changing in the future
 - the terms and effects of the possible management regimes, including any taxation issues
 - the costs of the possible regimes

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