

Topical Probate Issues

DONNA WITHERS

21 October 2021



Topical issues in Probate

Remote signing

Jersey Lasting Powers of Attorney

#FreeBritney / I Care A Lot

US Conservatorship vs Jersey Delegations



Remote signing

Covid-19 (Signing of Instruments) (Jersey) Regulations 2020

Removes the requirement for physical presence when executing certain documents

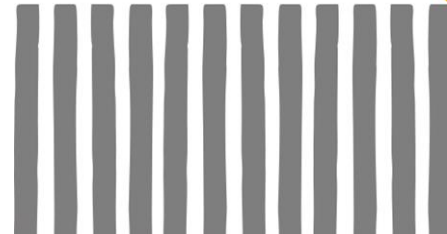
Extended to 31 October 2021

Remote attendance with Probate Registrar to swear the Oath Probate

Attestation of other Probate instruments

Execution of Wills

- Testator and witnesses must see each other by audio-video link
- Witness must
 1. Positively ID the Testator
 2. See Testator sign the Will
 3. Be satisfied that the document is the Will
 4. Must hear the Will of immovable estate read aloud in its entirety
 5. Provide a written declaration



Jersey Lasting Powers of Attorney (LPAs)

An instrument whereby a person (the Donor) gives power to another person (the Attorney) in respect of

- the Donor's health and welfare decisions
- the Donor's property and financial affairs

Survives the incapacity of the Donor

Covid

- Retired nurse arrested for taking mother from care home
- Kate Garraway: Finding Derek

Local – Banking

Foreign – Test Case



#FreeBritney / I Care A Lot

- 2008 Spears' conservatorship established
- Since then she released three albums, held a successful Las Vegas residency and made numerous television appearances, including as a judge on the US X Factor
- Reports state that at 2018 Spears had a net worth of \$59m (£46m) with \$1.1m spent on legal and conservator fees
- Alleged abusive restrictions include:
 - Forced birth control
 - Dating / marriage restrictions
 - Home decor



What is the conservatorship?

- Granted by a court for individuals who are unable to make their own decisions.
- Split into two parts
 - one for estate and finances
 - the other for the person.

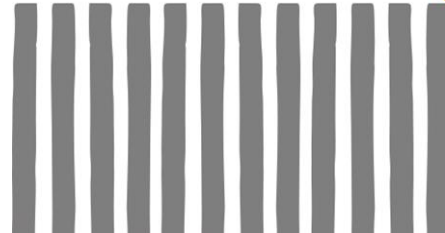
Jersey Delegations

Capacity and Self-Determination (Jersey) Law 2016

- Delegate may only make decisions (ie. impose restrictions) concerning health and welfare if
 - permitted by the Court Order; and
 - the person does not have capacity to make those decisions for herself.
- Capacity is time and subject-matter specific.
- Must give the person all the help they need to make a decision themselves
- Right to make unwise decisions

If they don't have capacity - Best interests decisions

- past and present wishes, beliefs and values, views of family members and carers
- hold the decision off as they might regain capacity?
- Must restrict basic rights as little as possible.




Jersey Delegations

Excluded decisions

Delegate cannot consent on behalf of the person to

- marriage or a civil partnership
- sexual relations
- divorce or dissolution civil partnership
- a child being placed for adoption
- making of an adoption order
- organ donation
- fertility treatment
- parental responsibilities

Only the Court can make decisions about these issues Re C [2020]JRC150A



Jersey Delegations

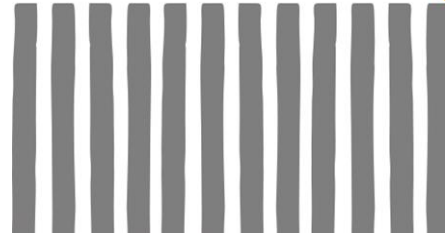
Independent Capacity Advocates

- Support the person to participate in their decision-making
- Obtaining information about and representing the person's best interests
- Ascertaining their wishes and feelings, beliefs and values
- Where the person has no family

Re C [2020]JRC150A

Court orders included

- C resides at specific address
- Subject to care plan with substantial supervision and restrictions
- Supervised social contract
- Contact with husband
- Lacked capacity to consent intimacy



Thank you



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