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Paternalism -v- Empowerment



Many decades ago the section of the court system that then dealt with those who were mentally incapable was the Chancery Division of the High Court which was said to deal with 'wills, wives and wrecks'. In other words, probate matters (as now), matrimonial issues (now dealt with by their own court called The Family Court), and shipping matters. The 'wrecks' were maritime rather than human. Cases relating to those without mental capacity were headed 'In Lunacy'. That was an age of paternalism; and not always very benign.

Gradually the law in relation to those lacking mental capacity entered a world of kinder paternalism where others knew best and the mentally incapable were treated almost as children.

The landscape has yet again changed and we are now in a culture where those lacking mental capacity are to be 'empowered' wherever possible to make decisions with whatever means and support is available.

The practical effect on those managing the affairs of those without mental capacity, whether by a Power of Attorney (Enduring or Lasting) or as a Court-appointed 'Deputy' is significant.

The terminology of the Court and its administrative system is only slowly catching up

with the new ethos. The administrative head of the system is called 'The Public Guardian' (which even though I have been dealing with his office for more than 20 years still carries 'caped-crusader' connotations for me).

The Mental Capacity Act 2005 is approaching its tenth birthday. By this a person is to be assumed to have mental capacity and to be able to make their own decisions unless it is established that they do not. They are to be helped to make as many of their own decisions as possible by those managing their affairs. And just because someone does not make a wise decision it does not mean that they are to be treated as incapable of making a decision. It is reassuring to know that even in 2014 the law enshrines the right of an English man or woman to be eccentric.

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