

The Mental Capacity Minefield

Unlocking estate planning
opportunities for Deputies
and Attorneys



A Warm Welcome



James Ward
Partner & Head of Private Client
Kingsley Napley



KINGSLEY NAPLEY
WHEN IT MATTERS MOST



Our Speakers



James Ward
Partner & Head of Private Client
Kingsley Napley



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Senior Associate, Private Client
Kingsley Napley



Matthew Steiner
Corporate Director
Stellar Asset Management

Agenda

- ★ Examining the Issues
- ★ The difference between a Deputy and an Attorney
- ★ Duties and responsibilities
- ★ Common problems and case studies
- ★ When a Financial Adviser is required when carrying out estate planning
- ★ How Stellar can assist
- ★ Investing as a Deputy or an Attorney – New Service
- ★ Questions

Examining the issues

- ★ Attorneys and Deputies are able to invest on behalf of another, “P”, as part of their duties
- ★ They cannot do whatever they like and must show that they have considered the person’s circumstances
- ★ This may require inheritance tax and financial planning with the assistance of an adviser
- ★ Decisions must be made in a person’s best interests
- ★ There is a lack of awareness in the market

Deputies v Attorneys

Deputies

- ★ Appointed by the Court of Protection
- ★ Annual reporting required by the Office of the Public Guardian
- ★ Required to take out insurance – known as a bond
- ★ General Authority includes appointing a financial adviser

Attorneys

- ★ Appointed by the execution of a Lasting Power of Attorney
- ★ No scrutiny unless complaint made
- ★ Authority to delegate to a financial adviser must be explicitly referenced in document

Professional or Lay Person

Professional Attorney/Deputy:

- ★ Is permitted to charge for their services
- ★ Will have experience in people and financial management
- ★ Will often deal in high value and complex matters

Lay Attorney/Deputy:

- ★ Cannot charge for their services
- ★ Are likely to require more advice and assistance from other professionals

How they make decisions

When P lacks capacity decisions must be made in their “best interests”

This requires consideration of:

- ★ Their wishes and feelings
- ★ Their past views and beliefs
- ★ Views of others such as family, friends and carers
- ★ Consideration of all relevant circumstances
- ★ They must invest for the person’s benefit, not their own

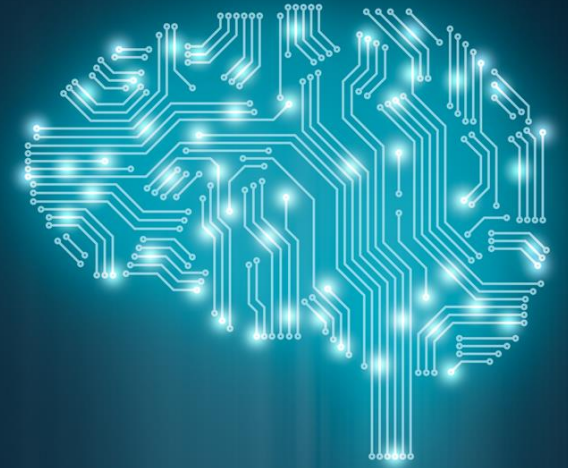


How they make decisions

- ★ They must keep their own money separate from P's where possible to avoid mistakes or confusion
- ★ They must not take advantage of their position
- ★ They must not personally profit or benefit from their position
- ★ They must not allow someone else or a financial adviser to decide something that they should, unless it has been authorised in the LPA or by the Court

Other considerations

- ★ Tax
- ★ Care
- ★ Wills and beneficiaries
- ★ Keeping records
- ★ Fraud



Case study

Mrs P

- ★ 81 years old, 2 children
- ★ Recently downsized property due to be sold for £3+ million and now living in annexe of son's home
- ★ Pension and benefits worth £48k per annum
- ★ Diagnosed with dementia, executed LPA in favour of children
- ★ No authority to delegate to financial adviser in LPA
- ★ Requires care, current cost £24k per annum
- ★ Now deemed to lack capacity to make decisions regarding finances



How Kingsley Napley assist

Mrs P

- ★ Legal advice regarding their obligations and responsibilities as Attorneys including the sale of the property
- ★ Legal advice on Court application to obtain authority to delegate to financial adviser
- ★ Legal advice on Court application to execute a Statutory Will
- ★ Legal advice on Court application to make gifts as part of tax planning

When a Financial Adviser is required

According to the Guidance from the Office of the Public Guardian a Deputy or Attorney should work with a financial adviser when they:

- ★ feel they do not have relevant experience or knowledge
- ★ need to show they have taken advice
- ★ need to diversify or review the person's investments
- ★ need advice from a specialist adviser on specific investment types

When a Financial Adviser is required

Thought must be given to P's current and future financial needs including:

- ★ Age, health and life expectancy
- ★ Income and outgoings and how these may change
- ★ Total assets
- ★ Cost of care and accommodation
- ★ Property costs
- ★ Anticipated future expenditure
- ★ Gifts or payments to dependents (this may involve a Court application)
- ★ Funds required for emergencies

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If you would like legal advice or legal assistance, please contact us: www.kingsleynapley.co.uk

The Deputy and Attorney Service



Matthew Steiner
Corporate Director
Stellar Asset Management



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Introducing Stellar

About us

- ★ Managing tax advantaged investments for 30 years
- ★ Assets under management £310m
- ★ Specialists in **Business Relief** qualifying activities

Our Approach

- ★ Provide financial advisers with options
- ★ Matching each client's needs
- ★ Create real diversification to mitigate risk
- ★ Partner services for wider aspects of estate planning

▶ Inheritance Tax Services that provide families with financial **reassurance**, now and in the future.

Business Relief

100% Relief from Inheritance Tax after 2 years

Features

- ★ Formerly Business Property Relief (BPR)
- ★ 1976 Finance Act
- ★ Applies to qualifying businesses activities
- ★ 100% relief from Inheritance Tax after 2 years

Benefits

- ★ Qualifying assets have a nil value for IHT in the estate
- ★ No transfer of capital or asset deprivation
- ★ Relief continues between spouse and civil partners
- ★ Wide IHT planning application
- ★ **Deputies and Attorneys need the correct investment permissions**



Stellar Inheritance Tax Services

Services for clients and their families

Portfolio Services

The Stellar ITS

AiM Portfolio Services

AiM IHT Service

AiM ISA IHT Service

AiM Platform Services

Personal Trading Companies

Conservative Growth IHT Service

Growth IHT Service

Family Trading Companies

Business IHT Service

Bespoke IHT Service





Partner Services

A collaborative approach to estate planning

Estate Planning Services

Estate Administration Services

Estate Administration
Probate Lending
Probate Solutions

Executor and Trustee Services

Executorship
Power of Attorney
Trust and Trustee Services
Will Writing

Family Wealth Planning Services

Complex Family Wealth Planning
Family Investment Companies
Family Office Services
Families and Succession Planning

Tax Advisory Services

Inheritance Tax Planning
Tax Advice for High Net Worth
Individuals
Tax Advice for Trusts and Trustees

Business Services

Business Management Services

Accounts and Bookkeeping
Business Concierge
Intellectual Property Review Service
IR35 Advice
Lending and Financial Consultancy

Business Taxation Services

Business Structures and
Transactions
Business Succession
Contentious Planning
Disputes and Investigations
Employee Ownership Trusts
Personal Trading Company Advice
Research and Development Tax
Credits
Tax Advice

Property Taxation Services

Business Owner Mortgages
Residential Property Incorporation
Stamp Duty Land Tax

Consultancy Services

Forecasting and Planning

Cash Flow Modelling
Digital Estate Planning
Digital Life Administration
Discretionary Fund Management

Lifestyle and Later Life Services

Funeral Planning
Lifestyle Concierge
Long Term Care Insurance

Legal Services

COVID-19 Advice
Estate Planning for International
Clients
Estate Planning for US Citizens
Residence and Domicile Advice

Case Study

Mrs P

Attorney Planning

- ★ The Stellar ITS was recommended to:
 - ★ mitigate IHT liability
 - ★ provide security and modest capital growth
 - ★ retain ownership of capital
 - ★ To create a tax efficient legacy for the beneficiaries



The Stellar ITS

A Discretionary Managed IHT Service

Key Features

- ★ A diversified portfolio of business activities
- ★ Usually asset backed/physical assets
- ★ Activities include forestry, property development and hotels
- ★ Annual target return of 3% - 4.5% (net of fees)

Benefits

- ★ Relief from IHT after two years
- ★ Control of and access to capital
- ★ Exposure to existing assets
- ★ Risk mitigation
- ★ Monthly liquidity

The Stellar ITS

Application and Structure

Shareholding

- ★ Mrs P receives shares in underlying IHT companies
- ★ 2-year clock starts
- ★ Shares held via discretionary portfolio (nominee)
- ★ Share capital is allocated to business activities

After 2 years a holding in the Stellar ITS should attract 100% relief from IHT provided the shares are held at the point of death

Structure



The Stellar ITS

Business Activities

Current Activities



Hotels



Bridging
Finance



Commercial
Forestry



Commercial
Property
Development



Golf
Courses



Care
Homes



Residential
Property
Development

Structure



The Stellar ITS

A Discretionary Managed IHT Service

Allocation to Business Activities



Share capital is allocated to new and existing business activities



All activities qualify for Business Relief



Each individual business is owned within a partnership; and each partnership is owned by shareholders

Structure



The Stellar ITS

A Discretionary Managed IHT Service

Allocation to Business Activities



Target return of 3% to 4.5% per annum



Target performance is net of Stellar initial and annual Fees



Capital preservation helps to reduce risk

Structure



Stellar Inheritance Tax Services

Planning Ideas

For individuals and families

- ★ reduce IHT liabilities
- ★ legacy planning
- ★ keep control of and access to capital
- ★ shelter surplus capital

ISA Planning

- ★ annual allowance
- ★ ISA transfer
- ★ APS transfer

Trust Planning

- ★ reduce or remove CLT
- ★ reduce periodic charges
- ★ Increase tax efficiency

Business owners and succession

- ★ surplus capital
- ★ proceeds of sale
- ★ buy to let incorporation

For clients with loss of capacity

- ★ Attorneys (LPA)
- ★ Deputies (COP/Office of the public guardian)

Family Office Services

- ★ active investment strategies
- ★ bespoke planning
- ★ higher net worth planning



Investing as a Deputy or an Attorney

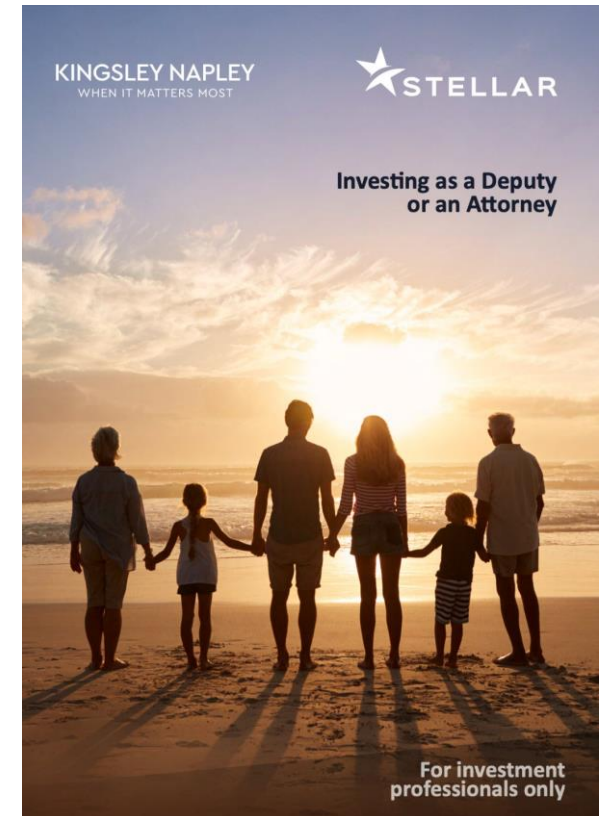
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Investing as a Deputy or an Attorney

About the Services

- ★ Attorney Service
- ★ Deputy Service (Professional)
- ★ Deputy Service (Lay)
- ★ Trusts



Investing as a Deputy or an Attorney

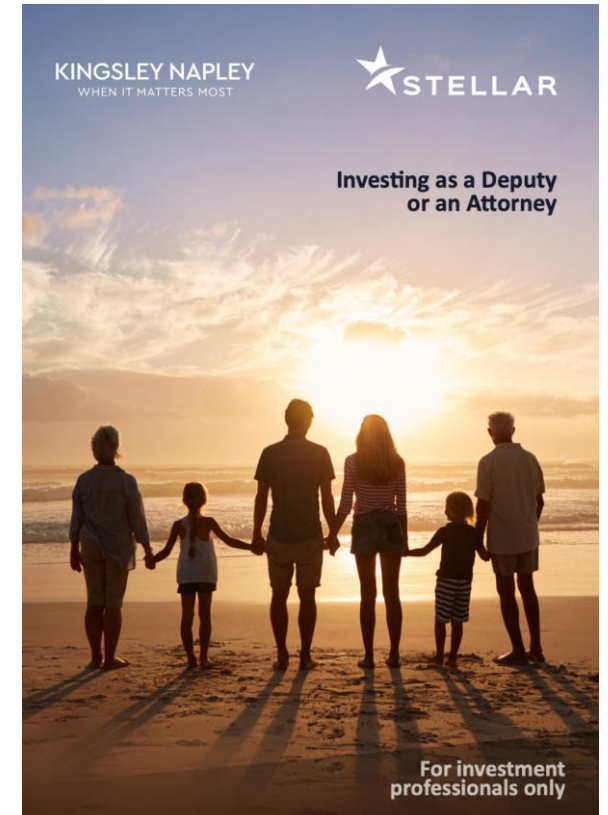
Attorney Service

Kingsley Napley will:

- ★ provide a review service for the Attorney to understand the requirements of the individual;
- ★ advise on Office of the Public Guardian obligations and assist with any necessary Court applications for authority to act as required, this may include confirming appropriate investment powers in place;
- ★ introduce Attorney to Stellar to consider investment instruction by requesting investment proposal, directly or via a financial adviser.

If selected, Stellar will:

- ★ provide ongoing Investment management services, including tax planning; and
- ★ formally report to the Attorney on a quarterly basis.



Investing as a Deputy or an Attorney

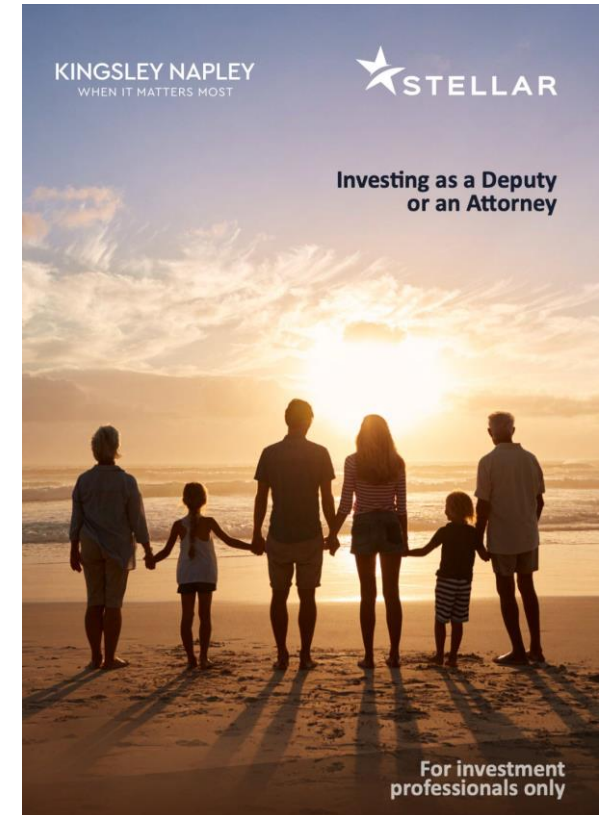
Deputy Service (Professional)

Kingsley Napley will:

- ★ act as Professional Deputy, Order of authority includes permission to an investment fund manager on a discretionary basis;
- ★ consider requesting investment proposal from Stellar or via financial adviser.

If selected, Stellar will:

- ★ provides on-going Investment management services, including tax planning; and
- ★ formally report to the Deputy on a quarterly basis.



Investing as a Deputy or an Attorney

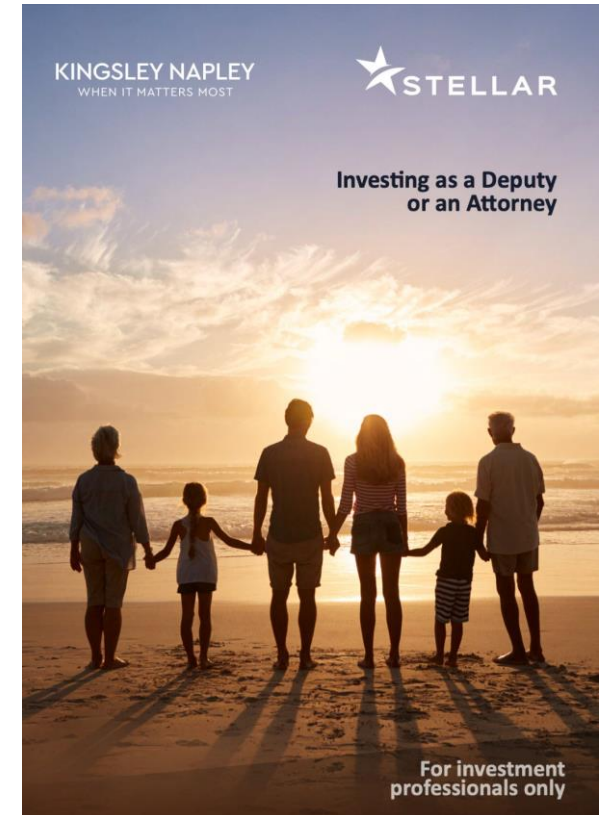
Deputy Service (Lay)

Kingsley Napley will:

- ★ understand the requirements of the individual;
- ★ advise on Court of Protection obligations and assist with any necessary Court applications for authority to act as appropriate;
- ★ introduce Deputy to Stellar to consider investment instruction, directly or via a financial adviser.

If selected, Stellar will:

- ★ provide on-going Investment management services, including tax planning; and
- ★ formally report to the Deputy on a quarterly basis.

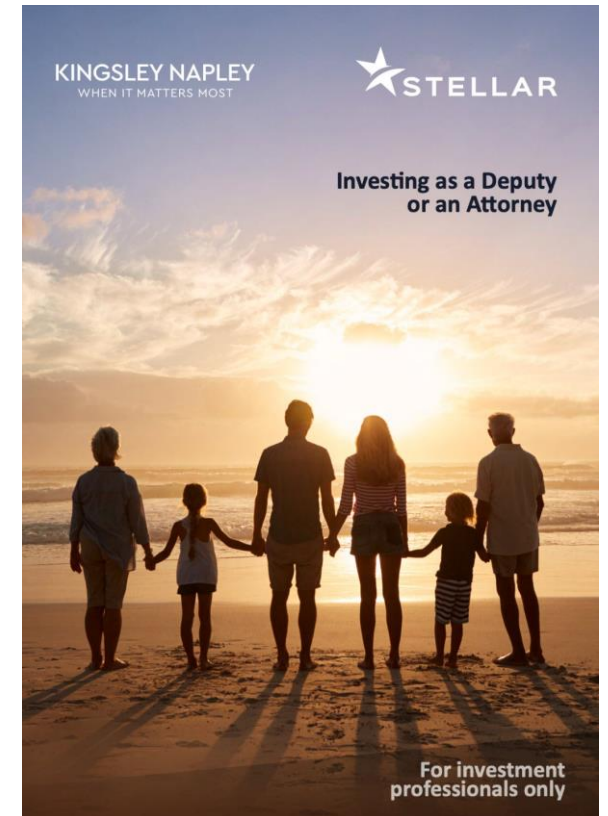


Investing as a Deputy or an Attorney

Trusts

Kingsley Napley will:

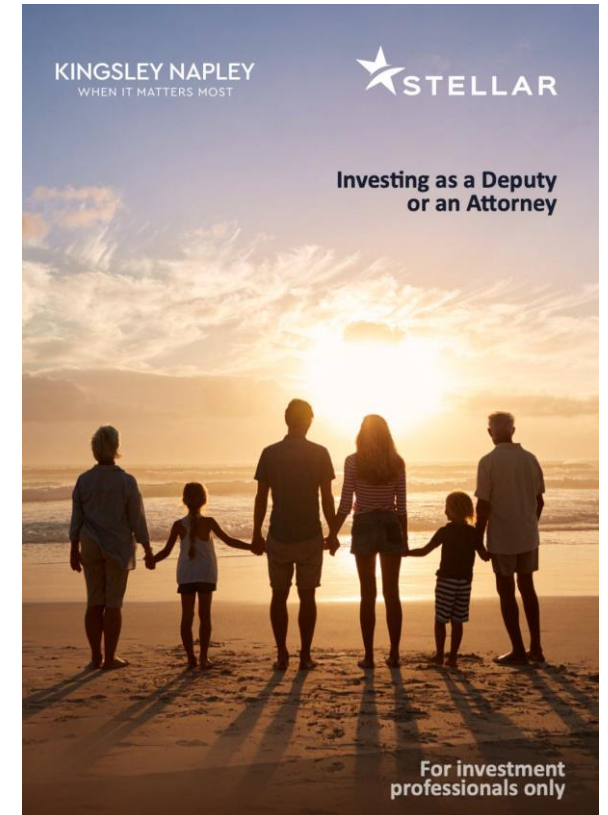
- ★ Kingsley Napley assists clients in setting up Personal Injury Trusts following receipt of compensation award in order to ring-fence funds from benefits and care funding means tests.
- ★ Kingsley Napley may also act as Professional Trustees for such clients.
- ★ Kingsley Napley can provide advice in respect of the Trustees fiduciary duties. Proper management of funds will be essential to ensure funds can meet lifetime care costs.
- ★ If acting as a Professional Trustee, Kingsley Napley may request an investment proposal from Stellar.
- ★ Lay Trustees may also seek advice from Kingsley Napley in order to comply with their duties as Trustees.
- ★ Kingsley Napley may introduce Stellar to Trustees so that they can consider their proposals, including tax planning advice.
- ★ If instructed, Stellar formally report to the Trustee on a quarterly basis.



Investing as a Deputy or an Attorney

Next Steps

- ★ Our service is designed to support you, if you have clients who are acting as deputies or attorneys and who could benefit from:
 - ★ increased awareness of their obligations to P
 - ★ investment planning advice
 - ★ tax planning advice
 - ★ mitigating Inheritance tax
- ★ Clinic on Thursday, 7 October 2021 – contact us to make an appointment
- ★ Contact us to start the conversation



Questions



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Join us at the Stellar Estate Planning Virtual Summit on 21 October

Register your free place today

Stellar Estate Planning Virtual Summit

Money, Mortality and
the Modern Family

Thursday, 21 October 2021



Sponsored by:

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Find out more

To book your place please visit:
www.stellar.am.com/events/

Contact us

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Thank you



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