



martin searle
solicitors

Making Sense of the Law

Services for Professional Deputies and Attorneys

Community Care and Employment Law Advice and Training



About us

I lead the Community Care Law team at **martin searle solicitors**, a niche Community Care Law and Employment Law firm I co founded in 2004.

My team has always specialised in traditional public law areas, challenging Health and Social Care decisions about funding and care packages. We built upon our existing expertise to offer a full range of Community Care Law areas including Mental Capacity law, Court of Protection litigation, Safeguarding and NHS Continuing Healthcare funding.

The Care Act 2014

As a Community Care Law practitioner, I had high hopes that the **Care Act** would make a meaningful difference for people reliant upon Health and Social Care services. The provision of a statutory basis for Adult Safeguarding in April 2015 was reason to celebrate. However, the timing of the Care Act and the ongoing austerity cuts have resulted in an increasing number of disappointing public law decisions. Unfortunately, vulnerable clients are finding it harder to access basic health and social care services and funding.

Now more than ever, an understanding of the principles of Community Care Law and public law is fundamental to the everyday practice of private and elderly client solicitors. The **OPG Professional Deputy standards** further emphasise the importance of exploring all potential sources of state funding for clients.

Why work with us?

Our firm is founded on our ethos of co-operation, best practice and putting the client first. This resulted in our firm creating a new service, which includes Employment Law support, for Professional Attorneys and Deputies.

We work collaboratively with solicitors' firms across England, sharing our expertise to complement your areas of legal practice and enhance your existing services. Our teams' services add value to your practice and ensure that your clients receive essential Community Care Law and Employment Law advice.

Please get in touch if you would like to know more.

Kind regards



Cate Searle, Director



Our Service for Professional Deputies won the Law Society Award for Excellence in Business Development in October 2016. The judges recognised that our service addresses significant issues facing Professional Deputies and Attorneys. By providing complementary Community Care Law, and Employment Law advice and representation, we add significant value to the service already offered by the Deputy to their vulnerable client.

The Care Act 2014



Keeping up with the Care Act 2014

Introduced in April 2015, the Care Act 2014 overhauled the social care system, changing vital aspects of care and support for the vulnerable and elderly. In July 2015, the Office of the Public Guardian (OPG) issued new guidance for Deputies and Attorneys.

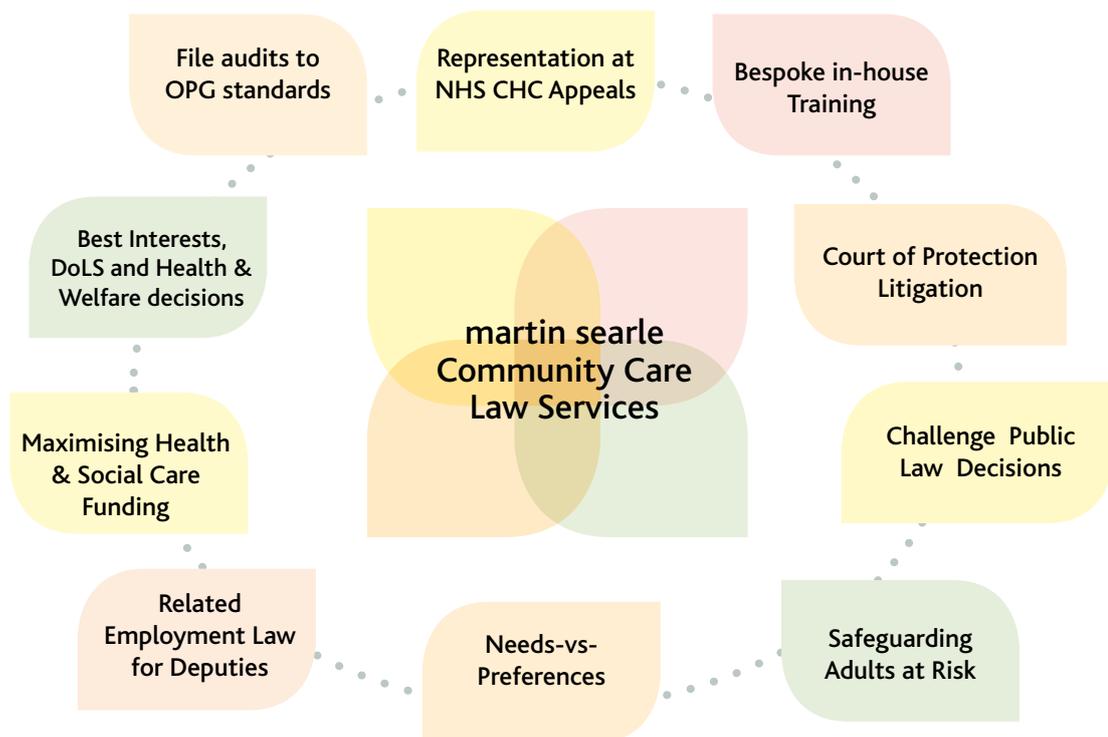
Health and social care funding is under increasing financial pressure and with the interpretation of a relatively new law evolving, keeping up with the Care Act, and its implications for your vulnerable clients, is difficult.

Our holistic approach to Community Care Law

Our holistic service for [Professional Deputies and Attorneys](#) is designed to help you to ensure that you are achieving the best possible outcomes for your vulnerable clients, their families and their carers.

Under the guidance of Cate Searle, a recognised expert in [NHS Continuing Healthcare](#) (NHS CHC) and Community Care Law, our team can also help you to ensure that you are surpassing the five Professional Deputy Standards, protecting your clients and your practice in even the most complex cases.

Supporting Professional Deputies and Attorneys



The Challenge

Best Practice and the five Professional Deputy Standards

In July 2015, the Office of the Public Guardian (OPG) issued new guidance to ensure that all professional and local authority Deputies meet the standards. In March 2017, the OPG published their good practice guide for Professional Attorneys.



We can help

Understanding and demonstrating best practice is critical for your client and your practice

Whether you are a Professional Deputy or Attorney, Private Client, Elderly Client, Wills Trusts & Probate, or a Personal Injury solicitor, our specialist Community Care Law team can work proactively or behind the scenes to help you achieve the best outcomes.

Professional Outcomes

Achieving outstanding outcomes for your clients

However you choose to engage us, we will deliver outstanding outcomes for your clients, while protecting and growing the reputation of your practice.

Outcomes include:

Securing the maximum NHS CHC funding awards for clients with complex healthcare needs

Ensuring health and social care funding for clients with Personal Injury settlements

Challenging inadequate health and social care packages in order to improve your client's quality of life

Resolving [safeguarding disputes](#) involving vulnerable clients

Enabling Deputies to demonstrate compliance with OPG Professional Deputy Standards Guidance

Assisting Deputies to avoid complaints or claims from 'disappointed beneficiaries' when Estate assets are depleted by care costs

Helping you to build [Community Care Law](#) expertise and experience within your practice

Providing [Employment Law advice](#), support and contracts for Deputies, Attorneys, and carers.

“Cate is brilliant in meetings dealing with sensitive issues in Social Services meetings, having the experience and ability to respond quickly and professionally in challenging matters. The written advice received is excellent, thorough and answers the questions raised. With Cate's help, I am gaining valuable experience.”

Liz, Professional Deputy



Our Services

Case file audits for complex cases

- We provide comprehensive advice and find solutions to funding long-term care, NHS Continuing Healthcare entitlement and Social Services funding eligibility.

This will ensure that your client receives the correct state funding to reflect their individual needs and circumstances.

- We audit case files against OPG Standards.

This can be carried out prior to an OPG visit to give you confidence and provide valuable learning.

- We can provide an initial audit when you are first appointed as Deputy or Attorney.

This assesses the client's care and funding history and gives your team invaluable recommendations as to the best strategy moving forward.

- We offer an annual audit of all your case files.

This ensures you are always up to date with the evolving interpretation of the Care Act 2014 and enhances your team's knowledge of Health and Social Care Law in practice.

Case Studies

A large Professional Deputy Team in the North West awaiting their first OPG Professional Deputy Standards Audit asked us to assess three complex cases to give them confidence that they had accessed all of the available health and social care funding and relevant state benefits for their clients.

Case 1

Jack had suffered a traumatic brain injury and has physical disabilities. His NHS Continuing Healthcare funded most of his weekly care and support costs. We confirmed that the Deputy had acted correctly in funding additional services on a Best Interest basis.

Case 2

Tom had been severely injured in a hit and run accident and lived at home with care provided by his family and carers. Our audit identified that the Deputy should ask Social Services for an increased package of care. Tom's wife should complete a Care Act Carer's Assessment to access additional carer's benefits.

Case 3

Liza's PI settlement was still being negotiated. Social Services expected her to self fund the care at home package on discharge from hospital. We advised that the Deputy should insist upon an NHS Continuing Healthcare assessment, which if successful, would result in Liza having her care at home package funded by the NHS.

The Deputy and his team found our recommendations invaluable and the OPG Audit went very well.



Community Care Law for Personal Injury solicitors

- We provide expert opinion on the sustainability of current health or social care packages to inform settlement negotiations.

This includes a 'paying for care' audit for your client's PI settlement in relation to state funding. This ensures peace of mind in situations where health and social care funding can't be guaranteed.

“ I am a solicitor specialising in catastrophic brain injury Personal Injury claims. We recently instructed Cate Searle to prepare a report, advising on the likelihood of our client remaining eligible in the future for NHS Continuing Healthcare funding and any likely changes that would be made to the client's public funding in the future.

Cate's report was balanced, authoritative, incisive and extremely helpful. Both Queens Counsel and I were very impressed with the quality of Cate's work. Cate also later provided advice to the client and the care home on how best to maximise the client's chances of retaining continuing healthcare funding, which our clients were very pleased with.”

Francis Lacy Scott, Partner ASB Law,
Head of Claims – Brain Injury Specialist, Chair of Headway Hurstwood Park

Our Services

Challenging public law decisions made by Health & Social Services about care packages and funding including Judicial Review

We work with your Deputies to assess cases, provide expert opinion and challenge flawed public law decisions.

Representing your clients in the Court of Protection, at Best Interest Meetings, Assessments and NHS CHC Appeals

- We represent and advise your client on Health and Welfare issues, Safeguarding and Deprivation of Liberty Safeguards (DoLS) in the Court of Protection. We can work behind the scenes or litigate the matter on your behalf.
- We can represent your Professional Deputies and Attorneys at NHS Continuing Healthcare (NHS CHC) assessments and appeals to secure funding for vulnerable clients. We bring our Community Care Law expertise to build your client's case for a primary healthcare need.
- We are advocates in the Court of Protection for contested financial or health and welfare disputes between family members or disputes with Health and Social Services.
- We represent your clients in Best Interest meetings with a view to avoiding litigation.

Case Study

Jane is a Professional Deputy for Anna, a child who had suffered lifelong injury at birth. Anna had received a lump sum general settlement for £3 million when she was nine years old, to be administered through the Court of Protection.

Anna lived at home with her mother with a comprehensive care package funded by Social Services. When she turned 18, Social Services began to invoice the Deputy for Anna's care at home package.

We identified that Social Services had either misunderstood the way that the Care Act treats Personal Injury trusts and damages administered through the Court of Protection, or were incorrectly applying the law about Double Recovery. Social Services backed down. We also advised that Anna should be referred for an NHS Continuing Healthcare assessment to secure future funding.

Our Services

Tailor-made in-house training for your Professional Deputies, Attorneys and supporting legal teams.

Cate Searle and Chloe Smith regularly deliver national and regional [Community Care Law seminars](#).

We deliver Community Care Law training sessions relevant to your day to day casework.

We ensure that your team are fully up to date with case law and guidance. We provide interactive training based on real-life case studies, so your team can develop the best approach to challenging the complex legal issues that the older, vulnerable or disabled client group experience.

Many Deputies find that our training allows them to identify which cases can be dealt with in-house, and which complex cases require expert Community Care Law support.

“ We recently asked Cate Searle to provide some training to us as Professional Deputies and to our support team in relation to the Care Act and welfare benefits.

Cate was extremely knowledgeable and provided really useful case studies which helped illustrate the issues to be aware of in a very practical and understandable way.

Every member of the team found the training both engaging and informative and I would not hesitate to recommend this to other Professional Deputies and their teams.”

Richard Shearing, Partner, Dean Wilson LLP



Chloe Smith

Examples of our Training courses

[Paying For Care](#)

Care Act 2014

NHS Continuing Healthcare

[Mental Capacity Act & Code of Practice](#)

Best Interest Decision Making & Safeguarding

Deprivation of Liberty Safeguards (DoLS)

Introduction to Community Care Law

[Employment Law Essentials for Deputies](#)

Education Law Services for Professional Deputies and Attorneys

The Children and Families Act 2014 required children and young people who previously had a Statement of Special Educational Needs (SEN) to transfer over to an Education, Health and Care Plan (EHCP) by 1 April 2018 at the latest.

The challenge for Professional Deputies and Attorneys for disabled children and young people is ensuring that clients can access the right level of public funding, services and opportunities to which they are entitled.

Why seek expert help?

Optimising the SEN provision in your client's EHCP can significantly improve their ability to access public authority funding and reduce their reliance upon settlement funds.

In addition, SEN provision is integral to promoting your client's health and wellbeing in accordance with the OPG Health and Welfare Standards. As well as the choice of school or placement, this can also cover therapies, additional learning support, and equipment.



Services we provide

We provide a complete support service for Professional Deputies whose clients have EHCPs, or you can simply ask us to get involved on a case-by-case basis.

Case specific advice

- Expert advice and Part 35 Reports to inform settlements, including likely future costs associated with educational, health and care provision.
- Comprehensive advice and solutions to optimise the SEN provision for your client and maximise public authority funding.
- Audits of EHCPs and advice on how to improve them.
- Advising on transfer to an EHC plan and EHCP reviews.
- Specialist advice on transitions between educational stages and on transitions to adult health and social care.
- Legal advice on transport from home to school or placement.

Mediation and representation

- Correspondence, meetings and mediation with Local Authorities on behalf of your client.
- Advice and representation for SEN appeals to challenge inadequate provision.

Capacity building and Practice support

- Initial audits for newly appointed Deputies.
- Auditing case files against OPG standards.
- Tailor-made in-house Education Law training for Deputies and supporting teams.
- Integrated Health, Social Care and Education Law advice for clients aged 0-25 and related public law challenges.
- The application of the Equality Act 2010 in Special Educational Needs.

Why come to us?

Martin Searle Solicitors provides specialist services for Professional Deputies and Attorneys. Our team has a strong track record in Education Law and Community Care Law for disabled children, young people and those with Special Educational Needs.

For more information, contact our team on **01273 609911** or e-mail deputyservices@ms-solicitors.co.uk



Our Services



Employment Law for Professional Deputies and Attorneys

- Providing contracts, consultancy agreements, handbooks and policies.
- Advising on the specific Employment Law issues commonly faced by Deputies including dealing with care agencies and advising on TUPE when outsourcing or bringing the care package back in-house.
- Supporting Deputies dealing with grievances, poor performance and disciplinary hearings.
- Avoiding contravening equality legislation. Discrimination issues can occur between the client, their family and carers which makes them particularly complicated.
- Ensuring compliance on family-related rights to meet statutory requirements. This could include dealing with a carer's pregnancy and maternity leave, flexible working requests, Working-Time Regulations, National Minimum Wage and Auto-enrolment pensions.

For more information contact Fiona Martin
fiona@ms-solicitors.co.uk

Case Study

A Professional Deputy instructed us on behalf of her client, Jim, who had complex care needs requiring round-the-clock care. Jim's care package was provided by an agency. The Deputy felt that the package was expensive, did not meet her client's needs, and placed a great deal of strain on the family.

We discovered that the agency was in breach of contract and had failed to deliver the appropriate care as set out in Jim's care plan. We advised on the legal consequences of employing carers directly, including TUPE. We helped the Deputy to cancel the Agency Agreement and recruit directly. This vastly improved her client's standard of care by drawing on a smaller pool of skilled carers and saved money on agency fees.

“The Employment Law team at ***martin searle solicitors*** provides employment expertise and support to my firm where we act as Professional Deputy or on behalf of Lay Deputies. Their advice is always clear and concise, and it is our pleasure to recommend them.”

Jane Bennett, Managing Director at
JE Bennett Law, Solicitor, & Court of
Protection Deputy

Working with you



Contact our specialist teams today

If you have Employment Law enquiries please contact:

Fiona Martin, Director & Head of Employment Law on 01273 609911 or email fiona@ms-solicitors.co.uk

If you have Community Care Law cases involving vulnerable adults and would like an initial discussion to explore how we can help, please do get in touch today:

Contact Chloe Smith on 01273 609911 or email chloe@ms-solicitors.co.uk

Join our LinkedIn Group: NHS Continuing Healthcare For Lawyers

Our group promotes information sharing and problem solving amongst legal professionals so that we are all better equipped to assist our clients in challenging unfair NHS decisions.

Stay up to date with our newsletter

Sign up to receive our regular newsletter email info@ms-solicitors.co.uk

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