

# **PRACTICE DIRECTION – CASE MANAGEMENT PILOT**

## **PART 1 — GENERAL**

### **1.1**

This Practice Direction is made under rule 9A of the Court of Protection Rules 2007 (“CoPR”). It provides for a pilot scheme for the management of cases within which cases to which the pilot applies, and which are not excepted cases, are allocated to one of three case management pathways.

### **1.2**

Where the provisions of this Practice Direction conflict with the provisions of the CoPR and the practice directions supporting the CoPR, this Practice Direction shall take precedence.

### **1.3**

The pilot scheme is to—

- (a) operate from 1st September 2016 to 31st August 2017;
- (b) apply to all proceedings which are started (in accordance with rule 62) on or after 1st September 2016.

(Rule 62 provides that proceedings are started when the court issues an application form at the request of the applicant.)

### **1.4**

Where the pilot scheme applies—

- (a) the CoPR will apply with the modifications set out in Part 2 of this Practice Direction and the annexes to it; and
- (b) the relevant practice directions will apply with corresponding modifications as set out in Part 2 of this Practice Direction and the annexes to it.

### **1.5**

In applying this Practice Direction and the CoPR and practice directions as modified by it, the parties must have regard to any guidance issued in relation to allocation of Court of Protection cases to High Court Judges.

## **Part 2 — Modifications**

### **2.1**

Where this pilot applies—

- (a) Parts 1 to 5 and 13, and rules 84, 85 and 86 in Part 12 (but not the practice directions supplementing them), are disapplied;
- (b) Pilot Parts 1-5 as set out in Annex A to this Practice Direction (which contains modified versions of those Parts in a new arrangement) will apply in their place, together with the practice directions supplementing the disapplied rules (renumbered as appropriate to supplement Pilot Parts 1-5); and
- (c) rule 72(5) and (7) will not apply where a case is allocated to a case management pathway.

### **2.2**

In addition, Part 15 will apply with the modifications set out in Annex B1 to this Practice Direction. Annex B2 to this Practice Direction contains Pilot Part 15 as so modified.

### **2.3**

References in the remainder of the CoPR to the disapplied rules are amended to refer to the modified rules which apply in their place, as set out in Annex C to this Practice Direction.

### **2.4**

The practice directions supporting the disapplied rules are renumbered so as to relate to the modified rules which apply in place of the disapplied rules, and references in those and other practice directions to the modified rules and renumbered practice directions are amended accordingly, as set out in Annex D to this Practice Direction.

## **Part 3 — Scope of the case management pathways**

### **3.1**

Rule 3.9 (as it appears in Pilot Part 3 of the CoPR in Annex A to this Practice Direction) provides for each case which is started in the CoP to be allocated to one of three case management pathways on issue, unless the case falls within an excepted class of cases specified in a practice direction. The excepted classes of case which are specified for this purpose are—

- (a) uncontested applications;
- (b) applications for statutory wills and gifts;
- (c) applications made by the Public Guardian;
- (d) applications relating to serious medical treatment (for which Practice Direction 9E makes specific provision);
- (e) applications in Form COPDOL10; and
- (f) applications in Form DLA.

### **3.2**

The scope of the pathways is as follows—

#### **THE PERSONAL WELFARE PATHWAY**

This will be the normal pathway for a case in which an application (other than an application relating to serious medical treatment) is made to the court to make or authorise one or more decisions and/or actions and/or declarations relating to P's personal welfare only.

#### **THE PROPERTY AND AFFAIRS PATHWAY**

This will be the normal pathway for a case in which an application is made to the Court to make or authorise one or more decisions and/or actions and/or declarations relating to P's property and financial affairs only.

#### **THE MIXED WELFARE AND PROPERTY PATHWAY**

This will be the normal pathway for a case in which the court is to be asked to make or authorise one or more decisions and/or actions and/or declarations relating not only to P's property and financial affairs but also P's personal welfare.

## Part 4 — The Personal Welfare Pathway

### 4.1

The Personal Welfare Pathway comprises six stages—

- (a) *The pre-issue stage* (see **paragraph 4.2**);
- (b) *The point of issue of the application* (see **paragraph 4.3**);
- (c) *Case management on issue* (see **paragraph 4.4**);
- (d) *The Case Management Conference* (see **paragraph 4.5**);
- (e) *The Final Management Hearing* (see **paragraph 4.6**);
- (f) *The Final Hearing* (see **paragraph 4.7**).

### 4.2

#### THE PRE-ISSUE STAGE

##### (1) *In all cases*

The applicant must take all necessary steps to—

- (a) identify all potential respondents to the proceedings which the applicant proposes to start, and any other interested parties;
- (b) notify P (where possible) and the potential respondents and other interested parties identified in accordance with sub-paragraph (a) of the applicant's intention to start the proceedings unless the matters which the court would be asked to determine can be resolved without the need for proceedings;
- (c) explain to those notified in accordance with sub-paragraph (b) the nature of the proceedings which the applicant proposes to start, and the matters which the court would be asked to determine in those proceedings;
- (d) set out the applicant's proposals for resolving those matters without the need for proceedings;

- (e) engage with those notified in accordance with sub-paragraph (b) to resolve those matters as far as possible;
- (f) ensure, where it is not possible to resolve those matters without starting proceedings, that all the documents and information required by paragraph 4.3 will be ready to be included with the application.

*(2) Additionally, in urgent cases*

Where the applicant intends to make an urgent or interim application, the applicant must consider—

- (a) why the case is urgent and what the consequences will be if the case is not treated as urgent;
- (b) if any of the steps in paragraph 4.2(1) cannot be taken, why this is the case and what the consequences would be if those steps were taken;
- (c) whether there is any specific deadline, and what that deadline is;
- (d) whether there are issues which are not urgent and how those could be separated from those which are urgent.

### **4.3**

#### **THE POINT OF ISSUE OF THE APPLICATION**

*(1) In all cases*

The applicant must include in the application, or refer in the application to and file with it, the following documents or information—

- (a) a draft final order or explanation of the order that is sought;
- (b) a clear explanation of why an order, and the specific order sought, is required;
- (c) an explanation of the nature of the dispute;
- (d) a statement of what is expected of P's family and/or other connected individuals;
- (e) the names of the key people involved in the case, and the nature of their involvement;
- (f) a list of the options for P;
- (g) a needs assessment, including where appropriate a risk assessment;
- (h) a support plan for P, with a time line, including where appropriate a transfer plan;
- (i) evidence that the key individuals and agencies have been consulted;

- (j) confirmation that a best interests meeting has taken place, and a copy of the minutes of that meeting;
- (k) any relevant medical evidence;
- (l) except in applications under section 21A of the Act, a report from a medical practitioner or other appropriately qualified professional on P's litigation capacity and capacity to make decisions on the issues in the case;
- (m) an explanation of how P can be supported to maximise any decision-making capacity which P has (if possible);
- (n) an indication of whether there is likely to be a public law challenge in the case, and if so, the nature of the challenge which is anticipated;
- (o) a statement of how it is proposed that P will be involved in the case.

*(2) Additionally, in urgent cases*

Where the application is urgent, the applicant must include in the application, or refer in the application to and file with it, the following information or documents in addition to those in paragraph 4.3(1)—

- (a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;
- (b) if any of the steps in paragraph 4.2(1) have not been taken, why this is the case and what the consequences would be if those steps were taken;
- (c) confirmation of any specific deadline;
- (d) information identifying and separating the issues which are urgent from those which are not urgent.

#### **4.4**

#### **CASE MANAGEMENT ON ISSUE**

*(1) In all cases*

Upon issue of the application, the papers will be placed before a judge for gatekeeping and initial case management directions. These will include—

- (a) gatekeeping: allocating the case to the correct level of judge, having regard to any guidance issued in relation to allocation of Court of Protection cases to High Court Judges;
- (b) listing for a Case Management Conference within 28 days (unless the matter is urgent, in which case paragraph 4.4(2) applies);
- (c) directions to ensure the Case Management Conference is utilised properly;

- (d) considering whether it is necessary for P to be joined as a party, and whether any other persons should be invited to attend the Case Management Conference so that they may apply to be joined (but not making any order for any person other than P to be joined at this stage);
- (e) directing the parties to consider who can act as litigation friend or rule 1.2 (as numbered in the modified Pilot Parts 1-5) representative for P if necessary;
- (f) considering what details of P's estate should be provided for the purposes of securing litigation funding or otherwise;
- (g) considering whether an advocates' meeting should take place before the case management conference, and ordering such a meeting if appropriate;
- (h) ordering the preparation of a core bundle (which must not exceed 150 pages, unless the court directs otherwise) for the Case Management Conference.

(2) *In urgent cases*

Where the application is urgent—

- (a) if the case is within a category which must be heard by a High Court Judge in accordance with any guidance issued in relation to allocation of Court of Protection cases to High Court Judges, it must be transferred to a High Court Judge;
- (b) the case will be listed urgently in accordance with the judge's directions.

## 4.5

### THE CASE MANAGEMENT CONFERENCE

At the Case Management Conference, the court will—

- (a) record the issues in dispute;
- (b) record what has been agreed between the parties;
- (c) record which issues are not to be the subject of adjudication in the case;
- (d) consider the appropriate judge for the case;
- (e) allocate a judge to the case;
- (f) actively consider and decide, having regard to rule 1.2 (as numbered in the modified Pilot Parts 1-5), how P is to be involved in the case;
- (g) consider whether a litigation friend is required for P, and if so, who is to be the litigation friend, and if the Official Solicitor is to be the litigation friend, declare that the appointment of the Official Solicitor is a last resort;

- (h) determine who should be a party;
- (i) set a timetable for the proceedings;
- (j) fix a date for the Final Management Hearing, and set a target date for the Final Hearing or fix a trial window as appropriate;
- (k) consider whether a further best interests meeting is required, and if so, give directions for that meeting;
- (l) give directions for evidence, including disclosure and expert reports (if appropriate having regard to sub-paragraph (m));
- (m) actively consider whether a section 49 report or the use of a rule 1.2 (as numbered in the modified Pilot Parts 1-5) representative could achieve a better result than the use of an expert;
- (n) consider whether there should be a public hearing;
- (o) give any other directions as appropriate to further the overriding objective.

#### **4.6**

##### **THE FINAL MANAGEMENT HEARING**

- (1) A Final Management Hearing will be listed to enable the court to determine whether the case can be resolved, and if not, to ensure that the trial is properly prepared, giving directions as necessary for that purpose.
- (2) A meeting should take place at least five days before the Final Management Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Management Hearing, addressing each of the matters required by Practice Direction Pilot 4B and preparing a draft order.
- (3) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Management Hearing, file a core bundle, which must comply with the requirements of Practice Direction Pilot 4B and in particular include the documents specified in paragraphs 4.2 and 4.3 of that Practice Direction.
- (4) If sub-paragraph (3) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.



## 4.7

### THE FINAL HEARING

(1) Unless otherwise directed by the court, a meeting should take place at least five days before the Final Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Hearing.

(2) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Hearing, file a bundle, which must—

- (a) comply with the requirements of Practice Direction Pilot 4B, with particular reference to paragraphs 4.6 and 4.7 of that Practice Direction; and
- (b) not generally exceed 350 pages and in any event not contain more than one copy of the same document.

(3) If sub-paragraph (2) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.

## Part 5 — The Property and Affairs Pathway

### 5.1

(1) The Property and Affairs Pathway commences at a later stage than the Personal Welfare Pathway. It is recognised that contentious property and affairs applications tend to arise when a routine application is made, for example for the appointment of a deputy, and that application is opposed. The vast majority of applications, however, remain unopposed, and there is not the need for a pre-issue stage which there is in personal welfare cases.

(2) The Property and Affairs Pathway comprises four stages—

(a) *When the application becomes contested* (see **paragraph 5.2**);

(b) *Case management on allocation to pathway* (see **paragraph 5.3**);

(c) *The Dispute Resolution Hearing* (see **paragraph 5.4**);

(d) *The Final Hearing* (see **paragraph 5.5**).

(3) *Urgent applications* are less likely in property and affairs cases; but **paragraph 5.6** contains provision for their management.

### 5.2

#### WHEN THE APPLICATION BECOMES CONTESTED

(1) When the court is notified in Form COP5 that a property and affairs application is opposed, or that the respondent wishes to seek a different order from that applied for, the case must be allocated to the Property and Affairs Pathway.

(2) A copy of the notification in Form COP5 must be served by the court on the applicant together with the order allocating the case to the Property and Affairs Pathway (see paragraph 5.3; and see also paragraph 2.1(c) which disapplies rule 72(5) and (7)).

### 5.3

#### CASE MANAGEMENT ON ALLOCATION TO PATHWAY

(1) Following notification in Form COP5 that the case is contested, the papers will be placed before a judge who will allocate the case to the Property and Affairs Pathway and either—

- (a) list the case for a Dispute Resolution Hearing; or
- (b) transfer the case to the most appropriate regional court outside the Central Office and Registry for listing of the Dispute Resolution Hearing and future case management.

(2) The judge will also order the respondent to file a summary of the reasons for opposing the application or for seeking a different order, if the reasons are not clear from Form COP5 submitted by the respondent.

### 5.4

#### THE DISPUTE RESOLUTION HEARING

(1) All parties must attend the Dispute Resolution Hearing, unless the court directs otherwise; but the Dispute Resolution Hearing is not an attended hearing for the purposes of *Practice Direction – Transparency Pilot*.

(2) The Dispute Resolution Hearing will normally take place before a District Judge.

(3) The purpose of the Dispute Resolution Hearing is to enable the court to determine whether the case can be resolved and avoid unnecessary litigation, and so—

- (a) in order for the Dispute Resolution Hearing to be effective, parties must approach it openly and without reserve; and
- (b) the content of the hearing is not to be disclosed and evidence of anything said or of any admission made in the course of the hearing will not be admissible in evidence, except at the trial of a person for an offence committed at the hearing.

(4) The court will give its view on the likely outcome of the proceedings.

(5) If the parties reach agreement to settle the case, the court will make a final order if it considers it in P's best interests.

(6) If the parties do not reach agreement, the court will give directions for the management of the case and for a Final Hearing, having regard to the list of matters in paragraph 4.5, and the requirements of Practice Direction Pilot 4B in relation to the preparation of a bundle.

(7) The Final Hearing must be listed before a different judge, and the judge will mark the order accordingly.

## **5.5**

### **THE FINAL HEARING**

The final hearing will take place in accordance with the directions given at or following the Dispute Resolution Hearing.

## **5.6**

### **URGENT APPLICATIONS**

(1) Where a property and affairs application is urgent, the applicant should bear in mind the obligation on parties to co-operate in rule 1.4(2)(c) (as numbered in the modified Pilot Parts 1-5).

(2) The applicant must include in the application, or refer in the application to and file with it, the following information or documents—

- (a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;
- (b) if the application is made without notice, an explanation why it was not possible to make the application on notice, and what the consequences would be if the application were to proceed on notice and the order or an interim order were not made immediately;
- (c) confirmation of any specific deadline;
- (d) information identifying and separating the issues which are urgent from those which are not urgent.

(3) On issue, the case will be listed urgently in accordance with the judge's directions after considering the papers, which may, if the matter appears or is confirmed to be contentious, be that—

(a) the case will proceed to a Dispute Resolution Hearing but listed urgently;

or

(b) the case may be listed for an interim hearing to decide the urgent matter or matters in the case, and the court can decide at that hearing whether any further hearing is necessary and if so, whether that further hearing should include a Dispute Resolution Hearing or not.

## Part 6 — The Mixed Welfare and Property Pathway

### 6.1

(1) Where a case contains both personal welfare and property and affairs elements, the court has the power to use whichever of the personal welfare or the property and affairs pathway it considers most suitable, or to direct the use of elements of both those pathways if it considers that appropriate.

(2) The Mixed Welfare and Property Pathway, therefore, comprises two stages before the court makes a decision about which pathway, or a mixture of elements of both pathways, is most appropriate—

The *pre-issue stage*, during which the prospective parties are expected to identify which pathway is most appropriate to the case and to comply with the requirements of that pathway and seek to resolve issues as far as possible;

The *point of issue of the application*, for which the parties must file a list of issues to allow the court to identify which pathway, or mixture of elements, is most appropriate.

(3) *Case management*: On issue of the application, the papers will be placed before a judge who will either—

(a) order the case to be allocated to a pathway and give directions accordingly; or

(b) give directions as to the elements of each pathway which are to apply and the procedure the case will follow.

# ANNEX A: PILOT PARTS 1-5

## PILOT PART 1 THE OVERRIDING OBJECTIVE

### Contents of this Part

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Participation of P	Rule 1.2
<i>Duties to further the overriding objective</i>	
Court's duty to manage cases	Rule 1.3
The duty of the parties	Rule 1.4
The duty of legal representatives	Rule 1.5
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### Overriding objective

**1.1.**—(1) These Rules have the overriding objective of enabling the court to deal with a case justly and at proportionate cost, having regard to the principles contained in the Act.

(2) The court must seek to give effect to the overriding objective when it—

- (a) exercises any power under the Rules; or
- (b) interprets any rule or practice direction.

(3) Dealing with a case justly and at proportionate cost includes, so far as is practicable—

- (a) ensuring that it is dealt with expeditiously and fairly;
- (b) ensuring that P's interests and position are properly considered;
- (c) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (d) ensuring that the parties are on an equal footing;
- (e) saving expense;
- (f) allotting to it an appropriate share of the court's resources, while taking account of the need to allot resources to other cases; and
- (g) enforcing compliance with rules, practice directions and orders.

### Participation of P

**1.2.**—(1) The court must in each case, on its own initiative or on the application of any person, consider whether it should make one or more of the directions in paragraph (2), having regard to—

- (a) the nature and extent of the information before the court;
- (b) the issues raised in the case;
- (c) whether a matter is contentious; and
- (d) whether P has been notified in accordance with the provisions of Part 7 and what, if anything, P has said or done in response to such notification.

(2) The directions are that—

- (a) P should be joined as a party;
- (b) P's participation should be secured by the appointment of an accredited legal representative to represent P in the proceedings and to discharge such other functions as the court may direct;
- (c) P's participation should be secured by the appointment of a representative whose function shall be to provide the court with information as to the matters set out in section 4(6) of the Act and to discharge such other functions as the court may direct;
- (d) P should have the opportunity to address (directly or indirectly) the judge determining the application and, if so directed, the circumstances in which that should occur;
- (e) P's interests and position can properly be secured without any direction under subparagraphs (a) to (d) being made or by the making of an alternative direction meeting the overriding objective.

(3) Any appointment or directions made pursuant to paragraph (2)(b) to (e) may be made for such period or periods as the court thinks fit.

(4) Unless P has capacity to conduct the proceedings, an order joining P as a party shall only take effect—

- (a) on the appointment of a litigation friend on P's behalf; or
- (b) if the court so directs, on or after the appointment of an accredited legal representative.

(5) If the court has directed that P should be joined as a party but such joinder does not occur because no litigation friend or accredited legal representative is appointed, the court shall record in a judgment or order—

- (a) the fact that no such appointment was made; and
- (b) the reasons given for that appointment not being made.

(6) A practice direction may make additional or supplementary provision in respect of any of the matters set out in this rule.

(The appointment of litigation friends, accredited legal representatives and representatives under paragraph (2)(c) is dealt with under Part 17.)

("Accredited legal representative" is defined in rule 2.1.)

### *Duties to further the overriding objective*

#### **Court's duty to manage cases**

**1.3.**—(1) The court must further the overriding objective by actively managing cases.

(2) The court must manage a case at all times and in particular—

- (a) when a case file is referred to a judge;
- (b) at every hearing, whether listed by the court on its own initiative or on application by a party;
- (c) at all stages of a final hearing; and
- (d) when considering enforcement measures including committal.

(3) Active case management includes—

- (a) considering the appropriate case pathway for the case;
- (b) ensuring—
  - (i) that the appropriate judge is allocated to the case;
  - (ii) judicial continuity, so far as practicable;
- (c) avoiding delay and keeping costs down;
- (d) encouraging the parties to co-operate with each other in the conduct of the proceedings;



- (e) identifying at an early stage—
  - (i) the issues; and
  - (ii) who should be a party to the proceedings;
- (f) deciding promptly—
  - (i) which issues need a full investigation and hearing and which do not; and
  - (ii) the procedure to be followed in the case;
- (g) deciding the order in which issues are to be resolved;
- (h) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate;
- (i) fixing timetables or otherwise controlling the progress of the case;
- (j) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (k) dealing with as many aspects of the case as the court can on the same occasion;
- (l) dealing with the case without the parties needing to attend at court;
- (m) making use of technology;
- (n) giving directions to ensure that the case proceeds quickly and efficiently;
- (o) considering whether any hearing should be heard in public; and
- (p) considering whether any document relating to proceedings should be a public document and, if so, whether and to what extent it should be redacted.

(Rules 4.2 to 4.4 make provision about the court's powers to authorise publication of information about proceedings and to order that a hearing be held in public.)

### **The duty of the parties**

- 1.4.**—(1) The parties are required to help the court to further the overriding objective.
- (2) Without prejudice to the generality of paragraph (1), each party is required to—
- (a) ask the court to take steps to manage the case if—
    - (i) an order or direction of the court appears not to deal with an issue; or
    - (ii) if a matter including any new circumstances, issue or dispute arises of which the court is unaware;
  - (b) identify before issue if the case is within the scope of one of the case pathways and comply with the requirements of the applicable case pathway;
  - (c) co-operate with the other parties and with the court in identifying and narrowing the issues that need to be determined by the court, and the timetable for that determination;
  - (d) adhere to the timetable set by these Rules and by the court;
  - (e) comply with all directions and orders of the court;
  - (f) be full and frank in the disclosure of information and evidence to the court (including any disclosure ordered under Part 16);
  - (g) co-operate with the other parties in all aspects of the conduct of the proceedings, including in the preparation of bundles.
- (3) If the court determines that any party has failed without reasonable excuse to satisfy the requirements of this rule, it may under rule 159 depart from the general rules about costs in so far as they apply to that party.

(Rule 133(2) deals with the requirements of general disclosure.)

### **The duty of legal representatives**

**1.5.—(1) Legal representatives of parties are required to help the court to further the overriding objective.**

**(2) Without prejudice to the generality of paragraph (1), a legal representative of a party must—**

- (a) comply with any applicable rules, practice directions or orders of the court;**
- (b) follow (where appropriate) the applicable case pathway; and**
- (c) address whether the case can be swiftly resolved.**

### **The duty of unrepresented litigants**

**1.6.—(1) Without prejudice to the generality of rule 1.4, unrepresented litigants are required to help the court to further the overriding objective.**

**(2) This includes—**

- (a) engaging with the process applicable in the case and co-operating with the court and the other parties;**
- (b) seeking the court’s direction if an issue or dispute arises in the case;**
- (c) presenting their case fairly; and**
- (d) seeking early resolution of any dispute where practicable.**

## **PILOT PART 2**

### **INTERPRETATION AND GENERAL PROVISIONS**

#### **Contents of this Part**

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Court officers	Rule 2.2
Court officers – authorisation	Rule 2.3
Computation of time	Rule 2.4
Application of the Civil Procedure Rules and Family Procedure Rules	Rule 2.5
Pilot schemes	Rule 2.6

#### **Interpretation**

**2.1.** In these Rules—

“the Act” means the Mental Capacity Act 2005;

“accredited legal representative” means a legal representative authorised pursuant to a scheme of accreditation approved by the President to represent persons meeting the definition of “P” in this rule in proceedings before the court;

“applicant” means a person who makes, or who seeks permission to make, an application to the court;

“application form” means the document that is to be used to begin proceedings in accordance with Part 9 of these Rules or any other provision of these Rules or the practice directions which requires the use of an application form;

“application notice” means the document that is to be used to make an application in accordance with Part 10 of these Rules or any other provision of these Rules or the practice directions which requires the use of an application notice;

“attorney” means the person appointed as such by an enduring power of attorney created, or purporting to have been created, in accordance with the regulations mentioned in paragraph 2 of Schedule 4 to the Act;

“business day” means a day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday in England and Wales, under the Banking and Financial Dealings Act 1971<sup>(1)</sup>;

“child” means a person under 18;

“court” means the Court of Protection;

“deputy” means a deputy appointed under the Act;

“donee” means the donee of a lasting power of attorney;

“donor” means the donor of a lasting power of attorney, except where the expression is used in rule 68 or 201(5) (where it means the donor of an enduring power of attorney);

“enduring power of attorney” means an instrument created in accordance with such of the regulations mentioned in paragraph 2 of Schedule 4 to the Act as applied when it was executed;

“filing” in relation to a document means delivering it, by post or otherwise, to the court office;

“hearing” includes a hearing conducted by telephone, video link, or any other method permitted or directed by the court;

“judge” means a judge nominated to be a judge of the court under the Act;

“lasting power of attorney” has the meaning given in section 9 of the Act;

“legal representative” means a—

- (a) barrister;
- (b) solicitor;
- (c) solicitor’s employee;
- (d) manager of a body recognised under section 9 of the Administration of Justice Act 1985<sup>(2)</sup>; or
- (e) person who, for the purposes of the Legal Services Act 2007<sup>(3)</sup>, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to any application;

“legally aided person” means a person to whom civil legal services (within the meaning of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(4)</sup>) have been made available under arrangements made for the purposes of Part 1 of that Act;

“order” includes a declaration made by the court;

“P” means—

- (a) any person (other than a protected party) who lacks or, so far as consistent with the context, is alleged to lack capacity to make a decision or decisions in relation to any matter that is the subject of an application to the court; and
- (b) a relevant person as defined by paragraph 7 of Schedule A1 to the Act,

and references to a person who lacks capacity are to be construed in accordance with the Act;

“party” is to be construed in accordance with rule 73;

“personal welfare” is to be construed in accordance with section 17 of the Act;

“President” and “Vice-President” refer to those judges appointed as such under section 46(3)(a) and (b) of the Act;

“property and affairs” is to be construed in accordance with section 18 of the Act;

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(1) 1971 c. 80.  
(2) 1985 c. 61.  
(3) 2007 c. 29.  
(4) 2012 c. 10.

“protected party” means a party or an intended party (other than P or a child) who lacks capacity to conduct the proceedings;

“representative” means a person appointed under rule 1.2(2)(c), except where the context otherwise requires;

“respondent” means a person who is named as a respondent in the application form or notice, as the case may be;

“rule 1.2 representative” means a representative or an accredited legal representative;

“Senior Judge” means the judge who has been nominated to be Senior Judge under section 46(4) of the Act, and references in these Rules to a circuit judge include the Senior Judge;

“Tier 1 Judge” means any judge nominated to act as a judge of the Court of Protection under section 46 of the Act who is neither a Tier 2 Judge nor a Tier 3 Judge;

“Tier 2 Judge” means—

- (a) the Senior Judge; and
- (b) such other judges nominated to act as a judge of the Court of Protection under section 46 Act as may be set out in the relevant practice direction;

“Tier 3 Judge” means—

- (a) the President;
- (b) the Vice-President; and
- (c) such other judges nominated to act as a judge of the Court of Protection under section 46 Act as may be set out in the relevant practice direction;

“Visitor” means a person appointed as such by the Lord Chancellor under section 61 of the Act.

### **Court officers**

**2.2.**—(1) Where these Rules permit or require the court to perform an act of a purely formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer carry out any act at the request of any person is subject to the payment of any fee required by a fees order for the carrying out of that act.

### **Court officers – authorisation**

**2.3.**—(1) The Senior Judge or the President or Vice-President may authorise a court officer to exercise the jurisdiction of the court in such circumstances as may be set out in the relevant practice direction.

(2) A court officer who has been authorised under paragraph (1)—

- (a) must refer to a judge any application, proceedings or any question arising in any application or proceedings which ought, in the officer’s opinion, to be considered by a judge;
- (b) may not deal with any application or proceedings or any question arising in any application or proceedings by way of a hearing; and
- (c) may not deal with an application for the reconsideration of an order made by that court officer or another court officer.

### **Computation of time**

**2.4.**—(1) This rule shows how to calculate any period of time which is specified—

- (a) by these Rules;
- (b) by a practice direction; or
- (c) in an order or direction of the court.

- (2) A period of time expressed as a number of days must be computed as clear days.
- (3) In this rule, “clear days” means that in computing the number of days—
- (a) the day on which the period begins; and
  - (b) if the end of the period is defined by reference to an event, the day on which that event occurs,
- are not included.
- (4) Where the specified period is 7 days or less, and would include a day which is not a business day, that day does not count.
- (5) When the specified period for doing any act at the court office ends on a day on which the office is closed, that act will be done in time if done on the next day on which the court office is open.

### **Application of the Civil Procedure Rules and Family Procedure Rules**

**2.5.**—(1) In any case not expressly provided for by these Rules or the practice directions made under them, the court may apply either the Civil Procedure Rules 1998<sup>(5)</sup> or the Family Procedure Rules 2010<sup>(6)</sup> (including in either case the practice directions made under them) with any necessary modifications, in so far as is necessary to further the overriding objective.

(2) A reference in these Rules to the Civil Procedure Rules 1998 or to the Family Procedure Rules 2010 is to the version of those rules in force at the date specified for the purpose of that reference in the relevant practice direction.

### **Pilot schemes**

**2.6.**—(1) Practice directions may make provision for the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings—

- (a) for specified periods; and
- (b) in relation to proceedings—
  - (i) in specified parts of the country; or
  - (ii) relating to specified types of application.

(2) Practice directions may modify or disapply any provision of these Rules during the operation of such pilot schemes.

## **PILOT PART 3**

### **MANAGING THE CASE**

#### **Contents of this Part**

The court’s general powers of case management	Rule 3.1
Case management – unrepresented parties	Rule 3.2
Court’s power to dispense with requirement of any rule	Rule 3.3
Exercise of powers on the court’s own initiative	Rule 3.4
General power of the court to rectify matters where there has been an error of procedure	Rule 3.5

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<sup>(5)</sup> S.I. 1998/3132 (as amended).  
<sup>(6)</sup> S.I. 2010/2955 (as amended).

Dealing with the application	Rule 3.6
Directions	Rule 3.7
<i>Allocation of proceedings</i>	
Court's jurisdiction in certain kinds of cases to be exercised by certain judges	Rule 3.8
Allocation of cases to case pathways	Rule 3.9

### **The court's general powers of case management**

**3.1.**—(1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) The court may—

- (a) extend or shorten the time for compliance with any rule, practice direction, or court order or direction (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require P, a party, a party's legal representative or litigation friend, or P's rule 1.2 representative, to attend court;
- (d) hold a hearing and receive evidence by telephone or any other method of direct oral communication;
- (e) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (f) consolidate proceedings;
- (g) hear two or more applications on the same occasion;
- (h) direct a separate hearing of any issue;
- (i) decide the order in which issues are to be heard;
- (j) exclude an issue from consideration;
- (k) dismiss or give judgment on an application after a decision is made on a preliminary basis;
- (l) direct any party to file and serve an estimate of costs; and
- (m) take any step or give any direction for the purpose of managing the case and furthering the overriding objective.

(3) A judge to whom a matter is allocated may, if the judge considers that the matter is one which ought properly to be dealt with by another judge, transfer the matter to such a judge.

(4) Where the court gives directions it may take into account whether or not a party has complied with any rule or practice direction.

(5) The court may make any order it considers appropriate even if a party has not sought that order.

(6) A power of the court under these Rules to make an order includes a power to vary or revoke the order.

(Rules 1.3 to 1.6 concern the duty of the court to further the overriding objective by actively managing cases, and the duty of parties, legal representatives and unrepresented litigants to assist the court in furthering the overriding objective.)

### **Case management – unrepresented parties**

**3.2.**—(1) This rule applies in any proceedings where at least one party is unrepresented.

(2) When the court is exercising any powers of case management, it must have regard to the fact that at least one party is unrepresented.

(3) The court must adopt such procedure at any hearing as it considers appropriate to further the overriding objective.

(4) At any hearing when the court is taking evidence this may include—

- (a) ascertaining from an unrepresented party the matters about which the witness may be able to give evidence or on which the witness ought to be cross-examined; and
- (b) putting or causing to be put, to the witness such questions as may appear to the court to be proper.

### **Court's power to dispense with requirement of any rule**

**3.3.** In addition to its general powers and the powers listed in rule 3.1, the court may dispense with the requirements of any rule.

### **Exercise of powers on the court's own initiative**

**3.4.**—(1) Except where these Rules or another enactment make different provision, the court may exercise its powers on its own initiative.

(2) The court may make an order on its own initiative without hearing the parties or giving them the opportunity to make representations.

(3) Where the court proposes to make an order on its own initiative it may give the parties and any other person it thinks fit an opportunity to make representations and, where it does so, must specify the time by which, and the manner in which, the representations must be made.

(4) Where the court proposes—

- (a) to make an order on its own initiative; and
- (b) to hold a hearing to decide whether to make the order,

it must give the parties and may give any other person it thinks likely to be affected by the order at least 3 days' notice of the hearing.

### **General power of the court to rectify matters where there has been an error of procedure**

**3.5.** Where there has been an error of procedure, such as a failure to comply with a rule or practice direction—

- (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and
- (b) the court may waive the error or require it to be remedied or may make such other order as appears to the court to be just.

### **Dealing with the application**

**3.6.**—(1) This rule and rule 3.7 are subject to any provision made by a practice direction in respect of the case pathway to which the case is allocated.

(2) As soon as practicable after any application has been issued the court shall consider how to deal with it.

(3) Where permission to start proceedings is required, and whether or not it has been applied for, the court's consideration under paragraph (2) shall include whether to grant or refuse permission without a hearing, or to direct a hearing to consider whether permission should be granted.

(4) The court may deal with an application or any part of an application at a hearing or without a hearing.

(5) In considering whether it is necessary to hold a hearing, the court shall, as appropriate, have regard to—

- (a) the nature of the proceedings and the orders sought;

- (b) whether the application is opposed by a person who appears to the court to have an interest in matters relating to P's best interests;
  - (c) whether the application involves a substantial dispute of fact;
  - (d) the complexity of the facts and the law;
  - (e) any wider public interest in the proceedings;
  - (f) the circumstances of P and of any party, in particular as to whether their rights would be adequately protected if a hearing were not held;
  - (g) whether the parties agree that the court should dispose of the application without a hearing; and
  - (h) any other matter specified in the relevant practice direction.
- (6) Where the court considers that a hearing is necessary it shall—
- (a) give notice of the hearing date to the parties and to any other person it directs;
  - (b) state what is to be dealt with at the hearing, including whether the matter is to be disposed of at that hearing; and
  - (c) consider whether it is appropriate—
    - (i) for the hearing or any part of it to be in public; and
    - (ii) to make any order under rule 4.1, 4.2 or 4.3.

(The practice direction *Practice Direction - Case Management Pilot* makes provision in relation to case management pathways.)

## **Directions**

- 3.7.**—(1) The court may—
- (a) give directions in writing; or
  - (b) set a date for a directions hearing; and
  - (c) do anything else that may be set out in a practice direction.
- (2) When giving directions, the court may do any of the following—
- (a) require a report under section 49 of the Act and give directions as to any such report;
  - (b) give directions as to any requirements contained in these Rules or a practice direction for the giving of notification to any person or for that person to do anything in response to a notification;
  - (c) if the court considers that any other person or persons should be a party to the proceedings, give directions joining them as a party;
  - (d) if the court considers that any party to the proceedings should not be a party, give directions for that person's removal as a party;
  - (e) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the hearing;
  - (f) subject to rule 3.8, give directions as to the type of judge who is to hear the case;
  - (g) give directions as to whether the proceedings or any part of them are to be heard in public, or as to whether any particular person should be permitted to attend the hearing, or as to whether any publication of the proceedings is to be permitted;
  - (h) give directions as to the disclosure of documents, service of witness statements and any expert evidence;
  - (i) give directions as to the attendance of witnesses and as to whether, and the extent to which, cross-examination will be permitted at any hearing; and
  - (j) give such other directions as the court may think fit.



- (3) The court may give directions at any time—
- (a) on its own initiative; or
  - (b) on the application of a party.
- (4) Subject to paragraphs (5) and (6) and unless these Rules or a practice direction provide otherwise or the court directs otherwise, the time specified by a rule or by the court for a person to do any act may be varied by the written agreement of the parties.
- (5) A party must apply to the court if that party wishes to vary—
- (a) the date the court has fixed for the final hearing; or
  - (b) the period within which the final hearing is to take place.
- (6) The time specified by a rule or practice direction or by the court may not be varied by the parties if the variation would make it necessary to vary the date the court has fixed for any hearing or the period within which the final hearing is to take place.

(Participation of P in proceedings is addressed in rule 1.2 (participation of P) and Part 17 (litigation friends and rule 1.2 representatives).)

#### *Allocation of proceedings*

#### **Court's jurisdiction in certain kinds of cases to be exercised by certain judges**

**3.8.**—(1) A practice direction made under this rule may specify certain categories of case to be dealt with by a specific judge or a specific class of judges.

(2) Applications in any matter other than those specified in the practice direction referred to in paragraph (1) may be dealt with by any judge.

#### **Allocation of cases to case pathways**

**3.9.**—(1) This rule provides for the allocation of cases to case pathways.

(2) There are three case pathways—

- (a) the Personal Welfare Pathway;
- (b) the Property and Affairs Pathway;
- (c) the Mixed Welfare and Property Pathway.

(3) Each case shall on issue be allocated to one of the three case pathways unless (subject to paragraph (5)) it is in an excepted class of cases.

(4) Excepted classes of case may be specified in a practice direction.

(5) The court may direct that a case shall be allocated to a case pathway notwithstanding that it is in an excepted class of cases.

(6) A practice direction may make provision for—

- (a) the scope of each case pathway; and
- (b) how cases in each case pathway are to be managed.

(The practice direction *Practice Direction - Case Management Pilot* makes provision in relation to the case pathways and excepted classes of case.)

## PILOT PART 4

### HEARINGS

#### **Contents of this Part**

*Private hearings*

General rule – hearing to be in private	Rule 4.1
Court’s general power to authorise publication of information about proceedings	Rule 4.2
<i>Power to order a public hearing</i>	
Court’s power to order that a hearing be held in public	Rule 4.3
<i>Supplementary</i>	
Supplementary provisions relating to public or private hearings	Rule 4.4

*Private hearings*

**General rule – hearing to be held in private**

- 4.1.**—(1) The general rule is that a hearing is to be held in private.
- (2) A private hearing is a hearing which only the following persons are entitled to attend—
- (a) the parties;
  - (b) P (whether or not a party);
  - (c) any person acting in the proceedings as a litigation friend;
  - (d) any legal representative of a person specified in any of sub-paragraphs (a) or (b); and
  - (e) any court officer.
- (3) In relation to a private hearing, the court may make an order—
- (a) authorising any person, or class of persons, to attend the hearing or a part of it; or
  - (b) excluding any person, or class of persons, from attending the hearing or a part of it.

**Court’s general power to authorise publication of information about proceedings**

- 4.2.**—(1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated in accordance with paragraph (2) or (3).
- (2) The court may make an order authorising—
- (a) the publication or communication of such information or material relating to the proceedings as it may specify; or
  - (b) the publication of the text or a summary of the whole or part of a judgment or order made by the court.
- (3) Subject to any direction of the court, information referred to in paragraph (1) may be communicated in accordance with Practice Direction Pilot 4A.
- (4) Where the court makes an order under paragraph (2) it may do so on such terms as it thinks fit, and in particular may—
- (a) impose restrictions on the publication of the identity of—
    - (i) any party;
    - (ii) P (whether or not a party);
    - (iii) any witness; or
    - (iv) any other person;
  - (b) prohibit the publication of any information that may lead to any such person being identified;
  - (c) prohibit the further publication of any information relating to the proceedings from such date as the court may specify; or

- (d) impose such other restrictions on the publication of information relating to the proceedings as the court may specify.
- (5) The court may on its own initiative or upon request authorise communication—
- (a) for the purposes set out in Practice Direction Pilot 4A; or
  - (b) for such other purposes as it considers appropriate,
- of information held by it.

*Power to order a public hearing*

**Court's power to order that a hearing be held in public**

- 4.3.**—(1) The court may make an order—
- (a) for a hearing to be held in public;
  - (b) for a part of a hearing to be held in public; or
  - (c) excluding any person, or class of persons, from attending a public hearing or a part of it.
- (2) Where the court makes an order under paragraph (1), it may in the same order or by a subsequent order—
- (a) impose restrictions on the publication of the identity of—
    - (i) any party;
    - (ii) P (whether or not a party);
    - (iii) any witness; or
    - (iv) any other person;
  - (b) prohibit the publication of any information that may lead to any such person being identified;
  - (c) prohibit the further publication of any information relating to the proceedings from such date as the court may specify; or
  - (d) impose such other restrictions on the publication of information relating to the proceedings as the court may specify.

*Supplementary*

**Supplementary provisions relating to public or private hearings**

- 4.4.**—(1) An order under rule 4.1, 4.2 or 4.3 may be made—
- (a) only where it appears to the court that there is good reason for making the order;
  - (b) at any time; and
  - (c) either on the court's own initiative or on an application made by any person in accordance with Part 10.
- (2) A practice direction may make further provision in connection with—
- (a) private hearings;
  - (b) public hearings; or
  - (c) the publication of information about any proceedings.

## **Contents of this Part**

Documents used in court proceedings	Rule 5.1
Documents required to be verified by a statement of truth	Rule 5.2
Position statement not required to be verified by statement of truth	Rule 5.3
Failure to verify a document	Rule 5.4
Failure to verify a witness statement	Rule 5.5
False statements	Rule 5.6
Personal details	Rule 5.7
Supply of documents to a party from court records	Rule 5.8
Supply of documents to a non-party from court records	Rule 5.9
Subsequent use of court documents	Rule 5.10
Editing information in court documents	Rule 5.11
Public Guardian to be supplied with court documents relevant to supervision of deputies	Rule 5.12
Provision of court order to Public Guardian	Rule 5.13
Amendment of application	Rule 5.14
Clerical mistakes or slips	Rule 5.15
Endorsement of amendment	Rule 5.16

## **Documents used in court proceedings**

**5.1.**—(1) The court will seal or otherwise authenticate with the stamp of the court the following documents on issue—

- (a) an application form;
- (b) an application notice;
- (c) an order; and
- (d) any other document which a rule or practice direction requires to be sealed or stamped.

(2) Where these Rules or any practice direction require a document to be signed, that requirement is satisfied if the signature is printed by computer or other mechanical means.

(3) A practice direction may make provision for documents to be filed or sent to the court by—

- (a) facsimile; or
- (b) other means.

## **Documents required to be verified by a statement of truth**

**5.2.**—(1) The following documents must be verified by a statement of truth—

- (a) an application form, an application notice, an appellant's notice or a respondent's notice, where the applicant seeks to rely upon matters set out in the document as evidence;
- (b) a witness statement;
- (c) a certificate of—
  - (i) service or non-service; or
  - (ii) notification or non-notification;
- (d) a deputy's declaration; and
- (e) any other document required by a rule or practice direction to be so verified.

(2) Subject to paragraph (3), a statement of truth is a statement that—

- (a) the party putting forward the document;

- (b) in the case of a witness statement, the maker of the witness statement; or
- (c) in the case of a certificate referred to in paragraph (1)(c), the person who signs the certificate,

believes that the facts stated in the document being verified are true.

(3) If a party is conducting proceedings with a litigation friend, the statement of truth in—

- (a) an application form;
- (b) an application notice; or
- (c) an appellant's notice or a respondent's notice,

is a statement that the litigation friend believes that the facts stated in the document being verified are true.

(4) The statement of truth must be signed—

- (a) in the case of an application form, an application notice, an appellant's notice or a respondent's notice—
  - (i) by the party or litigation friend; or
  - (ii) by the legal representative on behalf of the party or litigation friend; and
- (b) in the case of a witness statement, by the maker of the statement.

(5) A statement of truth which is not contained in the document which it verifies must clearly identify that document.

(6) A statement of truth in an application form, an application notice, an appellant's notice or a respondent's notice may be made by—

- (a) a person who is not a party; or
- (b) two or more parties jointly,

where this is permitted by a relevant practice direction.

### **Position statement not required to be verified by statement of truth**

**5.3.** Nothing in these Rules requires a position statement to be verified by a statement of truth.

### **Failure to verify a document**

**5.4.** If an application form, an application notice, an appellant's notice or a respondent's notice is not verified by a statement of truth, the applicant (or appellant or respondent as the case may be) may not rely upon the document as evidence of any of the matters set out in it unless the court permits.

### **Failure to verify a witness statement**

**5.5.** If a witness statement is not verified by a statement of truth, it shall not be admissible in evidence unless the court permits.

### **False statements**

**5.6.—**(1) Proceedings for contempt of court may be brought against a person if that person makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only—

- (a) by the Attorney General; or
- (b) with the permission of the court.

## Personal details

**5.7.**—(1) Where a party does not wish to reveal—

- (a) his or her home address or telephone number;
- (b) P's home address or telephone number;
- (c) the name of the person with whom P is living (if that person is not the applicant); or
- (d) the address or telephone number of his or her place of business, or the place of business of any of the persons mentioned in sub-paragraphs (b) or (c),

that party must provide those particulars to the court.

(2) Where paragraph (1) applies, the particulars given will not be revealed to any person unless the court so directs.

(3) Where a party changes home address during the course of the proceedings, that party must give notice in writing of the change to the court.

(4) Where a party does not reveal his or her home address, that party must nonetheless provide an address for service which must be within the jurisdiction of the court.

## Supply of documents to a party from court records

**5.8.** Unless the court orders otherwise, a party to proceedings may inspect or obtain from the records of the court a copy of—

- (a) any document filed by a party to the proceedings; or
- (b) any communication in the proceedings between the court and—
  - (i) a party to the proceedings; or
  - (ii) another person.

## Supply of documents to a non-party from court records

**5.9.**—(1) Subject to rules 5.12 and 4.3(2), a person who is not a party to proceedings may inspect or obtain from the court records a copy of any judgment or order given or made in public.

(2) The court may, on an application made to it, authorise a person who is not a party to proceedings to—

- (a) inspect any other documents in the court records; or
- (b) obtain a copy of any such documents, or extracts from such documents.

(3) A person making an application for an authorisation under paragraph (2) must do so in accordance with Part 10.

(4) Before giving an authorisation under paragraph (2), the court will consider whether any document is to be provided on an edited basis.

## Subsequent use of court documents

**5.10.**—(1) Where a document has been filed or disclosed, a party to whom it was provided may use the document only for the purpose of the proceedings in which it was filed or disclosed, except where—

- (a) the document has been read to or by the court or referred to at a public hearing; or
- (b) the court otherwise permits.

(2) Paragraph (1)(a) is subject to any order of the court made under rule 4.3(2).

## Editing information in court documents

**5.11.**—(1) A party may apply to the court for an order that a specified part of a document is to be edited prior to the document's service or disclosure.

- (2) An order under paragraph (1) may be made at any time.
- (3) Where the court makes an order under this rule any subsequent use of that document in the proceedings shall be of the document as edited, unless the court directs otherwise.
- (4) An application under this rule must be made in accordance with Part 10.

### **Public Guardian to be supplied with court documents relevant to supervision of deputies**

- 5.12.**—(1) This rule applies in any case where the court makes an order—
- (a) appointing a person to act as a deputy; or
  - (b) varying an order under which a deputy has been appointed.
- (2) Subject to paragraphs (3) and (6), the Public Guardian is entitled to be supplied with a copy of qualifying documents if the Public Guardian reasonably considers that it is necessary to have regard to them in connection with the discharge of the Public Guardian’s functions under section 58 of the Act in relation to supervision of deputies.
- (3) The court may direct that the right to be supplied with documents under paragraph (2) does not apply in relation to such one or more documents, or descriptions of documents, as the court may specify.
- (4) A direction under paragraph (3) or (6) may be given—
- (a) either on the court’s own initiative or on an application made to it; and
  - (b) either—
    - (i) at the same time as the court makes the order which appoints the deputy, or which varies it; or
    - (ii) subsequently.
- (5) “Qualifying documents” means documents which—
- (a) are filed in court in connection with the proceedings in which the court makes the order referred to in paragraph (1); and
  - (b) are relevant to—
    - (i) the decision to appoint the deputy;
    - (ii) any powers conferred on the deputy;
    - (iii) any duties imposed on the deputy; or
    - (iv) any other terms applying to those powers and duties which are contained in the order.
- (6) The court may direct that any document is to be provided to the Public Guardian on an edited basis.

### **Provision of court order to Public Guardian**

**5.13.** Any order of the court requiring the Public Guardian to do something, or not to do something, must be served on the Public Guardian as soon as practicable and in any event not later than 7 days after the order was made.

### **Amendment of application**

- 5.14.**—(1) The court may allow or direct an applicant, at any stage of the proceedings, to amend the application form or notice.
- (2) The amendment may be effected by making in writing the necessary alterations to the application form or notice, but if the amendments are so numerous or of such a nature or length that written alteration would make it difficult or inconvenient to read, a fresh document amended as allowed or directed may be issued.

**Clerical mistakes or slips**

**5.15.** The court may at any time correct any clerical mistakes in an order or direction or any error arising in an order or direction from any accidental slip or omission.

**Endorsement of amendment**

**5.16.** Where an application form or notice, order or direction has been amended under this Part, a note shall be placed on it showing the date on which it was amended, and the alteration shall be sealed.



## **ANNEX B1: MODIFICATIONS TO PART 15**

**Part 15** (experts) is amended as follows.

(a) For rules 121 (duty to restrict expert evidence) and 122 (experts – overriding duty to the court) substitute—

### **“Duty to restrict expert evidence**

**121.—**(1) Expert evidence shall be restricted to that which is necessary to assist the court to resolve the issues in the proceedings.

(2) The court may give permission to file or adduce expert evidence as mentioned in rule 120(1) and 123(1) only if satisfied that the evidence—

(a) is necessary to assist the court to resolve the issues in the proceedings;

and

(b) cannot otherwise be provided.

### **Experts – overriding duty to the court**

**122.—**(1) It is the duty of the expert to help the court on the matters within the expert’s expertise.

(2) This duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.”.

(b) In rule 123 (court’s power to restrict expert evidence), for paragraphs (2) and (3) substitute—

“(2) When a party applies for a direction under this rule, that party must—

(a) identify the field in respect of which that party wishes to rely upon expert evidence and the issues to which the expert evidence is to relate;

(b) where practicable, identify the expert in that field upon whose evidence the party wishes to rely;

(c) provide any other material information about the expert;

(d) state whether the expert evidence could be obtained from a single joint expert;

(e) provide any other information or documents required by a practice direction; and

(f) provide a draft letter of instruction to the expert.

(2A) When deciding whether to give permission as mentioned in paragraph (1), the court is to have regard in particular to—

- (a) the issues to which the expert evidence would relate;
- (b) the questions which the expert would answer;
- (c) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings;
- (d) any failure to comply with any direction of the court about expert evidence;
- and
- (e) the cost of the expert evidence.

(3) Where a direction is given under this rule, the court shall specify—

- (a) the field or fields in respect of which the expert evidence is to be provided;
- (b) the questions which the expert is required to answer; and
- (c) the date by which the expert is to provide the evidence.”.

(c) In rule 125 (written questions to experts), in paragraph (2), omit “and” at the end of sub-paragraph (b) and at the end of sub-paragraph (c) insert—

“; and

(d) must be copied and sent to the other parties at the same time as they are sent to the expert.”.

(d) In rule 131 (instructions to a single joint expert), for paragraphs (1) and (2) substitute—

“(1) Where the court gives a direction under rule 130 for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(1A) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any instructing party copied to the other instructing parties.

(2) Where the court permits the instructing parties to give separate instructions to a single joint expert, unless the court directs otherwise, when an instructing party gives instructions to the expert, that party must at the same time send a copy of the instructions to the other instructing party or parties.”.

## **ANNEX B2: PART 15 AS MODIFIED**

### **PART 15**

#### **EXPERTS**

##### **References to expert**

**119.** A reference to an expert in this Part—

- (a) is to an expert who has been instructed to give or prepare evidence for the purpose of court proceedings; but
- (b) does not include any person instructed to make a report under section 49 of the Act.

##### **Restriction on filing an expert's report**

**120.**—(1) No person may file expert evidence unless the court or a practice direction permits, or if it is filed with the application form and is evidence—

- (a) that P is a person who lacks capacity to make a decision or decisions in relation to the matter or matters to which the application relates;
- (b) as to P's best interests; or
- (c) that is required by any rule or practice direction to be filed with the application form.

(2) An applicant may only rely on any expert evidence so filed in support of the application form to the extent and for the purposes that the court allows.

(Rule 64(a) requires the applicant to file any evidence upon which the applicant wishes to rely with the application form.)

##### **Duty to restrict expert evidence**

**121.**—(1) Expert evidence shall be restricted to that which is necessary to assist the court to resolve the issues in the proceedings.

(2) The court may give permission to file or adduce expert evidence as mentioned in rule 120(1) and 123(1) only if satisfied that the evidence—

- (a) is necessary to assist the court to resolve the issues in the proceedings; and
- (b) cannot otherwise be provided.

##### **Experts – overriding duty to the court**

**122.**—(1) It is the duty of the expert to help the court on the matters within the expert's expertise.

(2) This duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

##### **Court's power to restrict expert evidence**

**123**—(1) Subject to rule 120, no party may file or adduce expert evidence unless the court or a practice direction permits.

(2) When a party applies for a direction under this rule, that party must—

- (a) identify the field in respect of which that party wishes to rely upon expert evidence, and the issues to which the expert evidence is to relate;
- (b) where practicable, identify the expert in that field upon whose evidence the party wishes to rely;
- (c) provide any other material information about the expert;
- (d) state whether the expert evidence could be obtained from a single joint expert;
- (e) provide any other information or documents required by a practice direction; and
- (f) provide a draft letter of instruction to the expert.

(2A) When deciding whether to give permission as mentioned in paragraph (1), the court is to have regard in particular to—

- (a) the issues to which the expert evidence would relate;
- (b) the questions which the expert would answer;
- (c) the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings;
- (d) any failure to comply with any direction of the court about expert evidence; and
- (e) the cost of the expert evidence.

(3) Where a direction is given under this rule, the court shall specify—

- (a) the field or fields in respect of which the expert evidence is to be provided;
- (b) the questions which the expert is required to answer; and
- (c) the date by which the expert is to provide the evidence.

(4) The court may specify the person who is to provide the evidence referred to in paragraph (3).

(5) Where a direction is given under this rule for a party to call an expert or put in evidence an expert's report, the court shall give directions for the service of the report on the parties and on such other persons as the court may direct.

(6) The court may limit the amount of the expert's fees and expenses that the party who wishes to rely upon the expert may recover from any other party.

### **General requirement for expert evidence to be given in a written report**

**124.** Expert evidence is to be given in a written report unless the court directs otherwise.

### **Written questions to experts**

**125.**—(1) A party may put written questions to—

- (a) an expert instructed by another party; or
- (b) a single joint expert appointed under rule 130.

about a report prepared by such a person.

(2) Written questions under paragraph (1)—

- (a) may be put once only;
- (b) must be put within 28 days beginning with the date on which the expert's report was served;
- (c) must be for the purpose only of clarification of the report; and
- (d) must be copied and sent to the other parties at the same time as they are sent to the expert.

(3) Paragraph (2) does not apply in any case where—

- (a) the court permits it to be done on a further occasion;
- (b) the other party or parties agree; or
- (c) any practice direction provides otherwise.

(4) An expert's answers to questions put in accordance with paragraph (1) shall be treated as part of the expert's report.

(5) Paragraph (6) applies where—

- (a) a party has put a written question to an expert instructed by another party in accordance with this rule; and
- (b) the expert does not answer that question.

(6) The court may make one or both of the following orders in relation to the party who instructed the expert—

- (a) that the party may not rely upon the evidence of that expert; or
- (b) that the party may not recover the fees and expenses of that expert, or part of them, from any other party.

(7) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing party is responsible for the payment of the expert's fees and expenses, including the expert's costs of answering questions put by any other party.

### **Contents of expert's report**

**126.**—(1) The court may give directions as to the matters to be covered in an expert's report.

(2) An expert's report must comply with the requirements set out in the relevant practice direction.

(3) At the end of an expert's report there must be a statement that the expert—

- (a) understands his or her duty to the court; and
- (b) has complied with that duty.

(4) The expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written.

(5) The instructions to the expert shall not be privileged against disclosure.

### **Use by one party of expert's report disclosed by another**

**127.** Where a party has disclosed an expert's report, any party may use that expert's report as evidence at any hearing in the proceedings.

### **Discussions between experts**

**128.**—(1) The court may, at any stage, direct a discussion between experts for the purpose of requiring the experts to—

- (a) identify and discuss the expert issues in the proceedings; and
- (b) where possible, reach an agreed opinion on those issues.

(2) The court may specify the issues which the experts must discuss.

(3) The court may direct that following a discussion between the experts they must prepare a statement for the court showing—

- (a) those issues on which they agree; and
- (b) those issues on which they disagree and a summary of their reasons for disagreeing.

(4) Unless the court directs otherwise, the content of the discussions between experts may be referred to at any hearing or at any stage in the proceedings.

### **Expert's right to ask court for directions**

**129.**—(1) An expert may file a written request for directions to assist in carrying out the expert's functions as an expert.

(2) An expert must, unless the court directs otherwise, provide a copy of any proposed request for directions under paragraph (1)—

- (a) to the party instructing the expert, at least 7 days before filing the request; and
- (b) to all other parties, at least 4 days before filing it.

(3) The court, when it gives directions, may also direct that a party be served with a copy of the directions.

### **Court's power to direct that evidence is to be given by a single joint expert**

**130.**—(1) Where two or more parties wish to submit expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by one expert only.

(2) The parties wishing to submit the expert evidence are called “the instructing parties”.

(3) Where the instructing parties cannot agree who should be the expert, the court may—

- (a) select the expert from a list prepared or identified by the instructing parties; or
- (b) direct the manner by which the expert is to be selected.

### **Instructions to a single joint expert**

**131.**—(1) Where the court gives a direction under rule 130 for a single joint expert to be used, the instructions are to be contained in a jointly agreed letter unless the court directs otherwise.

(1A) Where the instructions are to be contained in a jointly agreed letter, in default of agreement the instructions may be determined by the court on the written request of any instructing party copied to the other instructing parties.

(2) Where the court permits the instructing parties to give separate instructions to a single joint expert, unless the court directs otherwise, when an instructing party gives instructions to the expert, that party must at the same time send a copy of the instructions to the other instructing party or parties.

(3) The court may give directions about—

- (a) the payment of the expert's fees and expenses; and
- (b) any inspection, examination or experiments which the expert wishes to carry out.

(4) The court may, before an expert is instructed, limit the amount that can be paid by way of fees and expense to the expert.

(5) Unless the court directs otherwise, and subject to any final costs order that may be made, the instructing parties are jointly and severally liable for the payment of the expert's fees and expenses.

**ANNEX C: MODIFICATION OF REFERENCES ELSEWHERE  
IN THE CoPR TO RULES IN THE NEW PARTS 1-5 AS  
MODIFIED**

<i>Location of reference</i>	<i>Rule referred to</i>	<i>Change reference to</i>
Rule 33 (words in parentheses after rule)	3A	1.2
Rule 41A(a)	3A	1.2
Rule 54 (words in parentheses after rule)	84(1A)	3.6(3)
Rule 88 (words in parentheses after rule)	3A	1.2
Rule 89(6)	7A	2.3
Rule 89 (words in parentheses after rule)	7A(2)(c)	2.3(2)(c)
Rule 99 (words in parentheses after rule)	11	5.2
Part 17 heading	3A	1.2
Rule 143 (words in parentheses after rule)	3A	1.2
Part 17 Section 2 heading	3A	1.2
Rule 146A	3A	1.2
Rule 147 heading	3A	1.2
Rule 148 heading	3A	1.2
Rule 148 (words in parentheses after rule)	3A	1.2
Rule 148A heading	3A	1.2
Rule 148B heading (twice)	3A	1.2
Rule 148C heading	3A	1.2

Rule 149 heading	3A	1.2
Rule 171(2)	84(3)	3.6(5)
Rule 171A(3)	7A	2.3
Rule 171A (words in parentheses after rule)	7A	2.3
Rule 188(2)	90(1)	4.1(1)



## ANNEX D: MODIFICATIONS OF PRACTICE DIRECTIONS

**TABLE A**

Practice directions which supplement Parts of the CoPR now in the modified Parts 1-5 are renumbered as follows—

<i>Practice Direction number</i>	<i>Supplementing</i>	<i>Supplementing in modified Parts 1-5</i>	<i>Change Practice Direction number to</i>
2A	Part 2	Pilot Part 1	Pilot 1A
3A	Part 3	Pilot Part 2	Pilot 2A
3B	Part 3	Pilot Part 2	Pilot 2B
3C	Part 3	Pilot Part 2	Pilot 2C
4A	Part 4	Pilot Part 5	Pilot 5A
4B	Part 4	Pilot Part 5	Pilot 5B
12A	Part 12	Pilot Part 3	Pilot 3A
13A	Part 13	Pilot Part 4	Pilot 4A
13B	Part 13	Pilot Part 4	Pilot 4B

**TABLE B**

References in practice directions to rules of Parts which are renumbered as part of the modifications are modified as follows:

<i>Practice Direction</i>	<i>Location of reference</i>	<i>Rule or Part referred to</i>	<i>Change reference to</i>
Pilot 1A	Heading	Part 2	Pilot Part 1
	Paragraph 2	Rule 3A	Rule 1.2
	Paragraph 3	Rule 3A(2)(e)	Rule 1.2(2)(e)
	Paragraph 5	Rule 3A	Rule 1.2
	Paragraph 7	Rule 3A(2)(b) to (e)	Rule 1.2(2)(b) to (e)
	Paragraph 8	Rule 3A	Rule 1.2
	Paragraph 8	Rule 3A(2)(b)	Rule 1.2(2)(b)
	Paragraph 8	Rule 3A(2)(c)	Rule 1.2(2)(c)
	Paragraph 8	Rule 3A	Rule 1.2
	Paragraph 9	Rule 6	Rule 2.1
	Paragraph 12	Rule 3A(2)(c)	Rule 1.2(2)(c)
	Paragraph 12	Rule 3A(2)(d) or (e)	Rule 1.2(2)(d) or (e)
	Paragraph 13 (three times)	Rule 3A	Rule 1.2
Pilot 2A	Heading	Part 3	Pilot Part 2

	Paragraph 1.1	Rule 7A	Rule 2.3
	Paragraph 1.2	Rule 7A(1)	Rule 2.3(1)
	Paragraph 3(a)	Rule 25(2)(a)	Rule 3.1(2)(a)
	Paragraph 3(b)	Rule 25(2)(m)	Rule 3.1(2)(m)
	Paragraph 3(c)	Rule 25(5)	Rule 3.1(5)
	Paragraph 3(d)	Rule 25(6)	Rule 3.1(6)
Pilot 2B	Heading	Part 3	Pilot Part 2
	Paragraph 1.1	Rule 6	Rule 2.1
Pilot 2C	Heading	Part 3	Pilot Part 2
	Paragraph 1	Rule 9(2)	Rule 2.5(2)
Pilot 3A	Heading	Part 12	Pilot Part 3
	Paragraph 1	Rule 86	Rule 3.8
Pilot 4A	Heading	Part 13	Pilot Part 4
	Paragraph 2	Rules 90 to 92	Rules 4.1 to 4.3
	Part 1 heading	Rules 90, 91 or 92	Rules 4.1, 4.2 or 4.3
	Paragraph 4	Rules 90, 91 or 92	Rules 4.1, 4.2 or 4.3
	Paragraph 5	Rules 90 to 92	Rules 4.1 to 4.3
	Paragraph 6	Rules 90, 91 or 92	Rules 4.1, 4.2 or 4.3
	Paragraph 7	Rule 91(1)	Rule 4.2(1)
	Paragraph 7	Rule 91	Rule 4.2
	Paragraph 9	Rule 92	Rule 4.3
	Paragraph 11	Rule 92(2)	Rule 4.3(2)
	Paragraph 12(a)(i),	Rule 91(3)	Rule 4.2(4)
	Paragraph 12(b)(i)	Rule 92(2)	Rule 4.3(2)
	Paragraph 15	Rule 19	Rule 5.11
	Paragraph 30	Rule 91	Rule 4.2
	Paragraph 33(c)	Rule 3A	Rule 1.2
Pilot 4B	Heading	Part 13	Pilot Part 4
Pilot 5A	Heading	Part 4	Pilot Part 5
	Paragraph 1	Rule 10(2)	Rule 5.1(2)
	Paragraph 8	Rule 19	Rule 5.11
Pilot 5B	Heading	Part 4	Pilot Part 5
	Paragraph 1	Rule 11	Rule 5.2
	Paragraph 1	Rule 11(1)	Rule 5.2(1)
	Paragraph 6(a)	Rule 19	Rule 5.11
	Paragraph 16 – words in parentheses after paragraph	Rule 14	Rule 5.6

7A	Paragraph 2(d)	Rule 3A	Rule 1.2
8A	Paragraph 4	Rule 84(4)(a)	Rule 3.6(6)(a)
9A	Paragraph 2(c)	Rule 19	Rule 5.11
	Paragraph 3	Rule 19	Rule 5.11
	Paragraph 5	Rule 19	Rule 5.11
	Paragraph 6	Rule 11	Rule 5.2
	Paragraph 8	Rule 14	Rule 5.6
	Paragraph 8 – words in parentheses after paragraph	Practice Direction B accompanying Part 4	Practice Direction Pilot 5B
	Paragraph 13	Rule 10	Rule 5.1
	Paragraph 13	Practice Direction A accompanying Part 4	Practice Direction Pilot 5A
9H	Paragraph 6 - words in parentheses after paragraph	Practice Direction B accompanying Part 4	Practice Direction Pilot 5B
10A	Paragraph 3	Rule 19	Rule 5.11
	Paragraph 6	Rules 90 to 92	Rules 4.1 to 4.3
10B	Paragraph 14	Part 12	Pilot Part 3
10AA	Paragraph 49	Part 13	Pilot Part 4
	Paragraph 49	Practice Direction A to Part 13	Practice Direction Pilot 4A
	Paragraph 49	Rule 92	Rule 4.3
	Paragraph 49	Rule 93	Rule 4.4
11A	Paragraph 8 - words in parentheses after paragraph	Practice Direction 12A	Practice Direction Pilot 3A
14A	Paragraph 2	Rule 19	Rule 5.11
	Paragraph 3(a)	Rule 19	Rule 5.11
	Paragraph 33	Rule 19	Rule 5.11
	Paragraph 34(a)	Rule 19	Rule 5.11
	Paragraph 44 - words in parentheses after paragraph	Practice Direction B accompanying Part 4	Practice Direction Pilot 5B

	Paragraph 45	Rule 14	Rule 5.6
14D	Paragraph 7	Rule 23	Rule 5.15
14E	Paragraph 1(b)	Rule 85(2)(a)	Rule 3.7(2)(a)
	Paragraph 14	Rule 19	Rule 5.11
14E (Pilot)	Paragraph 1(b)	Rule 85(2)(a)	Rule 3.7(2)(a)
	Paragraph 3(b)	Rule 3A	Rule 1.2
	Paragraph 3(b)	Rule 3A(5)	Rule 1.2(5)
	Paragraph 21	Rule 19	Rule 5.11
	Annex (draft order) paragraph 10(c)	Rule 3A	Rule 1.2
	Annex (draft order) paragraph 17	Rule 3A(5)	Rule 1.2(5)
15A	Paragraph 12	Rule 14	Rule 5.6
	Paragraph 12 - words in parentheses after paragraph	Practice Direction B accompanying Part 4	Practice Direction Pilot 5B
17B	Heading	Rule 3A	Rule 1.2
20B	Paragraph 1.2	Rule 6 and Practice Direction 3B	Rule 2.1 and Practice Direction Pilot 2B
Practice Direction – Transparency Pilot	Heading	Part 13	Pilot Part 4
	Paragraph 1.1	Rule 9A	Rule 2.6
	Paragraph 1.2	Part 13 and Practice Direction 13A	Pilot Part 4 and Practice Direction Pilot 4A
	Heading above paragraph 2.1	Rule 92(1)(a) and (2)	Rule 4.3(1)(a) and (2)
	Paragraph 2.1(a)	Rule 92(1)(a)	Rule 4.3(1)(a)
	Paragraph 2.1(b)	Rule 92(2)	Rule 4.3(2)
	Paragraph 2.4	Rule 92(1)(b) or (c)	Rule 4.3(1)(b) or (c)
Practice Direction – Section 49 Reports Pilot	Paragraph 1.1	Rule 9A	Rule 2.6

