

PRACTICE DIRECTION – TRANSPARENCY PILOT

This Practice Direction supplements Part 13 of the Court of Protection Rules 2007

1. General

1.1

This Practice Direction is made under rule 9A¹ of the Court of Protection Rules 2007 (“CoPR”). It provides for a pilot scheme for the holding of hearings to be in public pursuant to orders under rule 92² with a standard order for restrictions on reporting to ensure the anonymity of P and, where appropriate, other persons.

1.2

Where the provisions of this Practice Direction conflict with the provisions of Part 13 of the CoPR or Practice Direction 13A³, this Practice Direction shall take precedence.

1.3

The pilot scheme is to—

- (a) operate from 29th January 2016 to 31st August 2017;
- (b) apply to hearings in all proceedings except applications relating to serious medical treatment (for which Practice Direction 9E makes specific provision) and applications for a committal order (for which rule 188 makes specific provision); and
- (c) apply to hearings which the court has, on or after 29th January 2016, directed to take place (but not hearings taking place after that date pursuant to a direction before that date).

¹ Renumbered as rule 2.6 where the practice direction *Practice Direction – Case Management Pilot* (“the Case Management pilot”) applies.

² Renumbered as rule 4.3 where the Case Management pilot applies.

³ Renumbered respectively as Pilot Part 4 and Practice Direction Pilot 4A where the Case Management Pilot applies.

2. General rule – standard order under rule 92(1)(a) and (2)⁴

2.1

Where the pilot scheme applies, the court will ordinarily—

(a) make an order under rule 92(1)(a) that any attended hearing shall be in public; and

(b) in the same order, impose restrictions under rule 92(2) in relation to the publication of information about the proceedings.

2.2

An “attended hearing”, except where a practice direction provides otherwise, means a hearing where one or more of the parties to the proceedings have been invited to attend the court for the determination of the application. A Dispute Resolution Hearing is not an attended hearing for this purpose.

2.3

An order pursuant to paragraph 2.1 will ordinarily be in the terms of the standard order approved by the President of the Court of Protection and published on the judicial website at <https://www.judiciary.gov.uk/publication-court/court-of-protection/>

2.4

The court may decide not to make an order pursuant to paragraph 2.1 if it appears to the court that there is good reason for not making the order, but will consider whether it would be appropriate instead to make an order (under rule 92(1)(b) or (c))—

(a) for a part only of the hearing to be held in public; or

(b) excluding any persons, or class of persons from the hearing, or from such part of the hearing as is held in public.

⁴ Rule 92 is renumbered as rule 4.3 where the Case Management pilot applies.

2.5

(1) In deciding whether there is good reason not to make an order pursuant to paragraph 2.1 and whether to make an order pursuant to paragraph 2.4 instead, the court will have regard in particular to—

- (a) the need to protect P or another person involved in the proceedings;
- (b) the nature of the evidence in the proceedings;
- (c) whether earlier hearings in the proceedings have taken place in private;
- (d) whether the court location where the hearing will be held has facilities appropriate to allowing general public access to the hearing, and whether it would be practicable or proportionate to move to another location or hearing room;
- (e) whether there is any risk of disruption to the hearing if there is general public access to it;
- (f) whether, if there is good reason for not allowing general public access, there also exists good reason to deny access to duly accredited representatives of news gathering and reporting organisations.

(2) In sub-paragraph (1)(f), “duly accredited” refers to accreditation in accordance with any administrative scheme for the time being approved for the purposes of this pilot by the Lord Chancellor.

2.6

Where the court makes an order pursuant to paragraph 2.1 or 2.4 that an attended hearing or part of it is to be in public, the court will grant, to any person who would have been entitled under the Legal Services Act 2007 to exercise rights of audience at that hearing if such an order had not been made and the hearing was held in private (and who is not otherwise entitled to exercise such rights), the equivalent rights of audience at that attended hearing and any further attended hearing. unless the court is satisfied that there is good reason not to do so.