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STATUTORY INSTRUMENTS

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**2017 No. 1035**

**The Court of Protection Rules 2017**

**PART 3**

**MANAGING THE CASE**

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**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;

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- (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;
- (m) direct or limit the means of communication to be used by the parties; and
- (n) 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 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

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- (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.

(Rule 3.9 and Practice Direction 3B make provision about the case 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 case.

(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.

(Practice Direction 3B makes provision in relation to the case pathways and excepted classes of case.)

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