

## **PRACTICE DIRECTION – ADMISSIONS, EVIDENCE AND DEPOSITIONS**

*This practice direction supplements Part 14 of the Court of Protection Rules 2007*

### **PRACTICE DIRECTION E – SECTION 49 REPORTS**

#### **General**

1. Attention is drawn to:
  - (a) section 49 of the Act – which makes provision for the court to require a report dealing with such matters relating to P as the court may direct;
  - (b) rule 85(2)(a) – which provides that the court, when giving directions, may require a section 49 report and give directions about any such report;
  - (c) rule 117 – which sets out the duties of a person required to prepare a section 49 report and specifies to whom the report may be sent; and
  - (d) rule 118 – which makes provision for the court to permit written questions to be put to a person who has made a section 49 report.

#### **The court's direction for a report**

2. The Annex to this practice direction contains the form of an order requiring a report under section 49 of the Act and the forms of directions relating to the report. When requiring a section 49 report, the court will as far as possible base its order and directions on those forms.

#### **Reports by Public Guardian or a Court of Protection Visitor**

3. Where a report is to be prepared by either the Public Guardian or a Court of Protection Visitor,<sup>1</sup> a copy of the order and the directions will be sent to the Public Guardian.
4. In the case of a report which is to be made by a Court of Protection Visitor, the Public Guardian must ensure that:
  - (a) a person is nominated from the panel of General Visitors or the panel of Special Visitors, as appropriate; and

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<sup>1</sup> See section 49(2) of the Act.

- (b) the court is notified of his name and contact details as soon as practicable.
5. The nomination of a Court of Protection Visitor should be made before the end of the period of 7 days beginning with the date on which the Public Guardian received a copy of the order.

### **Reports under arrangements made by a local authority or an NHS body**

6. Where a report is to be prepared under arrangements made by a local authority or an NHS body,<sup>2</sup> a copy of the order and the directions will be sent to a senior officer of that authority or body. That person must ensure that:
- (a) an appropriate person is nominated to make the report; and
  - (b) the court is notified of his name and contact details as soon as practicable.
7. The nomination should be made before the end of the period of 7 days beginning with the date on which the senior office of that local authority or NHS body received a copy of the order.

### **Access to information**

8. The court will generally provide to the person who is to produce a report:
- (a) a copy of the application form and any annexes to it;
  - (b) the name and contact details of P;
  - (c) the name and contact details of the parties; and
  - (d) the name and contact details of any legal representative of a person specified in (b) or (c).
9. The court order requiring the report, the directions relating to it and the information described in paragraph 8 will generally be sent by first class mail or by facsimile. If the circumstances warrant a different form of communication, the documents and information will also be sent by first class mail or by facsimile at the first available opportunity.

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<sup>2</sup> See section 49(3) of the Act.

10. Section 49(7) of the Act sets out other documents relating to P which the Public Guardian or a Court of Protection Visitor may examine or of which he may take copies for the purpose of making the report.

### **The contents of the report**

11. The person required to prepare a section 49 report must:

- (a) prepare it having regard to the provisions of rule 117;
- (b) produce it in the manner specified in this practice direction (subject to any directions given by the court); and
- (c) produce it in accordance with the timetable set out in the court's directions.

12. The report should contain four main sections. These are:

- (a) the details of the person who prepared the report;
- (b) the details of P;
- (c) the matters and material considered in preparing the report; and
- (d) the conclusions reached.

13. In the first section (details of the person who prepared the report), the report should:

- (a) state the full name of the person who prepared the report;
- (b) state whether he was appointed under section 49(2) or (3) of the Act;
- (c) state whether he is:
  - (i) the Public Guardian,
  - (ii) a General Visitor,
  - (iii) a Special Visitor,
  - (iv) an officer, employee or other person nominated by a local authority, or
  - (v) an officer, employee or other person nominated by an NHS body;
- (d) state his occupation or employment (for example, social worker employed by a local authority or general practitioner in private practice); and
- (e) list his qualifications and experience.

14. In the second section (P's details), the report should (unless an order to the contrary pursuant to rule 19 has been made):

- (a) state P's full name, date of birth and present place of residence;
- (b) state P's nationality, racial origin, cultural background and religious persuasion (if appropriate);

- (c) identify P's immediate family (specifying their relationship to P and contact details);
- (d) identify any other person who has a significant role in P's life (for example, a close friend or a carer) specifying their role and contact details; and
- (e) give a summary of P's medical history.

15. In the third section (matters and material considered), the report should:

- (a) list any interview conducted with P (specifying time and place);<sup>3</sup>
- (b) list any interview conducted with one or more persons other than P (specifying time and place);<sup>4</sup>
- (c) state:
  - (i) whether any examination of P was conducted by a Special Visitor under section 49(9) of the Act, and
  - (ii) the name and qualifications of any person who assisted with any such examination;
- (d) give a summary of any key events in P's life which appear to have a direct bearing on the matters to be dealt with in the report;
- (e) set out the details of any of the following material which was relied on in the preparation of the report:
  - (i) any literature or other material,
  - (ii) any records obtained under section 49(7) of the Act;
- (f) set out the details of facts and opinions relied on in the preparation of the report (ensuring that there is a clear distinction between the two);
- (g) where there is a range of opinion on an issue addressed in the report:
  - (i) summarise the range of opinion,
  - (ii) state the views held by the person who prepared the report and give reasons for them, and
  - (iii) if those views are qualified in any way, state the nature of the qualification; and
- (h) indicate which of the facts are within the knowledge of the person who prepared the report.

16. In the fourth section (conclusions), the report should:

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<sup>3</sup> The person preparing the report should ensure that he keeps any notes made during the interview with P, so that the notes are available for production to the court if necessary.

<sup>4</sup> The person preparing the report should ensure that he keeps any notes made during the interview with an person other than P, so that the notes are available for production to the court if necessary.

- (a) identify any issues or questions which were specified in the directions given by the court as being matters in which the court had a particular interest;
- (b) address clearly such issues or questions;
- (c) state clearly all conclusions reached by the person who prepared the report;
- (d) state clearly the recommendations made by the person who prepared the report; and
- (e) contain a statement of truth in the following terms:

“I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are, and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.”



9. [The court is particularly interested in the following issues or questions and these must also be addressed in the report:

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**Persons to whom report is likely to be disclosed**

10. At the time of ordering the report, it is the court's intention to disclose it under rule [117(4)] to [the parties only] [the parties and ].

**Other directions**

11. [ ].