

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 July 2016;
- (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 set out in the Annex to this Practice Direction.

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.

2.5

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

(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,

ANNEX – STANDARD ORDER

IN THE COURT OF PROTECTION

CASE NO: -----

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

IN THE MATTER OF X [*THE ANONYMISED REFERENCE TO P*]

BEFORE ----- on -----

BETWEEN

[PARTIES IN APPROPRIATELY ANONYMISED FORM]

IMPORTANT

If any person disobeys the order in paragraph (5) they may be found guilty of contempt of court and may be sent to prison, fined or have their assets seized. They have the right to ask the court to vary or discharge the order.

UPON READING the Court file

AND UPON HEARING -----

AND UPON IT APPEARING TO THE COURT that there should be an attended hearing to which the pilot provided for by *Practice Direction – Transparency Pilot* should apply

IT IS HEREBY ORDERED that:

- (1) This application be set down for an attended hearing on ----- with a time estimate of ----- at which the Court will consider the following issues:
 - (a) ---,
 - (b) ---

[DEFINE THE ISSUES]

(2) Subject to further order of the Court that attended hearing and any further attended hearing of this application is to be in public PROVIDED ALWAYS THAT the court may exclude from the attended hearing any person (other than a party) who refuses a request to sign a document recording their attendance and that they are aware of the terms of this order

(3) The attended hearing is to be listed as follows:

[SET OUT A DESCRIPTION BY REFERENCE TO THE GENERAL DESCRIPTION LIST]

(4) Part 3 of Practice Direction 13A to the Court of Protection Rules 2007 (which relates to proceedings held in private) shall continue to apply to these proceedings.

(5) (A) The following persons (the Persons Bound by the Injunctive Order) are bound by this injunctive order:

- (i) the parties and their representatives,
- (ii) the witnesses,
- (iii) all persons who attend all or any part of an attended hearing,
- (iv) all persons who by any means obtain or are given an account or record of all or any part of an attended hearing or of any order or judgment made or given as a result of an attended hearing, and
- (v) any body, authority or organisation (and their officers, employees, servants and agents) for whom any such person works or is giving evidence.

(B) The material and information (the Information) covered by this injunctive order is:

- (i) any material or information that identifies or is likely to identify that
 - (a) [X] and members of X's family are respectively the subject (and so a P as defined in the Court of Protection Rules 2007) or members of the family of a subject of these proceedings, or that
 - (b) [--- ANONYMISED REFERENCE TO ANY OTHER PARTY --] is a party to these proceedings, or that
 - (c) [----- ANONYMISED PERSON WHOSE IDENTITY SHOULD NOT BE PUBLISHED -----] (who the Court has so identified to the parties in private) [----- has taken a part in / or been referred to in -----] these proceedings; and
- (ii) any material or information that identifies or is likely to identify where any person listed above lives, or is being cared for, or their contact details.

(C) Subject to further order of the Court and save as provided by subparagraph (D) the Persons Bound by this Injunctive Order shall not by any means directly or indirectly:

- (i) publish the Information or any part or parts of it, or
- (ii) cause, enable, assist in or encourage the publication of the Information or any part or parts of it.

(D) Subject to further order of the Court this injunctive order does not prevent the Persons Bound by this Injunctive Order from communicating information relating to these proceedings on the basis that Part 3 of Practice Direction 13A to the Court of Protection Rules 2007 (which relates to proceedings held in private) applies to these proceedings.

- (6) Subject to further order of the Court any transcript of a hearing of and any judgment or order given in these proceedings shall be anonymised so that it shall contain no reference by name or address to the persons or bodies referred to in paragraph (5)(B) and shall refer to them by their descriptions therein.
- (7) Subject to further order of the Court all position statements, statements of issues, chronologies and skeleton arguments prepared when the injunctive order in paragraph (5) is in force shall refer to the persons or bodies referred to in paragraph (5)(B) by their descriptions therein.
- (8) Subject to further order or direction of the Court (including directions relating to payment, use, copying, return and the means by which a copy of a document may be provided):
 - (A) the documents prepared in accordance with paragraph (7) will if requested by them be provided to duly accredited representatives of news gathering and reporting organisations who attend the hearing referred to in paragraph (1) (and any later hearing), and
 - (B) at those attended hearings the Court shall give such further directions as it thinks fit concerning the provision of copies of documents put before the Court and the terms on which they are to be provided to any person who attends the hearing (and is not a person to whom the document can be provided under Part 3 of Practice Direction 13A to the Court of Protection Rules 2007).
- (9) A record (the Record) of the Information shall be kept by the Court. The Record shall contain a list of the names separately from the other parts of the Information. The Record or some of it may on request be made available to anyone who attends or has attended a hearing on such terms as the Court thinks fit.
- (10) Application may be made to the Court by any person who has not been present at an attended hearing (and so become aware of or been able to request the Information) for a direction that they be provided with the Information or some of it on such terms as the Court thinks fit. Any such application must be accompanied by evidence setting out why such a direction is sought.

- (11) The parties and any person affected by this order may apply to the Court for an order (and the Court may of its own motion make an order) that:
- (i) varies or discharges this order or any part or parts of it, or which
 - (ii) permits the publication of any of the Information on the basis that it is lawfully in the public domain or for such other reason as the Court thinks fit.
- (12) Subject to further order of the Court, any person who would have been entitled under the Legal Services Act 2007 to exercise rights of audience at the attended hearing if this order had not been made and it was held in private (and is not otherwise entitled to exercise such rights), shall be entitled to exercise equivalent rights of audience at that attended hearing and any further attended hearing of this application.

(13) Costs reserved.

Dated:-----

Address for notifying the Court:
