

PRACTICE DIRECTION 22A – CIVIL RESTRAINT ORDERS

This practice direction supplements Part 22 of the Court of Protection Rules 2017

Introduction

1. This practice direction applies where the court is considering whether to make—
 - (a) a limited civil restraint order;
 - (b) an extended civil restraint order; or
 - (c) a general civil restraint order,against a party who has made applications which are totally without merit.
2. Rule 3.1 (General case management powers), rule 3.6(2) – (5) (Dealing with the application), rule 14.2 (Power of the court to control evidence), and rule 15.5 (Power of the court to restrict expert evidence) provide powers to the court to case manage and control the preparation, presentation and the conduct of any case before the court.
3. Rule 22.1 provides that where an application (including an application for permission) is dismissed, whether or not on the court’s own initiative, and is totally without merit, the court order must specify that fact and the court must consider whether to make a civil restraint order.

Limited civil restraint orders

4. A limited civil restraint order may be made where a party has made 2 or more applications which are totally without merit.
5. Where the court makes a limited civil restraint order, the party against whom the order is made—
 - (a) will be restrained from making any further applications in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
 - (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and
 - (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.
6. Where a party who is subject to a limited civil restraint order—

- (a) makes a further application in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, such application will automatically be dismissed—
 - (i) without the judge having to make any further order; and
 - (ii) without the need for the other party to respond to it; and
 - (b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.
7. A party who is subject to a limited civil restraint order may not make an application for permission under paragraphs 5(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 8.
8. A notice under paragraph 7 must—
- (a) set out the nature and grounds of the application; and
 - (b) provide the other party with at least 7 days within which to respond.
9. An application for permission under paragraphs 5(a) or (b)—
- (a) must be made in writing;
 - (b) must include the other party's written response, if any, to the notice served under paragraph 7; and
 - (c) will be determined without a hearing.
10. Where a party makes an application for permission under paragraphs 5(a) or (b) and permission is refused, any application for permission to appeal—
- (a) must be made in writing; and
 - (b) will be determined without a hearing.
11. A limited civil restraint order—
- (a) is limited to the particular proceedings in which it is made;
 - (b) will remain in effect for the duration of the proceedings in which it is made, unless the court orders otherwise; and

- (c) must identify the judge or judges to whom an application for permission under paragraphs 5(a), 5(b) or 10 should be made.

Extended civil restraint orders

12. An extended civil restraint order may be made where a party has persistently made applications which are totally without merit.
13. Unless the court orders otherwise, where the court makes an extended civil restraint order, the party against whom the order is made—
 - (a) will be restrained from making applications in the Court of Protection concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order;
 - (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and
 - (c) may apply for permission to appeal the order and if permission is granted, may appeal the order.
14. Where a party who is subject to an extended civil restraint order—
 - (a) makes an application in the Court of Protection concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge identified in the order, the application will automatically be struck out or dismissed—
 - (i) without the judge having to make any further order; and
 - (ii) without the need for the other party to respond to it; and
 - (b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss the application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.
15. A party who is subject to an extended civil restraint order may not make an application for permission under paragraphs 13(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 16.
16. A notice under paragraph 15 must—

- (a) set out the nature and grounds of the application; and
- (b) provide the other party with at least 7 days within which to respond.

17. An application for permission under paragraphs 13(a) or (b)—

- (a) must be made in writing;
- (b) must include the other party's written response, if any, to the notice served under paragraph 15; and
- (c) will be determined without a hearing.

18. Where a party makes an application for permission under paragraphs 13(a) or (b) and permission is refused, any application for permission to appeal—

- (a) must be made in writing; and
- (b) will be determined without a hearing.

19. An extended civil restraint order—

- (a) will be made for a specified period not exceeding 2 years; and
- (b) must identify the judge or judges to whom an application for permission under paragraphs 13(a), 13(b) or 18 should be made.

20. The court may extend the duration of an extended civil restraint order, if it considers it appropriate to do so, but the duration of the order must not be extended for a period greater than 2 years on any given occasion.

General civil restraint orders

21. A general civil restraint order may be made where the party against whom the order is made persists in making applications which are totally without merit, in circumstances where an extended civil restraint order would not be sufficient or appropriate.

22. Unless the court otherwise orders, where the court makes a general civil restraint order, the party against whom the order is made—

- (a) will be restrained from making any application in the Court of Protection without first obtaining the permission of a judge identified in the order;
- (b) may apply for amendment or discharge of the order, but only with the permission of a judge identified in the order; and

(c) may apply for permission to appeal the order and if permission is granted, may appeal the order.

23. Where a party who is subject to a general civil restraint order—

(a) makes an application in the Court of Protection without first obtaining the permission of a judge identified in the order, the application will automatically be struck out or dismissed—

(i) without the judge having to make any further order; and

(ii) without the need for the other party to respond to it; and

(b) repeatedly makes applications for permission pursuant to that order which are totally without merit, the court may direct that if the party makes any further application for permission which is totally without merit, the decision to dismiss that application will be final and there will be no right of appeal, unless the judge who refused permission grants permission to appeal.

24. A party who is subject to a general civil restraint order may not make an application for permission under paragraphs 22(a) or (b) without first serving notice of the application on the other party in accordance with paragraph 25.

25. A notice under paragraph 24 must—

(a) set out the nature and grounds of the application; and

(b) provide the other party with at least 7 days within which to respond.

26. An application for permission under paragraphs 22 (a) or (b)—

(a) must be made in writing;

(b) must include the other party's written response, if any, to the notice served under paragraph 24; and

(c) will be determined without a hearing.

27. Where a party makes an application for permission under paragraphs 22(a) or (b) and permission is refused, any application for permission to appeal—

(a) must be made in writing; and

(b) will be determined without a hearing.

28. A general civil restraint order—

(a) will be made for a specified period not exceeding 2 years; and

(b) must identify the judge or judges to whom an application for permission under paragraphs 22(a), 22(b) or 27 should be made.

29. The court may extend the duration of a general civil restraint order, if it considers it appropriate to do so, but the duration of the order must not be extended for a period greater than 2 years on any given occasion.

General

30. The other party or parties to the proceedings may apply for any civil restraint order.

31. An application under paragraph 30 must be made using the procedure in Part 9 unless the court otherwise directs and the application must specify which type of civil restraint order is sought.