PRACTICE DIRECTION 3B – CASE PATHWAYS

This practice direction supplements Part 3 of the Court of Protection Rules 2017

NOTE: Rule 9.12(5) and (7) do not apply where a case is allocated to a case pathway.

In applying this practice direction, the parties must have regard to any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges.

Part 1 — Scope of the case management pathways

1.1

Rule 3.9 provides for each case which is started in the CoP to be allocated to one of three case management pathways on issue, unless the case falls within an excepted class of cases specified in a practice direction. The excepted classes of case which are specified for this purpose are—

(a) uncontested applications;

(b) applications for statutory wills and gifts;

(c) applications made by the Public Guardian;

(d) applications in Form COPDOL11;

(e) applications in Form DLA; and

(f) Schedule 3 applications (under Part 23 of the Rules).

1.2

The scope of the pathways is as follows—

THE PERSONAL WELFARE PATHWAY (Part 2 of this practice direction)

This will be the normal pathway for a case in which an application is made to the court to make or authorise one or more decisions and/or actions and/or declarations relating to P's personal welfare only.

THE PROPERTY AND AFFAIRS PATHWAY (Part 3 of this practice direction)

This will be the normal pathway for a case in which an application is made to the Court to make or authorise one or more decisions and/or actions and/or declarations relating to P's property and financial affairs only.

THE MIXED WELFARE AND PROPERTY PATHWAY (Part 4 of this practice direction)

This will be the normal pathway for a case in which the court is to be asked to make or authorise one or more decisions and/or actions and/or declarations relating not only to P's property and financial affairs but also P's personal welfare.

Part 2 — The Personal Welfare Pathway

2.1

The Personal Welfare Pathway comprises six stages—

(a) *The pre-issue stage* (see **paragraph 2.2**);

(b) *The point of issue of the application* (see **paragraph 2.3**);

(c) *Case management on issue* (see **paragraph 2.4**);

(d) *The Case Management Conference* (see **paragraph 2.5**);

(e) *The Final Management Hearing* (see **paragraph 2.6**);

(f) *The Final Hearing* (see **paragraph 2.7**).

2.2

THE PRE-ISSUE STAGE

(1) *In all cases*

The applicant must take all necessary steps to—

(a) identify all potential respondents to the proceedings which the applicant proposes to start, and any other interested parties;

(b) notify P (where possible) and the potential respondents and other interested parties identified in accordance with sub-paragraph (a) of the applicant's intention to start the proceedings unless the matters which the court would be asked to determine can be resolved without the need for proceedings;

(c) explain to those notified in accordance with sub-paragraph (b) the nature of the proceedings which the applicant proposes to start, and the matters which the court would be asked to determine in those proceedings;

(d) set out the applicant's proposals for resolving those matters without the need for proceedings;

(e) engage with those notified in accordance with sub-paragraph (b) to resolve those matters as far as possible;

(f) ensure, where it is not possible to resolve those matters without starting proceedings, that all the documents and information required by paragraph 2.3 will be ready to be included with the application.

(2) *Additionally, in urgent cases*

Where the applicant intends to make an urgent or interim application, the applicant must consider—

(a) why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if any of the steps in paragraph 2.2(1) cannot be taken, why this is the case and what the consequences would be if those steps were taken;

(c) whether there is any specific deadline, and what that deadline is;

(d) whether there are issues which are not urgent and how those could be separated from those which are urgent.

2.3

THE POINT OF ISSUE OF THE APPLICATION

(1) *In all cases*

The applicant must include in the application, or refer in the application to and file with it, the following documents or information—

(a) a draft final order or explanation of the order that is sought;

(b) a clear explanation of why an order, and the specific order sought, is required;

(c) an explanation of the nature of the dispute;

(d) a statement of what is expected of P's family and/or other connected individuals;

(e) the names of the key people involved in the case, and the nature of their involvement;

(f) a list of the options for P;

(g) a needs assessment, including where appropriate a risk assessment;

(h) a support plan for P, with a time line, including where appropriate a transfer plan;

(i) evidence that the key individuals and agencies have been consulted;

(j) confirmation that a best interests meeting has taken place, and a copy of the minutes of that meeting;

(k) any relevant medical evidence;

(l) except in applications under section 21A of the Act, a report from a medical practitioner or other appropriately qualified professional on P's litigation capacity and capacity to make decisions on the issues in the case;

(m) an explanation of how P can be supported to maximise any decision-making capacity which P has (if possible);

(n) an indication of whether there is likely to be a public law challenge in the case, and if so, the nature of the challenge which is anticipated;

(o) a statement of how it is proposed that P will be involved in the case.

(2) *Additionally, in urgent cases*

Where the application is urgent, the applicant must include in the application, or refer in the application to and file with it, the following information or documents in addition to those in paragraph 2.3(1)—

(a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if any of the steps in paragraph 2.2(1) have not been taken, why this is the case and what the consequences would be if those steps were taken;

(c) confirmation of any specific deadline;

(d) information identifying and separating the issues which are urgent from those which are not urgent.

2.4

CASE MANAGEMENT ON ISSUE

(1) *In all cases*

Upon issue of the application, the papers will be placed before a judge for gatekeeping and initial case management directions. These will include—

(a) gatekeeping: allocating the case to the correct level of judge, having regard to any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges;

(b) listing for a Case Management Conference within 28 days (unless the matter is urgent, in which case paragraph 2.4(2) applies);

(c) directions to ensure the Case Management Conference is utilised properly;

(d) considering whether it is necessary for P to be joined as a party, and whether any other persons should be invited to attend the Case Management Conference so that they may apply to be joined (but not making any order for any person other than P to be joined at this stage);

(e) directing the parties to consider who can act as litigation friend or rule 1.2 representative for P if necessary;

(f) considering what details of P's estate should be provided for the purposes of securing litigation funding or otherwise;

(g) considering whether an advocates' meeting should take place before the case management conference, and ordering such a meeting if appropriate;

(h) ordering the preparation of a core bundle (which must not exceed 150 pages, unless the court directs otherwise) for the Case Management Conference.

(2) *In urgent cases*

Where the application is urgent—

(a) if the case is within a category which must be heard by a Tier 3 Judge in accordance with any guidance issued in relation to allocation of Court of Protection cases to Tier 3 Judges, it must be transferred to a Tier 3 Judge;

(b) the case will be listed urgently in accordance with the judge's directions.

2.5

THE CASE MANAGEMENT CONFERENCE

At the Case Management Conference, the court will—

(a) record the issues in dispute;

(b) record what has been agreed between the parties;

(c) record which issues are not to be the subject of adjudication in the case;

(d) consider the appropriate judge for the case;

(e) allocate a judge to the case;

(f) actively consider and decide, having regard to rule 1.2, how P is to be involved in the case;

(g) consider whether a litigation friend is required for P, and if so, who is to be the litigation friend, and if the Official Solicitor is to be the litigation friend, declare that the appointment of the Official Solicitor is a last resort;

(h) determine who should be a party;

(i) set a timetable for the proceedings;

(j) fix a date for the Final Management Hearing, and set a target date for the Final Hearing or fix a trial window as appropriate;

(k) consider whether a further best interests meeting is required, and if so, give directions for that meeting;

(l) give directions for evidence, including disclosure and expert reports (if appropriate having regard to sub-paragraph (m));

(m) actively consider whether a section 49 report or the use of a rule 1.2 representative could achieve a better result than the use of an expert;

(n) consider whether there should be a public hearing;

(o) give any other directions as appropriate to further the overriding objective.

2.6

THE FINAL MANAGEMENT HEARING

(1) A Final Management Hearing will be listed to enable the court to determine whether the case can be resolved, and if not, to ensure that the trial is properly prepared, giving directions as necessary for that purpose.

(2) A meeting should take place at least five days before the Final Management Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Management Hearing, addressing each of the matters required by Practice Direction 4B and preparing a draft order.

(3) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Management Hearing, file a core bundle, which must comply with the requirements of Practice Direction 4B and in particular include the documents specified in paragraphs 4.2 and 4.3 of that Practice Direction.

(4) If sub-paragraph (3) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.

2.7

THE FINAL HEARING

(1) Unless otherwise directed by the court, a meeting should take place at least five days before the Final Hearing between advocates and, so far as practicable, any unrepresented parties, with the purpose of resolving or narrowing the issues to be determined at the Final Hearing.

(2) The applicant (or, if the applicant is not represented but the respondent is represented, the respondent) must, not later than 3 days before the Final Hearing, file a bundle, which must—

(a) comply with the requirements of Practice Direction 4B, with particular reference to paragraphs 4.6 and 4.7 of that Practice Direction; and

(b) not generally exceed 350 pages and in any event not contain more than one copy of the same document.

(3) If sub-paragraph (2) has not been complied with, or any other directions have not been complied with, the court will consider whether to adjourn the hearing, and if it does so, will consider making an order as to costs.

Part 3 — The Property and Affairs Pathway

3.1

(1) The Property and Affairs Pathway commences at a later stage than the Personal Welfare Pathway. It is recognised that contentious property and affairs applications tend to arise when a routine application is made, for example for the appointment of a deputy, and that application is opposed. The vast majority of applications, however, remain unopposed, and there is not the need for a pre-issue stage which there is in personal welfare cases.

(2) The Property and Affairs Pathway comprises four stages—

(a) *When the application becomes contested* (see **paragraph 3.2**);.

(b) *Case management on allocation to pathway* (see **paragraph 3.3**);

(c) *The Dispute Resolution Hearing* (see **paragraph 3.4**);

(d) *The Final Hearing* (see **paragraph 3.5**).

(3) *Urgent applications* are less likely in property and affairs cases; but **paragraph 3.6** contains provision for their management.

3.2

WHEN THE APPLICATION BECOMES CONTESTED

(1) When the court is notified in Form COP5 that a property and affairs application is opposed, or that the respondent wishes to seek a different order from that applied for, the case must be allocated to the Property and Affairs Pathway.

(2) A copy of the notification in Form COP5 must be served by the court on the applicant together with the order allocating the case to the Property and Affairs Pathway (see paragraph 3.3; and see also the opening paragraph of this practice direction which disapplies rule 9.12(5) and (7)).

3.3

CASE MANAGEMENT ON ALLOCATION TO PATHWAY

(1) Following notification in Form COP5 that the case is contested, the papers will be placed before a judge who will allocate the case to the Property and Affairs Pathway and either—

list the case for a Dispute Resolution Hearing; or

transfer the case to the most appropriate regional court outside the Central Office and Registry for listing of the Dispute Resolution Hearing and future case management.

(2) The judge will also order the respondent to file a summary of the reasons for opposing the application or for seeking a different order, if the reasons are not clear from Form COP5 submitted by the respondent.

3.4

THE DISPUTE RESOLUTION HEARING

(1) All parties must attend the Dispute Resolution Hearing, unless the court directs otherwise; but the Dispute Resolution Hearing is not an attended hearing for the purposes of Practice Direction 4C.

(2) The Dispute Resolution Hearing will normally take place before a District Judge.

(3) The purpose of the Dispute Resolution Hearing is to enable the court to determine whether the case can be resolved and avoid unnecessary litigation, and so—

(a) in order for the Dispute Resolution Hearing to be effective, parties must approach it openly and without reserve; and

(b) the content of the hearing is not to be disclosed and evidence of anything said or of any admission made in the course of the hearing will not be admissible in evidence, except at the trial of a person for an offence committed at the hearing.

(4) The court will give its view on the likely outcome of the proceedings.

(5) If the parties reach agreement to settle the case, the court will make a final order if it considers it in P’s best interests.

(6) If the parties do not reach agreement, the court will give directions for the management of the case and for a Final Hearing, having regard to the list of matters in paragraph 2.5, and the requirements of Practice Direction 4B in relation to the preparation of a bundle.

(7) The Final Hearing must be listed before a different judge, and the judge will mark the order accordingly.

3.5

THE FINAL HEARING

The final hearing will take place in accordance with the directions given at or following the Dispute Resolution Hearing.

3.6

URGENT APPLICATIONS

(1) Where a property and affairs application is urgent, the applicant should bear in mind the obligation on parties to co-operate in rule 1.4(2)(c).

(2) The applicant must include in the application, or refer in the application to and file with it, the following information or documents—

(a) an explanation of why the case is urgent and what the consequences will be if the case is not treated as urgent;

(b) if the application is made without notice, an explanation why it was not possible to make the application on notice, and what the consequences would be if the application were to proceed on notice and the order or an interim order were not made immediately;

(c) confirmation of any specific deadline;

(d) information identifying and separating the issues which are urgent from those which are not urgent.

(3) On issue, the case will be listed urgently in accordance with the judge's directions after considering the papers, which may, if the matter appears or is confirmed to be contentious, be that—

(a) the case will proceed to a Dispute Resolution Hearing but listed urgently; or

(b) the case may be listed for an interim hearing to decide the urgent matter or matters in the case, and the court can decide at that hearing whether any further hearing is necessary and if so, whether that further hearing should include a Dispute Resolution Hearing or not.

Part 4 — The Mixed Welfare and Property Pathway

4.1

(1) Where a case contains both personal welfare and property and affairs elements, the court has the power to use whichever of the personal welfare or the property and affairs

pathway it considers most suitable, or to direct the use of elements of both those pathways if it considers that appropriate.

(2) The Mixed Welfare and Property Pathway, therefore, comprises two stages before the court makes a decision about which pathway, or a mixture of elements of both pathways, is most appropriate—

The *pre-issue stage*, during which the prospective parties are expected to identify which pathway is most appropriate to the case and to comply with the requirements of that pathway and seek to resolve issues as far as possible;

The *point of issue of the application*, for which the parties must file a list of issues to allow the court to identify which pathway, or mixture of elements, is most appropriate.

(3) *Case management*: On issue of the application, the papers will be placed before a judge who will either—

(a) order the case to be allocated to a pathway and give directions accordingly; or

(b) give directions as to the elements of each pathway which are to apply and the procedure the case will follow.