
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 1

THE OVERRIDING OBJECTIVE

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Overriding objective

1.1.—(1) These Rules have the overriding objective of enabling the court to deal with a case justly and at proportionate cost, having regard to the principles contained in the Act.

- (2) The court will seek to give effect to the overriding objective when it—
- (a) exercises any power under the Rules; or
 - (b) interprets any rule or practice direction.
- (3) Dealing with a case justly and at proportionate cost includes, so far as is practicable—
- (a) ensuring that it is dealt with expeditiously and fairly;
 - (b) ensuring that P's interests and position are properly considered;
 - (c) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
 - (d) ensuring that the parties are on an equal footing;
 - (e) saving expense;
 - (f) allotting to it an appropriate share of the court's resources, while taking account of the need to allot resources to other cases; and
 - (g) enforcing compliance with rules, practice directions and orders.

Participation of P

1.2.—(1) The court must in each case, on its own initiative or on the application of any person, consider whether it should make one or more of the directions in paragraph (2), having regard to—

- (a) the nature and extent of the information before the court;
 - (b) the issues raised in the case;
 - (c) whether a matter is contentious; and
 - (d) whether P has been notified in accordance with the provisions of Part 7 and what, if anything, P has said or done in response to such notification.
- (2) The directions are that—
- (a) P should be joined as a party;
 - (b) P’s participation should be secured by the appointment of an accredited legal representative to represent P in the proceedings and to discharge such other functions as the court may direct;
 - (c) P’s participation should be secured by the appointment of a representative whose function shall be to provide the court with information as to the matters set out in section 4(6) of the Act and to discharge such other functions as the court may direct;
 - (d) P should have the opportunity to address (directly or indirectly) the judge determining the application and, if so directed, the circumstances in which that should occur;
 - (e) P’s interests and position can properly be secured without any direction under subparagraphs (a) to (d) being made or by the making of an alternative direction meeting the overriding objective.
- (3) Any appointment or directions made pursuant to paragraph (2)(b) to (e) may be made for such period or periods as the court thinks fit.
- (4) Unless P has capacity to conduct the proceedings, an order joining P as a party shall only take effect—
- (a) on the appointment of a litigation friend on P’s behalf; or
 - (b) if the court so directs, on or after the appointment of an accredited legal representative.
- (5) If the court has directed that P should be joined as a party but such joinder does not occur because no litigation friend or accredited legal representative is appointed, the court shall record in a judgment or order—
- (a) the fact that no such appointment was made; and
 - (b) the reasons given for that appointment not being made.
- (6) A practice direction may make additional or supplementary provision in respect of any of the matters set out in this rule.

(The appointment of litigation friends, accredited legal representatives and representatives under paragraph (2)(c) is dealt with under Part 17.)

(“Accredited legal representative” is defined in rule 2.1.)

Duties to further the overriding objective

Court’s duty to manage cases

- 1.3.**—(1) The court must further the overriding objective by actively managing cases.
- (2) The court must manage a case at all times and in particular—
- (a) when a case is referred to a judge;
 - (b) at every hearing, whether listed by the court on its own initiative or on application by a party;

- (c) at all stages of a final hearing; and
 - (d) when considering enforcement measures including committal.
- (3) Active case management includes—
- (a) considering the appropriate case pathway for the case;
 - (b) ensuring—
 - (i) that the appropriate judge is allocated to the case;
 - (ii) judicial continuity, so far as practicable;
 - (c) avoiding delay and keeping costs down;
 - (d) encouraging the parties to co-operate with each other in the conduct of the proceedings;
 - (e) identifying at an early stage—
 - (i) the issues; and
 - (ii) who should be a party to the proceedings;
 - (f) deciding promptly—
 - (i) which issues need a full investigation and hearing and which do not; and
 - (ii) the procedure to be followed in the case;
 - (g) deciding the order in which issues are to be resolved;
 - (h) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate;
 - (i) fixing timetables or otherwise controlling the progress of the case;
 - (j) considering whether the likely benefits of taking a particular step justify the cost of taking it;
 - (k) dealing with as many aspects of the case as the court can on the same occasion;
 - (l) dealing with the case without the parties needing to attend at court;
 - (m) making use of technology;
 - (n) giving directions to ensure that the case proceeds quickly and efficiently;
 - (o) considering whether any hearing should be heard in public; and
 - (p) considering whether any document relating to proceedings should be a public document and, if so, whether and to what extent it should be redacted.

(Rules 4.2 to 4.4 make provision about the court's powers to authorise publication of information about proceedings and to order that a hearing be held in public.)

The duty of the parties

- 1.4.**—(1) The parties are required to help the court to further the overriding objective.
- (2) Without prejudice to the generality of paragraph (1), each party is required to—
- (a) ask the court to take steps to manage the case if—
 - (i) an order or direction of the court appears not to deal with an issue; or
 - (ii) if a matter including any new circumstances, issue or dispute arises of which the court is unaware;
 - (b) identify before issue if the case is within the scope of one of the case pathways and comply with the requirements of the applicable case pathway;

- (c) co-operate with the other parties and with the court in identifying and narrowing the issues that need to be determined by the court, and the timetable for that determination;
- (d) adhere to the timetable set by these Rules and by the court;
- (e) comply with all directions and orders of the court;
- (f) be full and frank in the disclosure of information and evidence to the court (including any disclosure ordered under Part 16);
- (g) co-operate with the other parties in all aspects of the conduct of the proceedings, including in the preparation of bundles.

(3) If the court determines that any party has failed without reasonable excuse to satisfy the requirements of this rule, it may under rule 19.5 depart from the general rules about costs in so far as they apply to that party.

(Rule 16.2(2) deals with the requirements of general disclosure.)

The duty of legal representatives

1.5.—(1) Legal representatives of parties are required to help the court to further the overriding objective.

- (2) Without prejudice to the generality of paragraph (1), a legal representative of a party must—
 - (a) comply with any applicable rules, practice directions or orders of the court;
 - (b) follow (where appropriate) the applicable case pathway; and
 - (c) address whether the case can be swiftly resolved.

The duty of unrepresented litigants

1.6.—(1) Without prejudice to the generality of rule 1.4, unrepresented litigants are required to help the court to further the overriding objective.

- (2) This includes—
 - (a) engaging with the process applicable in the case and co-operating with the court and the other parties;
 - (b) seeking the court’s direction if an issue or dispute arises in the case;
 - (c) presenting their case fairly; and
 - (d) seeking early resolution of any dispute where practicable.