

PRACTICE DIRECTION 4B – COURT BUNDLES

This practice direction supplements Part 4 of the Court of Protection Rules 2017

Introduction

1. This practice direction is issued to achieve consistency in the preparation of court bundles in the Court of Protection.

Application of the practice direction

2.1. Except as specified in paragraph 2.4, and subject to a direction under paragraph 2.5 or specific directions given in any particular case, this Practice Direction applies to all hearings in the Court of Protection—

(a) before the President of the Family Division, the Chancellor or a puisne judge of the High Court;

(b) relating in whole or in part to personal welfare, health or deprivation of liberty that are listed for a hearing of one hour or more before a judge other than a judge specified at sub-paragraph (a);

(c) relating solely to property and affairs that are listed before a judge other than a judge specified at sub-paragraph (a) for—

(i) a final hearing; or

(ii) an interim hearing of one hour or more.

2.2. “Hearings” includes all appearances before a judge whether with or without notice to other parties and whether for directions or for substantive relief.

2.3. This Practice Direction applies whether a bundle is being lodged for the first time or is being re-lodged for a further hearing.

2.4. This practice direction does not apply to the hearing of any urgent application if and to the extent that it is impractical to comply with it.

2.5. The President may, after such consultation as is appropriate, direct that this practice direction will apply to such other hearings as the President may specify irrespective of the length of hearing.

Responsibility for the preparation of the bundle

3.1. A bundle for the use of the court at the hearing must be provided by the party in the position of applicant at the hearing (or, if there are cross-applications, by the party whose application was first in time) or, if that person is a litigant in person, then (and subject to any direction by the court) by the first listed respondent who is not a litigant in person or P.

3.2. Where the first named respondent is P and he or she is represented by the Official Solicitor, the responsibility for preparing the bundle will fall to the next named respondent who is represented.

3.3. The party preparing the bundle must paginate it. If possible the contents of the bundle must be agreed by all parties.

Contents of the bundle

4.1. The bundle must contain copies of all documents relevant to the hearing, in chronological order from the front of the bundle, paginated (either in separate sections or sequentially), indexed and divided into separate sections as follows—

- (a) preliminary documents (see paragraphs 4.2 to 4.7);
- (b) any other case management documents required by any other practice direction;
- (c) a time estimate (see paragraph 10.1);
- (d) applications and orders including all Court of Protection forms filed with the application;
- (e) any registered enduring or lasting power of attorney;
- (f) any urgent or standard authorisation given under Schedule A1 of the Mental Capacity Act 2005;
- (g) statements and affidavits (which must state on the top right corner of the front page the date when it was signed or sworn);
- (h) any care or support plans (where appropriate);
- (i) experts' reports and other reports; and
- (j) other documents, divided into further sections as may be appropriate.

Preliminary Documents for Directions and Interim Hearings

4.2. At the start of the bundle there must be inserted a document or documents prepared by each party ('the preliminary documents for a directions or interim hearing') which should set out (either within the preliminary documents themselves or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

- (a) a case summary;
- (b) a chronology of relevant events;
- (c) the issues for determination at the hearing;
- (d) an outline of the likely factual and legal issues at the trial of the case;
- (e) the relief sought at the hearing; and
- (f) a list of essential reading.

4.3. Where appropriate, the preliminary documents for a directions or interim hearing should include—

- (a) a description of relevant family members and other persons who may be affected by or interested in the relief sought;
- (b) a particularised account of the issues in the case;
- (c) the legal propositions relied on, and in particular whether it is asserted that any issue is not governed by the Mental Capacity Act 2005;
- (d) any directions sought concerning the identification and determination of the facts that are agreed, the facts the court will be invited to find and the factors it will be invited to take into account based on such agreed facts or findings of facts;
- (e) any directions sought concerning the alternatives the court will be invited to consider in determining what is in P's best interests;
- (f) any directions sought relating to expert evidence;
- (g) any other directions sought; and
- (h) a skeleton argument.

Preliminary Documents for Fact Finding Hearings

4.4. At the start of the bundle there must be inserted a document or documents prepared by each party (“the preliminary documents for a fact finding hearing”) which should set out (either within the preliminary documents themselves, or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

- (a) the findings of fact that the court is being asked to make; and
- (b) cross references to the evidence relied on to found those findings.

4.5. Where appropriate, the preliminary documents for a fact finding hearing should include—

- (a) a chronology;
- (b) a skeleton argument; and
- (c) a description of relevant family members and other persons who may be affected by or interested in the relief sought.

Preliminary Documents for Final Hearings

4.6. At the start of the bundle there must be inserted a document or documents prepared by each party (“the preliminary documents for a final hearing”) which should set out (either within the preliminary documents themselves, or by cross-reference to what is set out in another document that is in, or is to be put in the bundle)—

- (a) the relief sought;
- (b) a skeleton argument.

4.7. Where appropriate, the preliminary documents for a final hearing should include—

- (a) a chronology;

- (b) the findings of fact that the court is being invited to make and the factors based on such findings or agreed facts that the court is being invited to take into account;
- (c) an appropriately particularised description of the alternatives the court is being invited to consider; and
- (d) a description of relevant family members and other persons who may be affected by or interested in the relief sought.

4.8. Each of the preliminary documents must state on the front page immediately below the heading the date when it was prepared and the date of the hearing for which it was prepared.

4.9. All case summaries, chronologies and skeleton arguments contained in the preliminary documents must be cross-referenced to the relevant pages of the bundle.

4.10. Where the nature of the hearing is such that a complete bundle of all documents is unnecessary, the bundle (which need not be repaginated) may comprise only those documents necessary for the hearing, but—

- (a) the preliminary documents must state that the bundle is limited or incomplete; and
- (b) the bundle must if reasonably practicable be in a form agreed by all parties.

4.9. Where the bundle is re-lodged in accordance with paragraph 9.2, before it is re-lodged—

- (a) the bundle must be updated as appropriate; and
- (b) all superseded documents must be removed from the bundle.

Format of the bundle

5.1. The bundle must be contained in one or more A4 size ring binders or lever arch files (each lever arch file being limited to 350 pages).

5.2. All ring binders and lever arch files must have clearly marked on the front and the spine—

- (a) the title and number of the case;
- (b) the court where the case has been listed;
- (c) the hearing date and time;
- (d) if known, the name of the judge hearing the case; and
- (e) where there is more than one ring binder or lever arch file, a distinguishing letter (A, B, C etc.) or number and confirmation of the total number of binders or files (1 of 3 etc.).

Timetable for preparing and lodging the bundle

6.1. The party preparing the bundle must, whether or not the bundle has been agreed, provide a paginated index and, when practicable, paginated copies of updating material to all other parties not less than 5 working days before the hearing.

6.2. Where counsel is to be instructed at any hearing, a paginated bundle must (if not already in counsel's possession) be delivered to counsel by the person instructing that counsel not less than 4 working days before the hearing.

6.3. The bundle (with the exception of the preliminary documents, if and insofar as they are not then available) must be lodged with the court not less than 3 working days before the hearing, or at such other time as may be specified by the judge.

6.4. The preliminary documents (and where appropriate any documents referred to therein that are not in the bundle) must be lodged with the court no later than 11 am on the day before the hearing and, where the hearing is before a Tier 3 Judge and the name of the judge is known, must at the same time be sent by email to the judge's clerk.

Lodging the bundle

7.1. The bundle must be lodged at the appropriate office as detailed at paragraph 7.2. If the bundle is lodged in the wrong place the judge may—

- (a) treat the bundle as having not been lodged; and
- (b) take the steps referred to in paragraph 12.

7.2. Unless the judge has given some other direction as to where the bundle in any particular case is to be lodged (for example a direction that the bundle is to be lodged with the judge's clerk) the bundle must be lodged—

(a) for hearings before a judge of the Family Division, in the office of the Clerk of the Rules, 1st Mezzanine, Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand);

(b) for hearings before a judge of the Chancery Division, in the office of the Chancery Judges' Listing Officer, 7 Rolls Building, Fetter Lane, London EC4 1NL (DX 160040 Strand 7);

(c) for hearings at the central registry of the Court of Protection in the office of the Listing & Appeals team, Court of Protection, PO Box 70185, First Avenue House, 42-49 High Holborn, London WC1A 9JA (DX 160013 Kingsway 7);

(d) for hearings in the Central Family Court at First Avenue House, at the List Office counter, 3rd floor, First Avenue House, 42-49 High Holborn, London, WC1V 6NP (DX 160010 Kingsway 7); and

(e) for hearings at any other court, including regional courts where a Court of Protection judge is sitting, at such place as may be designated and in default of any such designation, at the court office or Court of Protection section of the court where the hearing is to take place.

7.3. Any bundle sent to the court by post, DX or courier must be clearly addressed to the appropriate office and must show the date and place of the hearing on the outside of any packaging as well as on the bundle itself. It must in particular expressly and prominently state that it relates to Court of Protection business.

Lodging the bundle – additional requirements for cases being heard at the Central Family Court or before a Tier 3 Judge at the RCJ

8.1. In the case of hearings at the Central Family Court or before a Tier 3 Judge at the RCJ, parties must—

(a) if the bundle or preliminary and other documents are delivered personally, ensure that they obtain a receipt from the clerk accepting it or them; and

(b) if the bundle or preliminary and other documents are sent by post or DX, ensure that they obtain proof of posting or despatch.

8.2. The receipt (or proof of posting or despatch, as the case may be) must be brought to court on the day of the hearing and must be produced to the court if requested. If the receipt (or proof of posting or despatch) cannot be produced to the court the judge may—

(a) treat the bundle as having not been lodged; and

(b) take the steps referred to in paragraph 12.

8.3. For hearings at the RCJ before a Tier 3 Judge—

(a) bundles or preliminary and other documents delivered after 11 am on the day before the hearing will not be accepted by the Clerk of the Rules or Chancery Judges' Listing Officer and must be delivered directly to the clerk of the judge hearing the case;

(b) upon learning before which judge a hearing is to take place, the clerk to counsel, or other advocate, representing the party responsible for the bundle must, no later than 3 pm the day before the hearing, telephone the clerk of the judge hearing the case to ascertain whether the judge has received the bundle (including the preliminary and other documents), and, if not, must organise prompt delivery.

Removing and re-lodging the bundle

9.1. Following completion of the hearing the party responsible for the bundle must retrieve it from the court immediately or, if that is not practicable, must collect it from the court within five working days. Bundles which are not collected within the stipulated time may be destroyed.

9.2. The bundle must be re-lodged for the next (and for any further hearings of whatever type) in accordance with the provisions of this Practice Direction and in a form, which complies with paragraphs 5.1 and 5.2.

Time estimates

10.1. In every case a time estimate for the hearing must be prepared which must so far as practicable be agreed by all parties and must—

(a) specify separately—

(i) the time estimated to be required for judicial pre-reading;

(ii) the time required for hearing all evidence and submissions; and

(iii) the time estimated to be required for preparing and delivering judgment;
and

(b) be prepared on the basis that before they give evidence all witnesses will have read all relevant filed statements and reports.

10.2. Once a case has been listed, any change in time estimates must be notified immediately by telephone (and then immediately confirmed in writing)—

(a) in the case of hearings in the RCJ, to the Clerk of the Rules or the Chancery Judges' Listing Officer as appropriate;

(b) in the case of hearings in the central Registry of the Court of Protection, to the Diary Manager in the Listing & Appeals team at the Court of Protection;

(c) in the case of hearings in the Central Family Court at First Avenue House, to the List Officer at First Avenue House; and

(d) in the case of hearings elsewhere, to the relevant listing officer.

Taking cases out of the list

11. As soon as it becomes known that a hearing will no longer be effective, whether as a result of the parties reaching agreement or for any other reason, the parties or their representatives must immediately notify the court by telephone and by letter. The letter, which must wherever possible be a joint letter sent on behalf of all parties with their signatures applied or appended, must include—

(a) a short background summary of the case;

(b) the written consent of each party who consents and, where a party does not consent, details of the steps which have been taken to obtain that party's consent and, where known, an explanation of why that consent has not been given;

(c) a draft of the order being sought; and

(d) enough information to enable the court to decide—

(i) whether to take the case out of the list; and

(ii) whether to make the proposed order.

Penalties for failure to comply with this practice direction

12. Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a “wasted costs” order in accordance with CPR rule 46.8 or some other adverse costs order.