

PRACTICE DIRECTION – HOW TO START PROCEEDINGS

This practice direction supplements Part 9 of the Court of Protection Rules 2007

PRACTICE DIRECTION D – APPLICATIONS BY CURRENTLY APPOINTED DEPUTIES, ATTORNEYS AND DONEES IN RELATION TO P'S PROPERTY AND AFFAIRS

General

1. Rule 71 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction applies to applications:
 - (a) which are made by a person who is appointed to act as a deputy for P, or by an attorney under a registered enduring power of attorney or a donee of a registered lasting power of attorney;
 - (b) which relate to the applicant's powers and duties as a deputy, attorney or donee, in connection with making decisions as to P's property and affairs;
 - (c) where the applicant reasonably considers that the order sought is not likely to be significant to P's estate or to any other of P's interests; and
 - (d) where the applicant knows, or reasonably believes, that there are unlikely to be any objections to the application he proposes to make.
3. Applications may only be made using the procedure in this practice direction if the deputy, attorney or donee does not have the authority to make the decision or decisions in question.

Applications by deputies which may be suitable for the procedure set out in this practice direction

4. Examples of applications by deputies that may be suitable for the procedure in this practice direction include, but are not limited to:
 - (a) applications for regular payments from P's assets to the deputy in respect of remuneration;

- (b) applications seeking minor variations only as to the expenses that can be paid from P's estate;
- (c) applications to change an accounting period;
- (d) applications to set or change the time by which an annual account may be submitted;
- (e) applications in relation to the sale of property owned by P, where the sale is non-contentious;
- (f) applications for authority to disclose information as to P's assets, state of health or other circumstances;
- (g) applications to make a gift or loan from P's assets, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;
- (h) applications to sell or otherwise deal with P's investments, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;
- (i) applications for the receipt or discharge of a sum due to or by P;
- (j) applications for authority to apply for a grant of probate or representation, where P would be the person entitled to the grant but for his lack of capacity;
- (k) applications relating to the lease or grant of a tenancy in relation to property owned by P;
- (l) applications for release of funds to repair or improve P's property;
- (m) applications to sell P's furniture or effects;
- (n) applications for release of capital to meet expenses required for the care of P;
- (o) applications to arrange an overdraft or bank loan on P's behalf;
- (p) applications to open a bank account on behalf of P or for the purpose of the deputyship at a private bank, a bank that is not located in England and Wales, or at a bank which has unusual conditions attached to the operation of the account; and
- (q) applications for the variation of an order for security made pursuant to rule 200.¹

Applications by attorneys or donees which may be suitable for the procedure set out in this practice direction

5. Examples of applications by attorneys or donees that may be suitable for the

¹ Notwithstanding paragraph 9 of this practice direction, the Public Guardian must be notified of such an application.

procedure in this practice direction include, but are not limited to –

- (a) applications for regular payments from P's assets to the attorney or donee in respect of remuneration;
- (b) applications to make a gift from P's assets, provided that the sum in question is not disproportionately large when compared to the size of P's estate as a whole;
- (c) applications to authorise a sale of P's property to the attorney or donee, or a family member of P, the attorney or donee, at proper market value, and provided that the market value of the property in question is not disproportionately large when compared to the size of P's estate as a whole;
- (d) applications for authority to obtain a copy of P's will;
- (e) applications for the approval of equity releases; and
- (f) applications for orders for sale pursuant to paragraphs 8 and 9 of Schedule 2 to the Act.

Applications which are not suitable for the procedure set out in this practice direction

- 6. Examples of applications which are not suitable for the procedure in this practice direction include, but are not limited to:
 - (a) applications for the removal of a deputy;
 - (b) applications seeking authorisation to commence, continue or defend litigation on behalf of P;
 - (c) applications for the settlement of P's property, whether for P's benefit or for the benefit of others;
 - (d) applications to vary the terms of a trust or estate in which P has an interest;
 - (e) applications for a statutory will or codicil; and
 - (f) applications to operate or cease to operate a business belonging to P, or to dissolve a partnership of which P is a member.

- 7. An application which is likely to be contested, or which involves large sums of money (when compared to the size of P's estate as a whole) is not suitable for the procedure set out in this practice direction.

Procedure for applications to which this practice direction applies

8. Applications must be made by filing a COP1 application form, together with any evidence in support of the application. However, Annexes A and B to the application form (COP1A and COP1B) are not required to be filed, nor is an assessment of capacity form.
9. Notwithstanding rules 66 to 70, applications to which this practice direction applies may be made, in the first instance, without serving the application form on anyone and without notifying anyone that the application has been made.
10. The court may decide, upon considering the application, that other persons ought to be notified of the application and given the opportunity to respond. In such a case, the court will give directions as to who should be served with or notified of the application and the manner in which they are to be served or notified, as the case may be.
11. The court may deal with the application without a hearing and will give directions as to who should be served with any order that it makes.

Right of reconsideration

12. Where the application is determined without notice having been given to any person or without a hearing, P, any party or any person affected by the order may apply to the court, within 21 days of having been served with the court's order, to have the order reconsidered.² An application to have an order reconsidered must be made by filing a COP9 application notice in accordance with Part 10.

² Rule 89 sets out the procedure for applications for reconsideration.