



Neutral Citation Number: [2016] EWCOP 16

**Case Number and initials of P:
12755071 (VE)**

Date: 10 March 2016

**IN THE COURT OF PROTECTION
(Sitting in Open Court)**

Before MR JUSTICE CHARLES

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

RE: VE

Conrad Hallin (instructed by Blackburn with Darwen Borough Council)
Jason Coppel QC and Rachel Kamm (instructed by the Government Legal Department) for
the Secretary of State for Health and the Secretary of State for Justice
Bridget Dolan (instructed by the Official Solicitor) for the Official Solicitor
Stephen Broach (instructed by the Law Society's Legal Services Department) for the Law
Society of England and Wales (written submissions only)

Hearing dates: 3 and 4 December 2015 and 13 January 2016

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this
Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE CHARLES

Charles J :

Introduction

1. This is one of five cases that were listed before me and are the subject of my judgment in *Re JM & Others (DoL procedural requirements)* [2016] EWCOP 15. As explained in that judgment in this case a friend of VE is available for appointment as VE's Rule 3A representative and, applying my approach in *Re NRA & Others* [2015] EWCOP 59, I have decided to so appoint her.
2. *The terms of appointment.* In argument in *JM* the point was raised that the applicant authorities had experience of family members and friends finding it difficult to understand what their role as a Rule 3A representative involved and this made some of them reluctant to take on the role or involved discussion about it. To ameliorate this problem it was suggested that the role should be better explained in the order or elsewhere. Gateshead Council helpfully provided me with a standard letter they have prepared to so assist family members and friends.
3. I agree that this role should be better explained and suggest that the explanation set out below could be considered by the ad hoc Rules Committee and the Court as a starting point for guidance to be attached to and mentioned in orders.
4. Whilst the Court and the ad hoc Committee consider this I hope that what I have set out will be of some assistance.
5. *Legal aid.* My judgment in *JM* contains a discussion on the availability of legal aid through legal help. My conclusion on that is reflected in the explanatory note.
6. My suggested explanation is as follows:

EXPLANATORY NOTE FOR A FAMILY MEMBER OR FRIEND
APPOINTED AS A RULE 3A REPRESENTATIVE

General

The Supreme Court has decided that the package of care and support provided to P in this case means that P is being deprived of his liberty. If, as is asserted by the applicant authority, P does not have the capacity to give consent to that package of care and support, it needs to be authorised by the Court.

The Court will consider whether that package of care and support is the least restrictive available option to best promote the best interests of P and the application is made on the basis that the applicant authority is of the view that it is.

The Court has appointed you as a Rule 3A representative for P because of your relationship with and knowledge of P and because the Court is satisfied that without causing P any or any unnecessary distress you can assist the Court in reaching its decision by examining what is proposed and being done by the applicant authority from the perspective of P's best interests (rather than your own or those of others).

What you need to do is to consider and decide from that perspective whether P's package of care and support is the least restrictive available option that best promotes P's best interests and then inform the Court what you have decided and what P's wishes and feelings about the package of care and support are

In short, the Court is asking you, as someone who knows the position on the ground, to consider whether from the perspective of P's best interests you agree or do not agree that the Court should authorise P's package of care and support.

This will involve you weighing the pros and cons of that package of care and support, comparing it with other available options and (if appropriate) proposing changes to the applicant authority. For example, if you consider that some of the restrictions it puts in place are unnecessary or inappropriate and should be changed, you should raise this with the applicant authority and, if they do not agree with what you propose, the Court.

If you consider that P has capacity to consent to the package of care and support, or parts of it, you should raise this with the applicant authority and the Court.

In any event, you should inform the Court about what P has said about, and P's attitude towards, the package of care and support.

You should also check from time to time that the package of care and support is being properly implemented and whether it needs to be changed because P's condition has changed, or for any other reason. If you conclude that its implementation or terms should be changed you should raise this with the applicant authority and the Court if the changes are not made.

The Court Documentation

You will receive the application form (COPDOL10) with Annexes A, B and C. These include details of how the package of care and support is said to deprive P of his liberty and details of the consultations that have occurred with P and others about it.

You will also receive a formal assessment of P's mental capacity (COP3), a mental health assessment, a care plan, best interests assessment forms, risk assessments and a placement plan. These set out why the applicant authority has reached the view that the package of care and support is the least restrictive available option to best promote the best interests of P.

Steps you should take

These will include the following:

- examining the Court documentation to check that it is accurate and whether you agree with what it sets out
- discussing any points that you think need to be clarified or changed with the applicant authority
- discussing the package of care and support and the application to the Court with P in so far as P is able to understand them. In particular, if you do not know this already, and it will not cause unnecessary distress you should ask P what he thinks about the package of care and support
- considering whether you support the application and so think that the Court should make the order sought by the applicant authority
- if you support the application and so think that the Court should make the order sought by the applicant authority the Court could deal with the case without a hearing but you should discuss with P whether P wants to play a direct part in the proceedings (e.g. by attending a court hearing or by communicating directly with the judge) and if P wants to do this you should raise this with the applicant authority and include it in your statement to the Court.

Section 4(6) of the Mental Capacity Act

The order of the Court refers to this section. It provides that a person determining what is in a person's best interests must consider so far as is reasonably ascertainable:

(a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

(b) the beliefs and values that would be likely to influence his decision if he had capacity, and

(c) the other factors that he would be likely to consider if he were able to do so

Your statement

This should be in form COP24 and it can be downloaded from the Courts website (<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/cop024-eng.pdf>).

You should complete the details on page 1 as follows:

- Statement given by (name of witness) – **[your name]**
- Statement – **[tick 1st box]**
- Filed on behalf of (name of party) – **[your name (Rule 3A Representative)]**
- Date statement was made – **[date of completing your witness statement]**
- Case no. – **[Case number]**
- Full name of person to whom the application relates – **[P's full name]**

On page 2 you should include your name at (1), occupation at (2) and address at (3). You should not tick either of the boxes below (3).

Your statement begins at (4) and should be formatted in numbered paragraphs. It need not contain long explanations and if you agree with what others have set out in the court documentation you can simply say so.

Your statement should generally include the following:

- An explanation of who you are i.e. P's relation or friend
- So far as is possible the matters covered in section 4 (6), which is set out above
- If you do support the application your reasons for doing so
- Whether an oral hearing may be required because P wishes to see the judge or take a direct part in a hearing; setting out what P wants to happen
- Whether an oral hearing is required because matters are disputed because, for example, you do not support the arrangements proposed by the applicant authority or they are opposed by P or someone else (such as a friend or a family member); setting out the reasons for that lack of support or opposition
- Any comments you wish to make on P's capacity to make decisions about P's care arrangements
- Any other comments you wish to make and in particular any that are directed to assisting the Court to determine whether P's package of care and support is the least restrictive available option that best promote P's best interests

At the bottom of page four you should sign your statement to confirm that its contents are correct. You should also include your name and the date where indicated.

Legal advice

You may wish to seek independent advice from a solicitor who may be able to provide it to you free of charge under the legal aid regulations relating to “legal help”.

The applicant authority may be able to provide you with a list of solicitors who do this work.

Queries

The applicant local authority may be able to answer any queries you have and will be able to give you details of how you can contact the Court, if you wish to do so.