

Participation of “P” in Court of Protection proceedings

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Introduction

- P's best interests within the court process
- Attendance at court
- Meeting the judge
- Giving “information”
- Giving evidence
- Vulnerable parties and witnesses

P's best interests within the court proceedings

- What is necessary for effective participation?
- Best interests regarding conduct of the litigation
- Distinct from:
 - best interests in respect of the decision to be made by the court
 - wishes and feelings as to that issue
- Focus must be on P's particular circumstances and needs
- Should be considered from earliest possible stage

Attendance at hearing

- P's views should be sought at early stage
- Different issues may arise in respect of different hearings
- Practical considerations:
 - Liaising with court staff and informing judge
 - Can court accommodate P (if not, is a different court available)?
 - Video link as alternative to personal attendance
 - P's understanding of courtroom
 - P's understanding of proceedings
 - Practical arrangements

Meeting with the judge

- Does P wish to meet the judge
- What is the intended purpose of the meeting?
- Inform judge and court as soon as possible
- Seek their views
- Alert judge and court staff to any risks
- Attendance by others (support worker, P's solicitor, others)?
- Will meeting be recorded and by whom (written note, video recording, audio recording)?

P giving “information” to the court

- Rule 95(e): *the court may admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.*
- *Practical considerations:*
 - *Does P wish to give information?*
 - *What form should this take?*
 - *How should questions be posed? By whom?*
 - *What steps or measures are required to assist P to communicate information?*
 - *Does advanced work need to be done to prepare P to give information?*

P giving evidence to the court

- Cases in which P gives formal evidence will be rare
- A person must be “competent” to give evidence: able to understand the nature of the oath and give rational testimony
- If P is to give evidence consider:
 - Ground Rules hearing
 - Need for intermediary
 - Advanced preparation
 - Agreed questions and/or agreed approach to questioning

Vulnerable parties and witnesses

- Parties and other witnesses may also be vulnerable
- Similar considerations apply
- Issues include:
 - What support is required?
 - Is the witness competent?
 - Need for ground rules hearing, intermediaries, agreed approach to questions
 - Practical considerations
 - Accessibility
 - Timetabling

Useful resources

- Guidance from Mr Justice Charles: *Facilitating participation of 'P' and vulnerable persons in Court of Protection proceedings* (3 November 2016)
- Advocates Gateway (<http://www.theadvocatesgateway.org/>)
- Law Society Practice Note: Meeting the needs of vulnerable clients (<https://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-vulnerable-clients-july-2015/>)
- Series, Fennel & Doughty, *The Participation of P in Welfare Cases in the Court of Protection* (February 2017)