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Official Solicitor: Court of Protection: Acceptance of Appointment as Litigation Friend

The purpose of this Note is to explain the Official Solicitor's current general position when invited to act as litigation friend in Court of Protection healthcare and welfare cases, in order to correct some misconceptions which he has become aware are in circulation.

The Official Solicitor's Acceptance Criteria

Cases will be accepted only when his long-standing acceptance criteria (applicable in all courts) are met. Those are

- that there is evidence (or the court has made a finding) that the party (or intended party) lacks capacity to conduct the proceedings or is a child (or in Court of Protection proceedings evidence or a finding with regard to P's lack of relevant decision making capacity)
- that, on the basis of the information available to him, there is no one else suitable and willing to act as litigation friend
- that there is security for the costs of legal representation of the protected party or P or the case falls in one of the classes in which, exceptionally, he funds the litigation services out of, or partially out of, his budget, in accordance with long standing practice.

The Official Solicitor's Current Position in Healthcare and Welfare Cases

The Official Solicitor wrote to the President of the Court of Protection on 15 December 2011 to inform him that he had reached the limit of his resources with regard to Court of Protection welfare cases, he did not mean by this that he had run out of money, but rather that his available staff, (after movement of staff to this area of work and recruitment to the full extent which was possible), to manage this class of case were unable to take on any more of these cases.

As a result of this development the Official Solicitor is unable to accept invitations to act in any except the most urgent cases, namely serious medical treatment cases and section 21A appeals, other than those brought by the relevant person's representative. Section 21A appeals may nevertheless be subject to a delay in acceptance until a case manager becomes available to whom the case may be allocated.

All other cases, once his acceptance criteria are met, are being placed on a waiting list. These cases will be accepted, when a case manager becomes available, in chronological order starting with the earliest placed on the list, unless exceptional priority is given due to this office considering the case to be very urgent or should otherwise be expedited.

In the event that the court is of the view that a case should be considered as most urgent, or should be expedited for other reasons, the court should kindly inform the Senior Lawyers in the

Official Solicitor's CoP Healthcare and Welfare teams, of the court's reasons and consideration will be given on individual merit.

If at any time another litigation friend is appointed in this case before the Official Solicitor is in a position to accept the invitation the parties are asked to notify him as soon as possible, so that the file may be closed and the case removed from the waiting list.

Pre-Acceptance

In order to avoid any unnecessary delay, the Official Solicitor will at this stage make his initial enquiries to establish whether or not the case is one where his acceptance criteria are met, and, in principle, he would be willing to act. In order to enable those enquiries to be made the court may be invited to make an order for disclosure of financial information relating to P, the protected party or child.

Acceptance

When the Official Solicitor is able to accept the case, the Applicant will be contacted in order to establish whether or not P, the protected party or child remains a party, and whether the case remains a last resort case.

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