

Delay in Court of Protection Proceedings

As you may be aware, in recent months vulnerable adults who lack capacity have experienced significant delays in having their cases brought before the Court of Protection where there is a dispute about their welfare. This is in part due to the volume of applications being made to the Court of Protection, but also as a result of a new “queuing” system, which has been introduced by the Office of the Official Solicitor (“the OS”).

As you will no doubt be aware, the OS is usually appointed as litigation friend on behalf of the person (“P”) who is the subject of a welfare application to the Court of Protection. As litigation friend, the OS will represent P’s interests in the court proceedings and will arrange legal representation for P at any court hearings.

However, the OS has recently issued a Note explaining that, as a result of extreme pressure of resources, they are unable to take on any but the most urgent cases, and that all non-urgent cases will be put in a queue and allocated to an OS case worker as and when one becomes available. The full text of the OS’s note can be found here:

<http://www.justice.gov.uk/downloads/protecting-the-vulnerable/official-solicitor/litigation-friend-note.pdf>

This does not mean, however, that all non-urgent cases must wait for an OS case worker to become available before they can proceed to court. As the OS’s note states, the OS is “a litigation friend of last resort”. If a suitable individual is willing and able to act as litigation friend on behalf of P then the OS will usually decline the invitation to act on behalf of P and the proceedings can proceed with this individual acting as litigation friend for P.

The courts have in the past appointed IMCAs, advocates and other professionals to act as litigation friend for P in cases where there is a dispute about P’s welfare. This individual can either act as litigation friend in proceedings which have been commenced by a local authority, NHS trust or other party, or where no other party is willing to make an application to the Court of Protection, they can make the application themselves, in P’s name.

The legal costs of welfare cases in the Court of Protection are governed by the general rule, which is that each party pays his or her own costs. In many cases P will qualify for public funding (legal aid), which is still available in welfare cases for individuals who pass a means test. If P does not meet the means test for public funding, the court will usually order that P’s legal costs are paid from P’s own money. As long as a litigation friend has acted properly and taken appropriate legal advice, the court will not require the litigation friend to pay P’s legal costs. If an IMCA/Advocate acts as a litigation friend they may be able to have their costs met and authorised.

The Public Law department at Irwin Mitchell is regularly instructed by the Official Solicitor, families and IMCAs/Advocates in Court of Protection proceedings. We act in cases across England & Wales and have experience acting all regional Courts. [If you are concerned about the time it is taking for a client’s case to reach the court, expert lawyers in our department will be happy to advise you on how best to proceed, including advice on whether you can act as litigation friend for P in order to avoid delaying the proceedings.](#)

You can contact us as publiclawnewenquiries@irwinmitchell.com or call Alex Curran on **0870 1500 100** for more information.

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