

I have received an number of enquiries about how to progress Guardianship cases in the current crisis and I have had a couple of emergency cases myself. To avoid additional work for the court answering questions or correcting mistakes I offered to put together this guidance based on my experience over the last 2 weeks. The court has provided me with some input to this but the views expressed are my own.

Where we are just now

I know from family experience in the civil service they are working on 50% absence and massively increased demand. I am making a number of assumptions on how things are working in courts just now - the first being that the courts have the same absence rate. This will be because people at risk cannot be in the building and there is limited scope for working at home. Airdrie and Lanark are closed. Birnie House is closed at Hamilton. Therefore there is no access to any civil court process. The Computer Management system will not have copy documents. The CMS will not be up to date. Documents sent in a few days before lockdown will not have been added to the system. Post sent since lockdown will not be open or processed onto the CMS. As such there is limited scope for Courts to do any work at this time without Solicitor's providing copies of process etc. The Practice note states that the court is only undertaking urgent work. Guardianships can have an urgent nature to them and impact on the work of the NHS— moving adults from hospital into care homes, avoiding the need to renew CPO's consenting to treatment that otherwise requires the input of a doctor to sign a s47 consent are a few examples. I have been told that the court is swamped with such urgent applications. I am going to look at each stage of a guardianship and give my advice on how you should proceed based on my experience, the courts input and my views.

APPLICATIONS

Urgent applications are being considered by the court. If the case is urgent then interim powers should be necessary. You may not have the 4 necessary reports but if you have one report and an emergency case you should submit your application with that report and narrate the difficulties in obtaining the other reports in your covering email. [If you need help in how to include interim powers send me an email]. You should email hamilton@scotcourts.go.uk with "URGENT – GUARDIANSHIP APPLICATION" in the subject of the email. I understand that the clerks are processing these and passing them to a Sheriff working from home. The Sheriff will assess the emailed application (and decide if it is indeed urgent) and respond by email to the clerks with observations which will be passed on to you for a response. If necessary a telephone conference call will be set up. I would suggest you send multiple attachments in your email consisting of your application, inventory of productions (reports etc) and fee exemption. In the email set out the reasons for the urgency, details of the interim powers being sought, any issues the Sheriff is likely to need to know and address the issue of caution if necessary. I have not been advised if we are to submit paper copies of the reports now or at a later date and I expect this will be clarified in due course. For now the court is happy to work off the e-copy papers.

SERVICE OF PAPERS

Both the OPG and MWC have indicated that they want papers served on them by email and not by post. Both will provided confirmation emails as proof of service.

OPG – opgorders@scotcourts.gov.uk

MWC – mwc.support@nhs.net

I have asked NLC and SLC if they have any email addresses for service or requesting AWI[2] reports and will provide an update if that is provided.

Individuals – Service of papers should be sent by recorded delivery in the usual way. I would suggest including a covering letter in the following terms-

“Please find enclosed service of papers in the guardianship of [Name]. Usually we do not send a covering letter as the necessary information is in the attached Form 20. However, with the Covid-19 crisis the courts are operating on a limited basis and cases are at the time of posting being processed through email submissions. More information can be found at www.scotcourts.gov.uk . We would suggest that if you wish to respond to this application you should send an email to hamilton@scotcourts.gov.uk. Please mark the subject as “Urgent – court hearing” give the reference [Case ref] in the email. Please send a copy of that email to this firm at [solicitor’s email]. You should set out the reasons for opposing or supporting the application. Please send this to the court with sufficient time for the court to process this in advance of the hearing.

You should also consider taking independent legal advice from a solicitor on the content of this letter. Most solicitors are working from home and can be contacted by telephone or email and should be able to help you contact the court. Unfortunately the standard forms have not been updated to reflect the fast changing arrangements necessary due to Covid-19.”

POST SERVICE HEARING

In advance of the post service hearing (2 working days?) You should send the court details of the case by email to hamilton@scotcourts.gov.uk. Again the court does not have access to the process so along with your email you need to send a copy of the application, productions (reports etc) executions of service and observations by the OPG. I would suggest checking the Royal Mail tracker system to check that papers have not been returned as unserved as these could be sitting in the court building and not intimated to anyone including you. Again mark your email “Urgent – court instructions”. Your email should set out what you are seeking the Sheriff to do as you would if you were making an oral hearing. Address any changes in circumstances, observations, anticipated opposition, or issues set out in the reports. Set out the length of time you are asking for the order to be granted, if all the powers are to be granted, details of the level of caution, any question of expenses and how long you wish to have to arrange caution (I am asking for 8 weeks given the circumstances). Again a response from the Sheriff is likely via the Clerks and telephone conference call possible if matters cannot be resolved by email correspondence.

New applications are having post service hearings fixed in 2-3 months’ time in the hope that by that time the local courts will be open.

OPPOSED GUARDIANSHIPS

Firstly if there is opposition I would suggest parties try and find common ground for the hearing. Can interim order with limited powers be agreed or is there to be a safeguarder etc? As we are Officers of the Court we can then approach the Sheriff with the common position. If there is no agreement on the way forward then if the Sheriff cannot make a decision on the information available I suspect cases will be continued to a point in the future when hopefully the courts will be operating again. Opposition to a guardianship should be emailed to hamilton@scotcourts.gov.uk with “Urgent – court instructions” as the subject. Again set out the grounds of opposition as if addressing the Sheriff.

PROOFS

I have no idea if there will be any way to make proofs work in the short terms and would suggest these will be put off until such time as the courts are open again or mechanisms for operating proofs have been resolved.

NON URGENT CASES

The suggestion is that non-urgent cases should be posted in to the court in the usual manor and will be processed once the courts either begin to find a way to process cases or lockdown ends. I am not keen to do that in case papers get lost or there are to be other options for progressing cases and then we do not have the papers to hand. I would suggest that we hold on to the papers for non-urgent cases in the hope that the procedure above can be followed for all cases as more court resources become available.

SIGNING PAPERS

I believe there are 3 ways to sign your papers that require a signature. You can print off the papers, add a signature and scan the signed papers. You can add a signature as a picture to your document or you can sign the document using you LSS smart card. I believe all of these will be acceptable to the court.

Going forward.

On a personal note I hope that by finding a new way to do things we are able to take the best of both and find a better/ smarter way to work. Service of papers on the OPG, MWC and Local Authority by recorded delivery costs the best part of £10. On delivery those papers are probably scanned onto systems and the papers copy shredded. If we could continue to lodge applications to courts and statutory body's by email then time, resources, money and paper stops being wasted. I calculate to attend at court for an unopposed guardianship I have to spend an hour out of the office for a 5 minute hearing. If the first hearing could be done by video link I could spend 50 min working on other files and go home about an hour earlier at the end of the day or do an extra chargeable hour. We should be pushing for ways to work smarter.

If anyone has any questions or ideas please feel free to contact me and I will try and answer them as quickly as possible.

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20th April 2020