Neutral Citation Number: **[2018] EWCOP 23**

**Case No. 13020924**

**COURT OF PROTECTION**

**MENTAL CAPACITY ACT 2005**

**AND IN THE MATTER OF A SON**

Date: 21 September 2018

**District Judge Eldergill**

**LONDON BOROUGH OF HOUNSLOW (Applicant)**

**- AND -**

**A FATHER (First Respondent)**

**A MOTHER (Second Respondent)**

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*Costs in the Court of Protection – Disproportionate litigation –*

*Whether a litigant in person is entitled to recover costs including loss of earnings*

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1. This decision concerns the costs of these proceedings.

2. The proceedings concern a young man, whose name has been removed to protect his privacy. The Applicant is the London Borough of Hounslow and the Respondents are the young man's father and mother.

3. Ms Whittaker of Scott-Moncrieff and Associates Ltd and Ms Susanna Rickard (Counsel) acted for the father and Ms Hellier acted for the local authority. The mother was unrepresented.

4. The young man lives with his father. He has a severe learning disability and it is common ground that he lacks capacity to manage his property and affairs.

5. His financial means are modest. According to the Form COP1A his income consisted only of Disability Living Allowance and Income Support although in fact he also receives Employment Support Allowance. He does not own a property and has no significant savings.

6. When the proceedings were issued, the father was the DWP appointee responsible for administering the young man's state benefits. Although separated from the father, the mother assisted the father with their son's financial arrangements and the son's Disability Living Allowance was paid into her account.

7. Historically therefore, the son's benefits have been managed under a DWP appointeeship as one would expect. Furthermore, one would normally expect the suitability of an appointee, and the need to replace them, to be dealt with by application to the Secretary of State.

8. The relevant social security arrangements do provide that a deputy appointed by the Court of Protection automatically becomes the relevant person's appointee for the purpose of administering their benefits. However, good grounds will be required to justify deputyship in preference to appointeeship, because of the additional time and expense generated by the former arrangement, and they will also be required to justify a deputyship application as a means of replacing an unsuitable appointee.

9. In this case, the local authority considered that the protective framework of deputyship was appropriate because of financial safeguarding concerns. According to an email dated 26 January 2017, the local authority's strategy was to apply to the DWP to be appointed as the son's appointee in place of his father 'as an interim measure until the local authority can apply to the Office of Public Guardian [sic] for deputyship to manage his finances'.

10. On 6 February 2017 the court issued an application filed by the London Borough of Hounslow in which it asked the court to appoint the Director of Children's and Adult Services as the Deputy for Property and Affairs of the son.

11. The grounds of the application were set out on page 4 of Form COP1:

*'There is currently a safeguarding enquiry in place due to an allegation of financial abuse against [the Mother] who is alleged to be mismanaging [the son's] benefits. [The mother] does not reside in the same property nor is she a carer for [the son]. There has been previous mismanagement of direct payments which led to a Council managed service in May 2016'.*

12. An Acknowledgment of Service opposing the application was filed by the father on 1 March 2017. He stated at page 3 that,

*'I am the appointee for [my son's] benefits and I support him with managing his finances. I am assisted with this by [his] mother … and we work very closely together to support [our son] with his finances and all his other needs even though we are separated and [his mother] lives separately with her husband'.*

13. The father also stated that the London Borough of Hounslow had refused to provide him with a copy of the application 'saying it is confidential'. He said that the local authority 'had informed the mother that they are conducting a safeguarding investigation into an anonymous allegation that she is using a substantial amount of [our son's] DLA for herself. They have not given her any more details of evidence and have not written to me about it at all or raised any issue about my management of [my son's] finances even though I am his appointee and it is my decision to use [his mother's] assistance to support [our son]. There had been a failure to explore alternatives and the application was unnecessary, detrimental and contrary to the son's best interests.

14. Also on 1 March 2017, Samimah Garrib from the local authority's Community Learning Disability Team visited the son and his parents, noting that 'Overall, my impression was that [their son] is a very happy young man whose needs are met'.

15. On 6 March 2017, the local authority wrote to the mother stating that it had carried out a safeguarding inquiry under section 42 of the Care Act 2014 and that it would not be sharing the contents of the enquiry on the ground that the information was exempt under the Data Protection Act 1998.

16. The matter was set down for a Dispute Resolution Hearing on 2 May 2017.

17. On 28 April 2017, the local authority made an application in Form COP9 seeking 'Public Interest Immunity over aspects of the safeguarding investigation, on this basis the LA seeks permission to speak to the Judge in the absence of the other parties'.

18. On 2 May 2017, Senior Judge Hilder conducted the Dispute Resolution Hearing. No resolution was reached. The judge gave 4½ pages of comprehensive directions for the filing of evidence and position statements, meetings and separate hearings regarding the trial of the substantive matter before another judge whilst reserving further directions and the PII matter to herself.

19. The Senior Judge gave further directions on 13 July 2017 which included setting down the PII/redaction issue before herself for a half-day hearing on 29 September 2017.

20. On 8 September 2017, Senior Judge Hilder set aside her order of 13 July 2017, stayed the PII/redaction issue and directed that any application to dismiss the substantive application should be filed and served by 2 October 2017. That application was made and the matter then came before me.

21. On 2 October 2017, I emailed the parties as follows:

*'Dear Sirs*

*I have received two bundles. One of them consists of a COP9 application notice from Ms Whittaker supported by a position statement from Ms Rickard and various supporting documents. The other is from the local authority which Ms Hellier now wishes to be returned because the First Respondent is not in agreement with it.*

*Having read the file today, three things seem to me to stand out:*

*1) A case involving the alleged misuse of state benefits has generated an enormous amount of documentation, and no doubt legal costs, quite disproportionate to the simple central issue of an alleged misuse of benefits.*

*2) The position statements and correspondence are full of generalised assertions of abuse of process, applications being misconceived, summary judgment, etc, which no doubt partly explains why so much paper has been generated.*

*3) Both legally-represented parties have made basic procedural errors (filing lengthy documents electronically despite what the rules say, including references to discussions at a DRH, filing bundles that are immediately to be returned, not serving the application within the required time limits).*

*I make these points because of the very clear costs implications.*

*Ms Whittaker, is there an objection to the LA bundle being returned? Ms Hellier, if there is no objection, when will a new bundle be filed?*

*Can I suggest an alternative way forward which is simply that we set this down for a half-day final hearing at which [the mother] gives evidence? As far as I can see, the LA's case is simply that she has not provided an adequate explanation of items of expenditure recorded in bank statements, etc, and that on balance I should conclude a misuse of some funds which [the father] as appointee failed to notice or control. Once I have heard from her, I can make a determination and then the appropriate order.'*

22. I then made an order on 13 November 2017, setting out my concerns and giving the following directions:

***UPON***

(1) *Considering bundles and other filed documentation concerning this application of in excess of one thousand pages.*

***WHEREAS***

(1) *The local authority has applied to be appointed as the deputy for property and financial affairs of [the son] who is a gentleman in receipt of social security benefits that are managed under a DWP appointeeship held by the First Respondent.*

(2) *The outcome of the application will be either that the First Respondent continues to act as [his son's] appointee (if the application is dismissed) or that the local authority is appointed as [his son's] deputy, in which case the local authority automatically becomes his appointee.*

(3) *The overriding objective of the rules is to enable the court to deal with a case justly. This includes ensuring that it is dealt with expeditiously, in ways which are proportionate to the nature, importance and complexity of the issues, saving expense, and allotting to it an appropriate share of the court's resources. The parties are required to help the court to further the overriding objective.*

(4) *Unfortunately, an application concerning the management of [the son's] benefits has generated over one thousand pages of documents and a huge amount of professional time, expenditure and legal costs quite disproportionate to a simple central issue of alleged misuse of benefits. While the court acknowledges that some of the documentation and expense was required of the parties as a result of the court's case management directions of 2 May 2017, the amount of documentation filed has nevertheless been contrary to the overriding objective.*

(5) *Furthermore, and notwithstanding any submissions to the contrary:*

(a) *The position statements and correspondence are full of generalised assertions of abuse of process, applications being misconceived, summary judgment, etc, which no doubt partly explains why so much paper has been generated.*

(b) *Both legally-represented parties have made basic procedural errors (filing lengthy documents electronically despite what the rules say, including references to discussions at a DRH, filing bundles that are immediately to be returned, not serving the application within the required time limits, referring inappropriately to public interest immunity, etc).*

(6) *The parties will be aware that such considerations and observations have clear implications in terms of the recovery of the legal costs generated by these proceedings.*

(7) *On the documentary evidence filed to date, the court makes the following provisional observations in order to assist the parties:*

(a) *The safeguarding investigation was fundamentally flawed and unfair.*

(b) *The financial information filed to date suggests that there was a lack of prudent good housekeeping under the previous arrangements in force until February 2017 in relation to the way in which benefits were used for [the son's] benefit.*

(c) *The position statement dated 27 September 2017 filed on behalf of the First Respondent is in quite general terms, in particular the financial tables at (internal) pp.10-12.*

(d) *A hearing in the Court of Protection regarding the redaction of the identity of the informant would be disproportionately costly. Whether the initial report was malicious or not, and whoever the informant was, it is for the local authority to establish <u>on evidence</u> that there has been mismanagement or misuse by the Second Respondent of [her son's] funds, that such mismanagement or misuse means that the First Respondent (sic) cannot remain as [his son's] appointee, and furthermore that it justifies a deputyship order in favour of the local authority.*

(e) *To date, and despite a prolonged safeguarding investigation, the local authority has not established that the Second Respondent has used [the son's] funds for her own benefit or that the First Respondent is an inappropriate appointee. If the local authority cannot prove that then it follows that the informant was an unreliable informant.*

(f) *In relation to that issue, the local authority has not received unredacted copies of the Second Respondent's bank statements or had an opportunity to test the evidence of both Respondents by way of cross-examination. That being so, summary dismissal of the application (with the likely costs consequences) would not be just or appropriate at this stage.*

(g) *On the basis that the local authority is unwilling to withdraw its application, a short half-day final trial is appropriate with the following witness template: First Respondent Evidence-in-Chief 15 minutes, Cross-Examination 30 minutes; Second Respondent Evidence-in-Chief 15 minutes, Cross-Examination 30 minutes; Submissions 30 minutes; Judgment 30 minutes.*

(h) *Prior to the hearing the Second Respondent must (as she has very fairly willingly agreed to do) file and serve unredacted copies of the previously filed bank statements.*

***IT IS ORDERED THAT***

(1) *The matter shall be set down for a final hearing before District Judge Eldergill on ------ at the Court of Protection, First Avenue House, 42-49 High Holborn, London WC1A 9JA.*

(2) *No further evidence shall be filed save that within 14 days of the date of this Order the Second Respondent shall file and serve unredacted copies of the financial statements previously filed by her with a brief accompanying statement explaining which items are her own personal expenditure.*

(3) *The Applicant shall file and serve an agreed bundle at least five days prior to the hearing which shall contain only the statement referred to in the previous paragraph and such other previously filed information as is necessary to enable the court to determine whether there has been any misuse or mismanagement of the son's benefits.*

(4) *The parties have permission to each file a position statement at least two days prior to the hearing and such statements shall deal only with the issue of whether there has been any misuse or mismanagement of [the son's] benefits.*

(5) *Costs are reserved.*

(6) *Nothing in this Order prevents the parties from agreeing a final Order for the court's consideration which deals with the substantive application and the issue of costs.*

23. In due course, the mother provided the bank statements together with her notes regarding withdrawals and items of expenditure. The final hearing then took place on 2 February 2018 at the commencement of which the local authority withdrew its application without oral evidence being heard. That only left the matter of costs to be determined.

24. Why didn't the matter settle at an earlier stage? The substantive application was founded on alleged misuse of benefits but the prolonged and wholly disproportionate nature of the litigation increasingly turned not on this issue but on costs. The son had no savings and so the usual rule regarding costs – that the costs be paid from his estate – was not an option unless his solicitor and counsel were willing to waive their by then substantial costs. Despite the father's solicitor's attempt to persuade me otherwise, costs was the stumbling block and became the reason why the case did not settle. The correspondence recently copied to me makes that crystal clear. On 10 August 2017, Scott-Moncrieff & Associates Ltd wrote to the local authority stating, 'We will seek payment of our costs by Hounslow as a condition of the application being withdrawn'. On 22 September 2017, the local authority stated that, 'The LA has indicated that it may be willing to withdraw the application, on the basis the respondents are in agreement to another [sic, presumed to be 'a number'] of conditions'. The first condition was financial monitoring. 'The second condition is that the application [sic] will not agree to pay the first respondents costs'. Thus, the litigation continued and the litigation costs continued to rise.

25. I am not going to write a lengthy judgment, or give lengthy reasons, because in my view these proceedings have already taken up a wholly disproportionate amount of court time and been conducted with insufficient proportionality. The initial allegation was misuse of DLA by the partner of the DWP appointee. All that was required was that the mother provide the local authority with the relevant bank statements showing payments of DLA and out-going expenditure on the account. The local authority could then ask questions about particular items of expenditure and, if appropriate, question the mother on the expenditure at a short hearing. The outcome would either be that the applicant could prove misuse of funds on the

balance of probabilities or it could not do so. If there was no evidence in the bank statements and no oral evidence to support misuse of funds then the local authority case failed, regardless of whether or not the identity of their informant was known.

26. What happened instead was that the local authority's legal department and Scott-Moncrieff & Associates Limited on behalf of the father bombarded each other with hundreds of pages of unnecessary and often tetchy or bad-tempered correspondence, witness statements, position statements and emails into which the court was often copied. By the time they had finished litigating an alleged misuse of Disability Living Allowance benefit that could have been resolved by looking at bank statements and asking questions, the amount of claimed costs incurred amounted to approximately £50,000 + VAT in respect of Scott-Moncrieff's costs and £15,000 in respect of the local authority's costs. That is an astronomical figure and in my view wholly out of step with the following provisions of the Court of Protection Rules 2007 and 2017.

- By rule 1.1 of the current rules, 'These rules have the overriding objective of enabling the court to deal with a case justly and at proportionate cost …' This includes saving expense (r.1(3)9e)) and 'dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues' (r.1(3)(c)).
- Rule 1.4 then imposes a duty on the parties to help the court to further the overriding objective. Rules 1.5 and 1.6 impose similar duties on the legal representatives of the parties and on litigants in person.

27. The 2007 Rules imposed similar requirements with regard to the overriding objective.

28. When considering the proportionality of costs, I take into account the decisions and guidance given in *Cases A and B (Court of Protection: Delay and Costs)* [2014] EWCOP 48 and *A Local Authority v ED* [2013] EWHC 3069 (COP).

29. With regard to the payment of costs in respect of property and financial affairs applications, Rule 19.2 provides that 'Where the proceedings concern P's property and affairs the general rule is that the costs of the proceedings, or of that part of the proceedings that concerns P's property and affairs, shall be paid by P or charged to P's estate.'

30. Rule 19.5 then deals with departures from the general rule:

*Departing from the general rule*

*19.5.— (1) The court may depart from rules 19.2 to 19.4 if the circumstances so justify, and in deciding whether departure is justified the court will have regard to all the circumstances including—*

*(a) the conduct of the parties;*

*(b) whether a party has succeeded on part of that party's case, even if not wholly successful; and*

*(c) the role of any public body involved in the proceedings.*

*(2) The conduct of the parties includes—*

*(a) conduct before, as well as during, the proceedings;*

*(b) whether it was reasonable for a party to raise, pursue or contest a particular matter;*

*(c) the manner in which a party has made or responded to an application or a particular issue;*

*(d) whether a party who has succeeded in that party's application or response to an application, in whole or in part, exaggerated any matter contained in the application or response; and*

*(e) any failure by a party to comply with a rule, practice direction or court order.*

31. In terms of the conduct of the applicant, an allegation of dishonesty was made based on an anonymous report. In my view, the respondents did not have a fair opportunity to deal with that allegation at the time, within the safeguarding investigation. The local authority was so concerned to protect the identity of its anonymous informant that it decided not to share the minutes and 'aspects' of the safeguarding investigation with the respondents (Local Authority Position Statement, 7 July 2017, para 5). This made it difficult for them to provide a satisfactory response or explanation. The local authority then sought to rely on Public Interest Immunity in the proceedings, which was incorrect. When the bank statements were made available, the local authority was bound to conclude that it could not prove the alleged dishonesty and withdrew its application.

32. The local authority therefore did not succeed with its case and, for the reasons given, the manner in which the application and pursued was unsatisfactory.

33. Having regard to the fact that an allegation of dishonesty was made, which in my view a citizen is entitled to defend vigorously if unsubstantiated, the manner in which the application was pursued and the fact that the application was only withdrawn at the beginning of the hearing, my starting point would be that the local authority should pay all of the reasonable costs of the application.

34. However, I also find that the way in which the litigation was conducted on behalf of the First Respondent was unsatisfactory. In my view, the litigation was conducted disproportionately by both sides and there was a failure to focus on the simple central issue of whether the bank statements into which the DLA was paid evidenced any misuse of funds. The amount of claimed costs incurred of approximately £50,000 + VAT is, to my mind, a staggering sum given the relative simplicity of the central issue and the son's lack of means. Counsel's position statement dated 27 September 2017 on behalf of the First Respondent is in general terms, in particular the financial tables at (internal) pp.10-12, and involved giving evidence rather than merely setting out a position based on evidence. The correspondence is full of generalised assertions, of applications being misconceived, requests for summary judgment, etc, and both legally-represented parties made basic procedural errors (filing lengthy documents electronically despite what the rules say and including references to discussions at a DRH).

35. I accept that Senior Judge Hilder directed the filing of a considerable amount of evidence and the reasonable costs incurred in meeting those obligations should be fully recoverable. However, the key word is 'reasonable' and that only partly explains the level of costs claimed in this case. Costs are at the discretion of the court and I do not believe that the costs incurred by the First Respondent were proportionate to the issues, the complexity of the case and the son's circumstances.

36. Initially, I had in mind that the local authority be ordered to pay two-thirds of the respondent's assessed costs, with the view that this would reflect the court's finding that the manner in which the First Respondent responded to the application was unsatisfactory (rule 19.5(2)(c),

for example referring to the DRH, filing lengthy documents electronically, suggesting that the payment of costs was a condition of agreeing to the case being withdrawn, the length and tenor of the correspondence, etc.

37. However, I now think that it is necessary to separate out a reduction which is intended to reflect these conduct issues and the proportionality issue.

38. The proportionality of the work undertaken on behalf of the First Respondent can most fairly be assessed on an item-by-item detailed assessment of the First Respondent's costs by the SCCO subject to the caveat that this judgment is copied to the SCCO so that the taxing officer is aware of the court's concerns with regard to the litigation. That allows for an item-by-item detailed assessment of which items were reasonably required by SJ Hilder's directions, the nature of the allegations and the complexity of the case and which were not. Once the SCCO has undertaken a detailed assessment of the total amount of reasonable costs incurred by the First Respondent, the local authority shall pay 90% of those costs, the 10% reduction reflecting the court's finding on the litigation conduct of the other party.

39. With regard to the costs to which litigants in person are entitled, it was suggested to me that I should deal with this matter by applying CPR Rule 46.5. This is because Rule 19.6 of the Court of Protection Rules 2017 provides that:

*'19.6.—(1) Subject to the provisions of these Rules, Parts 44, 46 and 47 of the Civil Procedure Rules 1998(1) ("the 1998 Rules") apply with the modifications in this rule and such other modifications as may be appropriate, to costs incurred in relation to proceedings under these Rules as they apply to costs incurred in relation to proceedings in the High Court.'*

40. CPR Rule 46.5 provides as follows:

*46.5 (1) This rule applies where the court orders (whether by summary assessment or detailed assessment) that the costs of a litigant in person are to be paid by any other person.*

*(2) The costs allowed under this rule will not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative.*

*(3) The litigant in person shall be allowed –*

*(a) costs for the same categories of –*

*(i) work; and*

*(ii) disbursements,*

*which would have been allowed if the work had been done or the disbursements had been made by a legal representative on the litigant in person's behalf;*

*(b) the payments reasonably made by the litigant in person for legal services relating to the conduct of the proceedings; and*

*(c) the costs of obtaining expert assistance in assessing the costs claim.*

*(4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –*

*(a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or*

*(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46 [currently £19 per hour].*

41. This £19 per hour rate is fixed by Statutory Instrument. But this is subject to a cap: However long a litigant in person spends on their case s/he cannot recover more than two-thirds of what their legal representatives would have recovered if s/he had had a lawyer: see *R (on the application of Wulfsohn) v Legal Services Commission* [2002] EWCA Civ 250 and CPR Rule 46.5(2).

42. Further guidance was given by Chief Master Marsh in *Richard Andrew Campbell v Robert Campbell* [2016] EWHC 2237 (Ch). At paragraph 10, the Chief Master said that:

*'10. In an ordinary case, in which a litigant in person conducts the case with limited assistance, there may be little need for the court to exercise control over the costs which are recoverable by the making a costs management order. The litigant in person hourly rate is currently set at £19 per hour and the amount of costs should rarely be disproportionate to what is at stake.'*

43. Having considered this submission, I find that CPR Rule 46.5 does not in fact apply. This is because Rule 19.6(7) of the Court of Protection Rules 2017 expressly states: (7) Rule … 46.5 … of the 1998 Rules do not apply'.

44. Given that CPR Rule 46.5 does not apply, I have then turned to the Litigants in Person (Costs and Expenses) Act 1975 to see if it is of assistance. This provides as follows:

*'Costs or expenses recoverable.*

*1.-(1) Where, in any proceedings to which this subsection applies, any costs of a litigant in person are ordered to be paid by any other party to the proceedings or in any other way, there may, subject to rules of court, be allowed on the taxation or other determination of those costs sums in respect of any work done, and any expenses and losses incurred, by the litigant in or in connection with the proceedings to which the order relates.*

*This subsection applies to civil proceedings—*

*in England and Wales … in the Senior Courts …'*

45. However, according to section 1(1) of the Senior Courts Act, the Court of Protection is not one of the Senior Courts and therefore the 1975 Act also does not apply to the proceedings. I note that Schedule 6 to the Mental Capacity Act 2005 (Minor and Consequential Amendments) did not add the Court of Protection to the long list of courts to which the 1975 Act applies.

46. Turning next to the Mental Capacity Act 2005, section 55(1) simply states that, 'Subject to Court of Protection Rules, the costs of an incidental to all proceedings in the court are in its discretion'.

47. That allows me to award costs to the mother at my discretion unless that would be contrary to the Court of Protection Rules.

48. As I have already noted, the Court of Protection Rules 2017 provide a general rule in financial proceedings, which is that costs are payable from the incapacitated person's estate, and a rule setting out when departure from that general rule is justified (Rules 19.2 and 19.5).

49. Rules 19.2 and 19.5 are silent as to the 'costs' of a litigant in person and whether their 'costs' constitute 'costs' for the purposes of these particular rules. However, the interpretation rule (Rule 19.1) states that '"costs" include fees, charges, disbursements, expenses, remuneration and any reimbursement allowed to a litigant in person".

50. The intention appears to be that litigants in person may be reimbursed their expenses as distinct from being awarded a fee or being remunerated.

51. The definition of a 'reimbursement' is to repay or make up to a person a sum expended. The meaning of the word is made clearer by Section 19(7) of the main Act which deals with, and distinguishes between, the remuneration and expenses of deputies:

*19.-(7)The deputy is entitled—*

*(a) to be reimbursed out of P's property for his reasonable expenses in discharging his functions, and*

*(b) if the court so directs when appointing him, to remuneration out of P's property for discharging them.*

52. Having regard to those provisions, my view is that the intention of the rules is that a litigant in person is entitled to be reimbursed for their reasonable expenses but is not entitled to a fee or to remuneration. The intention of the rules seems to be that expenses but not fees, charges and remuneration are permitted and this is consistent with the disapplication of both CPR Rule 46.5 and the Litigants in Person (Costs and Expenses) Act 1975.

53. Given a general rule in financial proceedings that costs are payable from the incapacitated person's estate, the intention underlying the rules seems to be that litigants in person such as family members who have not incurred any legal costs should not charge a fee for assisting an incapacitated person and the court, for example to cover loss of earnings for attending court, reading documents and preparation. In many cases, such as statutory Will, LPA and disputed deputyship applications, several family members may wish to participate and join the proceedings as parties without being represented. The record I have seen, in a statutory Will case, is nineteen. If all of them were entitled to, for example, loss of earnings for attending and preparing for court, the additional costs would be significant.

54. This is, however, an unfortunate finding in the mother's case and one which, in my view, leads to an injustice. A serious allegation was made against her which necessarily she was bound to defend. It proved to be an unfounded allegation. Her conduct has been reasonable and I have no reason to doubt that her loss of earnings in defending her reputation is real. Naturally I am tempted to hold that section 55(1) is sufficiently broad that I have a discretion to award her costs but the section is subject to the rules and in my view the intention of Rule 19(1) is that litigants in person, like family member deputies, cannot charge or recover loss of earnings or hourly fees.

55. I would invite the mother to seek to agree with the local authority a sum covering her reasonable expenses. I would also invite the local authority to consider making an ex gratia payment to her and, if that cannot be agreed or done, that she gives consideration to whether

the Ombudsman might provide a remedy. The rules also need to be reviewed and revised so that the court can award a litigant in person costs in a case such as this.

**Addendum**

56. After copying my draft judgment to the parties for correction of any errors and anonymisation, I received further uninvited submissions on costs from the London Borough of Hounslow. However, the local authority has not discussed an ex gratia payment with the mother and in my view this aggravates the unfair way in which she has been treated by the local authority.

DJ Anselm Eldergill

4 September 2018