

MENTALLY DISORDERED RESPONDENTS

A QUICK STEP-BY-STEP GUIDE

By Chloe Hudson

IS THE RESPONDENT MENTALLY DISORDERED?

- S.1(2) of the Mental Health Act 1983
- Some medically defined conditions but also “any other disorder or disability of mind.”
- Is the Respondent incapable of managing/administering his own affairs; does he suffer from a mental disorder; is his incapacity due to that disorder?
- If “yes” then appoint guardian ad litem.
- The fact of disability is not itself a bar to the granting of an injunction against a person suffering under a disability. However, the question is whether the Respondent can understand the proceedings, the requirements of the injunction and the consequences of breaching it.

STEP ONE

- If an urgent application for the Applicant's protection is being made then it should be considered whether medical evidence (if available) is such to make it necessary to notify the Official Solicitor.

STEP TWO

- First hearing – Judge should consider whether there is sufficient evidence to immediately appoint a guardian ad litem.
- Medical evidence usually required but even without such evidence the Official Solicitor should be contacted at an early stage.

STAGE THREE

- Some Judges will be cautious about granting an injunction. Continuing without the appointment of the Official Solicitor can invalidate any order.
- Many will grant an application for an injunction and rely upon the issue of enforceability being dealt with at any committal stage.
- During committal proceedings many Judges will rely on the power under s.48 Family Law Act 1996 to adjourn for four weeks or remand for three in order to obtain a medical report.

STEP FOUR

- The Judge should only make an order having balanced the need to protect the Applicant against the disability of the Respondent.

Both parties should highlight at an early stage the mental health issues of the Respondent to assist the Judge in making an enforceable order or diverting the Respondent to be dealt with under the Mental Health Act 1983.

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