Research Project: Welfare cases in the Court of Protection

Information for judges and lawyers on the Court Files Study

This information sheet is for judges and lawyers working in the Court of Protection to provide them with information about a study about welfare cases in the Court of Protection. The overall aims of the project are to gather good quality empirical evidence to better inform discussions about accessibility, efficiency and transparency in welfare cases in the Court of Protection.

The principal investigator on the project is Professor Phil Fennell. Dr Lucy Series is a research associate working full time on the study. Professor Luke Clements and Dr Julie Doughty are project consultants. Their contact details are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Professor Phil Fennell | [Fennell@cardiff.ac.uk](mailto:Fennell@cardiff.ac.uk) | +44 (0)29 208 74344 | Cardiff Law School  Cardiff University  Museum Avenue  Cardiff  CF10 3AX |
| Dr Lucy Series | [SeriesL@cardiff.ac.uk](mailto:SeriesL@cardiff.ac.uk) | +44 (0)29 208 74342 |

The research is funded by the Nuffield Foundation ([www.nuffieldfoundation.org](http://www.nuffieldfoundation.org)).

The project website is: <http://sites.cardiff.ac.uk/wccop/>

You can contact the researchers with any questions you may have about any aspect of the research.

### Audit of Court Files

This phase of our research involves analyzing statistical data from files of Court of Protection welfare cases. This phase is to help gather quantitative information about the kinds of cases the Court of Protection adjudicates. We are interested in information about: the (broad) subject matter of any declarations or orders sought; demographic information about the parties; representation of the parties; procedural matters and transparency issues such as how often the media apply to attend or report on hearings. A full list of the data to be extracted is available upon request.

The purpose of the court files analysis is *not* to conduct any case studies; it is merely to be able to build up a statistical picture of who is using the Court and why. At a later point, we hope to conduct a comparable analysis of files from the First Tier Tribunal (Mental Health) to contrast procedural and demographic issues.

### Legal considerations in research on the Court Files

Almost all proceedings in the Court will be subject to s12 Administration of Justice Act 1960. This means that publication of information about proceedings held in private may be a contempt of court, unless the Court exercises its authority under rule 91 of the Court of Protection Rules 2007 authorizing publication of information about proceedings. Unlike the family division, the Court of Protection does not yet have a practice direction making exemptions from the law on contempt for authorized research projects, so a special procedure has been developed in conjunction with senior staff at the Court of Protection.

If the judge grants permission for the case to proceed, the Court has proposed granting an order with a recital in something like the following terms:

The Court being satisfied that examination of court files to produce information in the anonymized form proposed is designed to produce information which will be of benefit to users of the Court of Protection, and will therefore be in the best interests of P. The Court would direct that if any party or person notified objected to access within 21 days, the researchers would not be granted access to the file.

An appropriate order will be drafted by the Court of Protection’s technical specialists team for any orders which they issue in health and welfare cases.

The proposal is that, if there is no objection, and the judge feels that it is appropriate (subject to the considerations below and the Overriding Objectives of the Court of Protection), then he or she is requested to make an order permitting access to the file by the researchers for the purposes of the research project (in accordance with rule 91). The fact that a party or person notified has not objected within 21 days does not deprive them of the right to do so at a later date, and in such a case access to the file would not be permitted. If an order is made, the file will be marked with a sticker to help to identify it.

The Data Protection Act 1998 (DPA) has specific provisions permitting *statistical* research on sensitive personal data, provided it is in the substantive public interest and the risk of harm to the persons concerned is negligible (see s33 DPA and The Data Protection (Processing of Sensitive Personal Data) Order 2000 SI 2000/417 2000). The common law duty of confidentiality permits some disclosures in the public interest. Court records are public records governed by the Public Records Act 1958. This study has been approved by the Ministry of Justice Data Access Panel, who have granted us access to these records.

### Ethical review

This research has been reviewed and approved by Cardiff University’s Research Ethics Committee.

*Data protection and confidentiality*

The data from the file will be extracted by a researcher from the project, who will visit the Court of Protection. The file will not be removed from the Court’s premises for this research. The data will be entered into an electronic database, which will be encrypted. The database will not collect the names or addresses of the parties, nor the name of any local authority, hospital, NHS Trust, or care provider. The Court of Protection case number will, however, be stored, to enable the researchers to check the record against the original file in case of errors or concerns. Unless there are compelling legal reasons directing otherwise, the only people who will be given access to this database will be the named researchers on the project and the Court of Protection and HMCTS should they request to see it.

The researchers will only publish statistical information from this database - in the form of graphs, tables and summary statistics. The researchers will not publish any case studies from the files. Guidance from the Information Commissioner’s Office will be followed to protect against the risk of jigsaw identification.

The findings of the research will be disseminated in the following ways: publication in academic and professional journals; presentation at conferences; research reports which will be made freely available to the public on the research group’s website; simplified lay summaries of the research findings, made available on the research group’s website.

The terms of the *Privileged Access Agreement* issued by HMCTS granting access to the files also require that any reports, articles or presentations etc resulting from this research are approved by them prior to publication.