

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
AND IN THE MATTER OF XX

BETWEEN :

A COUNCIL

Applicant

-and-

XX

(by his litigation friend, the Official Solicitor)

P, the person to whom
these proceedings relate
and the First Respondent

draft ORDER

BEFORE District Judge Wisdom sitting as a nominated judge of the Court of Protection at the Capacious Combined Courts on 22 May 2014

UPON reading the draft order agreed and submitted by the parties together with the Position Statements filed by each.

UPON the parties confirming that XX moved to temporary accommodation at [address] on [date] and that this accommodation will be made available for him to occupy for so long as the clearance and reinstatement works necessitate his absence from his home at [address]

UPON the parties confirming that XX's secure tenancy of [address] subsists, and that XX will not be required to any occupation charge for [address] but will be liable for the utility bills incurred there.

UPON the applicant agreeing to use its best endeavours to carry out clearance works to [address] in accordance with the attached 'Schedule of Clearance Works' and to complete the same as soon as is practicable and in any event during the week commencing [date]

UPON the applicant agreeing to use its best endeavours to prepare and disclose to XX's solicitor as soon as practicable and in any event during the week commencing [date] a schedule of the reinstatement works required to put [address] into a safe and habitable condition

UPON the applicant agreeing to use its best endeavours to complete the reinstatement works to [address] as soon as practicable and in any event during the week commencing [date]

AND UPON the parties agreeing that [address] will be made available for XX to occupy as soon as practicable after the completion of the clearance and reinstatement works and that XX will be expected to move back to and occupy [address] as soon as is practicable after he is notified that it is ready for occupation.

IT IS DECLARED THAT XX lacks capacity to -

- 1) litigate these proceeding
- 2) make decisions about the management of [address] in accordance with the covenants of his tenancy agreement

- 3) decide whether he should vacate [address] whilst the clearance and reinstatement works are carried out

IT IS FURTHER DECLARED AND ORDERED that it is lawful, being in XX's best interests, that -

- 1) XX is not permitted to re-enter or re-occupy [address] for the duration of the clearance and remedial works other than with the prior agreement of the applicant.
- 2) The applicant and/or their agents and contractors have the right to enter and remain upon [address] for the purposes of and duration of the clearance and remedial works.
- 3) The applicant will offer the opportunity to XX to have accompanied visits to [address] at regular intervals during the clearance and reinstatement works so long as it is safe to do so and, in the event that it is not safe to do so or that XX declines such visits, then the applicant will provide XX with photographs showing the progression of those works.
- 4) The clearance works to [the address] will be carried out in accordance with the attached 'Schedule of Clearance Works'.
- 5) The applicant and/or its agents have the right to enter and inspect XXs temporary accommodation at [address] for the purpose of checking that the same remains in a safe habitable state and shall, save in the event of any immediate risk to his safety and

wellbeing, give XX no less than 3 days notice of its intention to enter and inspect.

- 6) The applicant and/or its agents have the right to enter and remain upon XX's temporary accommodation at[address] for the purpose of assisting XX to take such steps, or in the event that he refuses to or fails to do so, to themselves take such steps, as are required to ensure that the same remains in a safe habitable state and shall, save in the event of any immediate risk to his safety and wellbeing, give XX no less than 3 days notice of its intention to enter for that purpose.
- 7) In the event that XX accumulates any belongings and effects on the communal land surrounding his temporary accommodation at [address] then the applicant has the right to remove the same.
- 8) In the event that the same is necessary then the applicant may use such reasonable and proportionate measures as are necessary to give effect to the provisions of this order.

AND IT IS FURTHER ORDERED THAT -

- 9) The matter shall be listed for an oral hearing before District Judge Wisdom on the first open date after [date] at which time the court will consider such final declarations and orders are necessary and appropriate in relation to XX's present and future occupation of [address].