



Court of Protection

Minutes of Court User Group Meeting
Wednesday 25 April 2018 2.00pm
Court 23 First Avenue House
42 – 49 High Holborn London WC1V 6NP

Terms of Reference

The purpose of the Court User Group is to provide a forum for discussion for matters causing concern for Court Users and views and comments on policy issues.

These minutes may be widely disseminated.

Attendees

Her Honour Judge Carolyn Hilder (Court of Protection - Chair) (HHJH)

District Judge Susan Jackson (Visiting Judge – Court of Protection)

Joanne Earley (Operations Manager – Court of Protection) (JE)

Ross Hamilton (Authorised Court Officer – Court of Protection)

Gillian Jurd (Technical Advisor – Court of Protection)

Madhu Kumar (Ministry of Justice)

Lucy Astle-Fletcher (Ministry of Justice)

Rachel Finch (Doughty Street Chambers)

Helen Starkie (Law Society)

Julia Lomas (Irwin Mitchell)

Chloe Scarr (Martin Searle)

Gemma Eason (Osborne Morris & Morgan)

Alexandra Edwards (Bennett Griffin)

Louise Nettle (Royds Withy King)

Sara Isenberg (Royds Withy King)

Paul Phazey (Rathbones)

Kiran Vasuadeva (New Quadrant Partners)

Asha Beswetherick (Enable Law)
Martin Terrell (Thomson Snell & Passmore)
Holly Chantler (Morrison's)
Sophia de Arez Cintra (Stephensons)
Nicola Mackintosh QC (Mackintosh Law)
Jane Faulkner (JMW solicitors)
David Rees QC (5 Stone Buildings)
Andrew Harding (Hugh James solicitors)
Robert Hurling (Hugh James solicitors)
Ian MacKendrick (Frenkel Topping)
Karon Walton (Solicitors for the Elderly)
Neil Cawthorn (The PDS)
Emily Deane (STEP)
Christine Bunting (Chartered Legal Executive - Hyphen Law)
Pamela Clarke (South London Legal Partnership)
Phillip Joseph (London Borough of Ealing)
Yvonne Mitchell (APAD)
Elaine Brown (Official Solicitor)
Karen Bayley (Official Solicitor)
Latoyah Thompson (Official Solicitor)
Kevin Johnson (Supreme Court Costs Office)
Elizabeth Jeary (Office of the Accountant General)
Joan Goulbourn (Ministry of Justice)
Andrew Graham
Constance Slattery

Apologies

Alexander Elphinston (Anthony Collins)
Sophy Miles (Doughty Street)
Ruth Meyer (Boyes Turner)
Alexander Wright (Boyes Turner)
Duncan Boulton (lay deputy)
Robin Bailey (Chase de Vere Independent Financial Advisers)
Paul Reason (R. Costings Ltd)
Rebecca Robson (R. Costings Ltd)

Richard Fullman (Investec Wealth & Investment Ltd)

Alison Taylor (Frenkel Topping)

Helen Burnell (Mills & Reeve)

Jill Weston (Mills & Reeve)

Minutes and Action points

These were read and agreed. There were no action points brought forward.

Court Manager's Report

Joanne Earley (JE) reported as follows –

Issue volumes

There has been a 3% increase in the volume of applications received in the 6 months to March 2018 (16440 applications were received compared to 16013 applications received in the previous 6 months). The number of welfare applications, including "Re X" has increased on the previous month by 130. The volume of Deprivation of Liberty applications received under "Re X" has increased by 48% in the 6 months to March 2018 (1181 compared to 797), we think this could be as a result of a judgement that was handed down by Mr Justice Charles recently and we anticipate this number to continue to increase over the coming months.

There has been a 10% increase in the volume of applications issued in the 6 months to March on the previous 6 months (16510 compared 14212). In March the volume of applications issued within the five day target was 80% against the target of 95%. We are hoping that the increase will continue over the next few months.

We are still receiving an extremely high proportion of incorrect applications. In March we returned 401 applications. Of these 180 were from solicitors and again the main reason was that forms required for the application were not included, also that forms had not been signed.

Timeliness

The average weeks to disposal has increased since last reported for disposal of cases by Judges and Authorised Court Officers (ACOs) for Property & Affairs (P&A) Deputyship, other P&A and Health & Welfare cases against the current measure of 16 weeks. Our ACO complement was reduced by one last month and we are in the process of doing a recruitment campaign to fill this post.

Outstanding box work (that is, unattended hearings dealt with on the papers) stands at 672, with the oldest being from the 12 March 2018.

There were 3660 orders in target during the month of March 2018, which equates to 61%. This is below the 75% target. Although we were out of target it was still a very high number of orders issued in the month.

New Judges

The Court of Protection will see 2 new judges joining us. Judge John Beckley joined us yesterday and Judge Sarah Ellington will join us on the 8 May 2018.

Hearings and Orders

One of the issues we have is being able to identify quickly documentation that is sent to the Court either by email or post for an upcoming hearing or draft orders requiring approval. Could I request the following:-

- Via email – in the subject box can you put 'HEARING ON --/--/--' or 'DRAFT ORDER FOR APPROVAL' and send to the hearings inbox 'courtofprotectionhearings@hmcts.gsi.gov.uk'
- Post – could you add on the front of the letter 'HEARING ON --/--/--' or 'DRAFT ORDER FOR APPROVAL' and highlight this

By doing this it will allow the teams to quickly and easily identify anything that is for a hearing and it can be printed off and put on the file or passed to the Judge.

Duplicate documents

Please note that when a document is sent via email and it states that it has also been sent via post, the email will be deleted and the user not notified (unless urgent). Please do not send duplicate documents as this is a strain on our resources and we don't have capacity to be looking at work twice.

Phone calls

A large piece of work was carried out in October last year on answering our phone calls and updating our website. From our phone statistics, we are answering on average 99% of our calls daily, also the waiting time has reduced quite drastically and from carrying out mystery shopper exercises on average calls are answered in under 1 minute with the longest wait time not exceeding 5. I hope you will agree that there has been an improvement. We will continue to review our guidance online and will be carrying out further data capture exercises to identify the main reasons for calls.

Again, please do not call for progress updates unless the matter has become extremely urgent or you are concerned with the time passed since you have had contact from the Court. Please note you should not be looking for an update during the statutory waiting period.

Andrew Graham (AG) asked if the Court had a policy of ignoring correspondence. (JE) said that we would never intentionally ignore correspondence and that we had a 10 day target to respond. Her Honour Judge Hilder (HHJH) said that this was not the appropriate forum to deal with individual cases and if he had a complaint he should make this in the usual way and it would be looked into.

Multiple points of entry

Madhu Kumar (MK) and Lucy Astle-Fletcher (LAF) gave a presentation on the forthcoming change for applications being made directly to the Regional Hubs. At present all applications are made to First Avenue House for issue and, as appropriate, electronic transfer to the Regional Hub closest to where 'P' is living.

Regional issue will start with the South West Hub based at Bristol from Monday 30 April, with the other regions going live on 25 June.

Cases where P lives in London will continue to be dealt with at First Avenue House, as will applications in respect of serious medical treatment.

It was clarified that the process is intended to apply to matters of a type which is currently transferred to a regional hub immediately upon issue i.e. application under S21A and S16 which are immediately listed for hearing. Other applications, for example for the appointment of a welfare deputy, will continue to be dealt with as at present. However, if an application raises issues of different types, it would be expedient for them to be dealt with together in the regional court.

Applications made by professionals should be made electronically, although there will be arrangements for lay applicants to do this on paper.

Professionals are advised to register for a Fee Account (PBA) to facilitate payment of the fee which should accompany the application.

The process will be reviewed in August 2018 and feedback is welcome at Civil&FamilyBusinessSupport@justice.gov.uk.

Accredited Legal Representatives

Nicola Mackintosh (NM) wished to raise the new system of Accredited Legal Representatives (ALRs), which had gone live on 2 April.

(HHJH) and (JE) said that they had checked and no applications had been made yet, although (NM) said she had made an application some time ago.

(HHJH) explained that the panel of ALRs is maintained by the Law Society, although the appointment is made by the Court. The process is that the Court orders the appointment and the identification of an ALR is made impartially via the computer system, determined by area. A standard email is sent, giving 24 hours to respond and then the appointment is made.

There are 3 template orders that have been approved by the Law Society, one of which gives the ALR authority to investigate assets for funding purposes, similar to the existing arrangements for when the Official Solicitor acts. If this shows that there are insufficient assets to cover costs, the ALR would be able to apply to be discharged.

(NM) was concerned that if P's representative had already instructed a solicitor, and then an ALR was required, then it would be possible that a different solicitor would be appointed, with the need for a fresh Legal Aid application etc. This could discourage ALRs from coming forward.

(HHJH) observed that it is important to preserve the integrity of the panel, with the rotational basis being fair to P. However, the process will be reviewed after it had been running for ten weeks.

Sealing orders

Elaine Brown (EB) wanted to raise the delays in the sealing of orders from the High Court, particularly in respect of medical treatment.

(HHJH) said that she has raised this with Mr. Justice Baker and the process has been clarified. If there are further problems, they should raise this with the High Court/Tier 3 judge's clerk.

Capacity evidence in Personal Injury Litigation

Christine Bunting (CB) sought clarification of how the Court approaches cases where capacity is a matter of dispute in personal injury proceedings.

(HHJH) said that this had been discussed at the previous court user group meeting. The correct forum for determining the issue is the court seized of the personal injury litigation.

Deputyship Bonds

(CB) also asked the status of the consultation paper in respect of deputyship bonds.

Joan Goulbourn (JG) explained that there had been a paper prepared by the Office of the Public Guardian (OPG) some time ago, including a proposal that any application for the adjustment of a Bond level be made by the OPG, thereby not incurring a fee. However, this was still under discussion and until further notice if a deputy wanted to alter the level of the Bond, an application to the court is needed.

Fee exemptions

Asha Beswetherick (AB) on behalf of Hilary Cragg asked for clarification in respect of fee remissions. (JE) confirmed that the particular case to which she referred was being considered through the appropriate channels.

(HHJH) explained that there was a standard system in place for fee remission applications.

Any Other Business

Julia Lomas (JL) wanted to raise the issue that the CICA will only start proceedings if the Court of Protection have previously appointed a deputy. Would it be possible for the court to issue a short order in such cases or a fast track system?

(HHJH) confirmed that there are template orders both within deputyship and as a single issue but she was yet to be persuaded that there was a need for a specific fast track procedure.

(JL) also wished to raise a lack of consistency in orders received. She has had a number of cases where the cash assets had been exhausted, leaving only a property and benefits, that could be dealt with by an appointee, so applications have been made to discharge the deputyship, but different orders have been made by the Judges.

(HHJH) said that all orders are down to the individual circumstances. Factors such as the age of P and whether the deputy had been appointed from the panel may be relevant.

District Judge Jackson said that she had made various orders in such cases as there was often insufficient information included in the application to give assurance as to who would look after P. She would normally expect the Local Authority to act as Appointee.

(JL) also pointed out that there have been cases where applications have been refused but no reason was given, which made it difficult to apply for reconsideration. (HHJH) noted the concern and confirmed that application for reconsideration could be made in such circumstances if the order had been made on the paper.

(JL) wanted to raise the situation where "P" can need additional legal advice, such as divorce or criminal proceedings. Irwin Mitchell can usually provide this 'in house' but sometimes that matter is brought in part way through the proceedings, for example by parents regarding educational provision. Should the costs of these be assessed and paid or do they require an application for retrospective approval?

(HHJH) said that the powers of the deputy would depend on the terms of the deputyship order. If authority to conduct litigation was required, an application should be made. There can be no automatic authority given. It should not be assumed that costs would be authorised retrospectively.

Andrew Graham (AG) wanted to raise the lack of water in the court room which disadvantaged an elderly lady in a hearing.

(HHJH) said that water would always be supplied if requested.

Martin Terrell (MT) was concerned about the lack of information from the OPG when seeking the appointment of a Panel Deputy.

(HHJH) said that this problem had been addressed, and standard orders would now include an appropriate provision for disclosure of papers.

(MT) also raised the matter of costs after the death of "P". (HHJH) confirmed that discussions with the Senior Courts Costs Office had hopefully resolved this issue. For costs incurred during the lifetime of P, provision in the deputyship order is sufficient. No further order is required.

Neil Cawthorn (NC) asked whether he would be in contempt of court if he were to use letters of support from families in his publicity.

(HHJH) said that he should abide by the terms of the transparency order.

An issue was also raised about the Leeds Regional Hub where there seemed to be problems with staff not providing an embossed seal on the orders that require them.

(MK) said that she would look into this. The electronic seal can be done in the regions but the embossed seal is done at First Avenue House only.

Date of next Meeting

The next meeting will be at 14.00 on Wednesday 17 October 2019 in Court 23 at First Avenue House.