



**Court of Protection
Court User Group Meeting
(P&A)
Wednesday, 12 July 2023 2pm
via MS Teams
Minutes
Terms of Reference**

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

These minutes may be widely disseminated.

Meeting started at 14:03 by HHJ Hilder (HHJH)

Attendees

HHJ Hilder (HHJH)	Senior Judge of the Court of Protection
DJ Beckley (DJJB)	Resident Judge - Court of Protection
DJ Ellington (DJSE)	Resident Judge - Court of Protection
DJ Grosse (DJLG)	Resident Judge - Court of Protection
DJ Mullins (DJMM)	Resident Judge - Court of Protection
DJ Jackson	
Mala Nair (MN)	HMCTS Court of Protection - Acting Operations Manager
Maureen Mohammed	HMCTS Court of Protection- Delivery Manager
Anthony Tang	HMCTS Court of Protection- Delivery Manager
Kamila Czmiel	HMCTS Court of Protection- Delivery Manager
Joan Goulbourn (JG)	MOJ Mental Capacity Policy Team
Doris Sheridan (DS)	Sheridan Consult Ltd - Holborn House
Caroline Bielanska (CB)	Caroline Bielanska Consultancy
Kate Edwards (KE)	Simpson Millar
Alexandra Edwards (AE)	JE Bennett Law
Martin Terrell (MT)	Warners Law LLP
Sheree Green (SG)	Greenchurch Legal Services Ltd
Holly Chantler (HC)	Morrison Solicitors LLP

Judith Naylor (JN)	Cumbria County Council
Alexander Wright (AW)	Boyes Turner LLP
Shadia Ousta Doerfel (SOD)	London Borough of Islington
Yagoda Subotic (YS)	On behalf of APAD/London Borough of Redbridge
Heather Feast	HMCTS Court of Protection - ACO
Ezinne Kanu	HMCTS Court of Protection - ACO
Manisha Takhtar	HMCTS Court of Protection - ACO
Wendy Treadway	HMCTS Court of Protection - ACO
Laura Walters	HMCTS Court of Protection - ACO
Ayo Odunubi	HMCTS Court of Protection - ACO
Natalie Cheesewright	HMCTS Court of Protection
Scott Soley	HMCTS Court of Protection
Rachel Fiske	Office of the Public Guardian
Christopher McGowan	Office of the Public Guardian
Mandy Giedrojcz	Office of the Public Guardian
Elizabeth Jeary	MOJ HQ Court Funds Office
Christine Leggett	HMCTS Senior Courts Costs Office
Elaine Brown	Official Solicitor & Public Trustee
Mark Higgs	Official Solicitor & Public Trustee
John Howard	Official Solicitor & Public Trustee
Deborah Pardoe	Allied Services Trust
Niamh Leyland	Anthony Collins Solicitors
Karen Royall	Bath & North East Somerset Council
Barbara Walton	Bedford Council
Samantha Vickery	Blackburn with Darwen Borough Council
Sue Clark	Boyes Turner LLP
Teresa Pender-Stratford	Coole Bevis LLP
Shirley Otomewo	Croydon Council
Poki Wratten	Culver Law Ltd

Charlotte Alderson	Cumbria County Council
Philippa Davies	Dawson Cornwell
Helen Georgiou	Devon County Council
Catherine Lazenby	East Riding of Yorkshire Council
Mariam Bhamjee	East Sussex County Council
Nikki Bedford	Enable Law
Asha Beswtherick	Enable Law
Georgina Baidoun	Former Lay Deputy
Robyn Hemmings	Freeths LLP
Thanuja Oppilamany	Freeths LLP
Alison Meacher	Gatehouse Chambers
Michelle Weaver	Higgs LLP
Claire Whittall	Higgs LLP
Stuart Farmer	Howden Insurance Brokers
Amanda Shergold	Howden Insurance Brokers
Alison Greatbanks	HSW Solicitors
Shelia Moore	Hugh James
Elena Hall	IBB Law
Zoë Bancroft	Investec Wealth & Investment Ltd
Victoria Ward	Irwin Mitchell LLP
Humera Qureshi	Islington Council
Bethan Robart	JCP Solicitors
Jac Staddon	JCP Solicitors
Katie Ledwith	JMW Sols
Neil Davies	Landon Bowdler LLP
Toni Reeves	Landon Bowdler LLP
Lucy Speed	Landon Bowdler LLP
Eve Drummond	Leigh Day
Nicola Rigby	London Borough of Bexley

Elizabeth Mouricette	London Borough of Camden
Neil Micklewright	London Borough of Islington
Clare English	Martin Searle Solicitors
Samantha Hamilton	Mullis & Peake LLP
Chelle Farnan	NHS England
Linda Putland	NHS Suffolk and North East Essex ICB
Thomas Boden	North Tyneside Council
Grace Serwanga	Penningtons Manches Cooper LLP
Rachel Taylor	Penningtons Manches Cooper LLP
Desi McArd	Peter Edwards Law
Saskia Witney	Reading Borough Council
Shola Oshinuga	Rotherham MBC
Jess Edkins	RWK Goodman LLP
Eirian Hitchmough	RWK Goodman LLP
Sara Isenberg	RWK Goodman LLP
Louise Nettle	RWK Goodman LLP
Kerry-Jo Hatfield	Roythornes Limited
Kyra Harvey	SEN Legal
Alison Lamont	Setfords Solicitors
Sue Bowler	Shoosmiths LLP
Rebecca Bristow	Shoosmiths LLP
Jill Thomason-Stewart	Slater Gordon Lawyers
Georgina Garner	Slater Heelis Solicitors
Pamela Clarke	South London Legal Partnership
Nicola Fitzhugh	Southern Solicitors
Jodee Mayer	Stewarts Law LLP
Hannah Rodgers	Stonegate Legal
Annette Lawton	Suffolk County Council
Fran Russell	The Professional Deputy Service Trust Corporation (Case Manager)

Mark Aitchison	The Professional Deputy Service Trust Corporation (CEO)
Charlene Hughes	Thomson Snell & Passmore LLP
Emma Wesley	Tollers LLP
Esha Kansal	Torbay Council
Geri Rawlins	Trojan Consultants Limited
Oliver Banks	Vincent's Solicitors
Ezweni Ncube	Wards Solicitors
Karon Walton	Warner Goodman LLP
John Mackenzie	Warners Law
Lisa Flynn	West Berkshire Council
Rebecca Schofield	Wigan Council
Keighan Lovett	Wilkin Chapman LLP
Chantal Ul Haq-Weedon	Wilkin Chapman LLP
Holly Mievill-Hawkins	Wills and Equity Committee (Michelmores)
Vicki Pearce	Wilson Browne Solicitors
Matthew Cardoza	Wiltshire Council
Katrina Vollandine	Wollens
Owen Brown	Wrigleys Solicitors LLP

1. Apologies

- HHJ Owens - SE Regional Lead Judge
- Amy Chater (Leigh Day)
- Naomi Fathers (Jackson Lees)
- Yvonne Mitchell (APAD/London Borough of Ealing)
- Sam Ware (Hampshire County Council)
- Frances Seager (Suffolk County Council)
- Marie Leonard (Suffolk County Council)
- Lucy Cavell (East Riding of Yorkshire Council)
- Karen Taylor (Blackpool Council)
- Joanne Fraser (Irwin Mitchell LLP)
- Janet Ilett (Official Solicitor & Public Trustee)
- DJ Batten -Resident Judge - Court of Protection

2. Minutes and action points from previous meeting 18 January 2023

Approved and adopted

Action points

AP1–Death certificates. Process confirmed as follows: emails should be sent to COP Enquiries:courtprotectionenquiries@Justice.gov.uk with the subject line identifying case name, number, and notification of death. AP1 closed.

AP2–COP Statistics. The current quarterly provision of national COP statistics remains unchanged. Content improvements re performance, analysis and scope of detail are under review by the Performance and Analysis Team throughout the court service. AP2 closed.

AP3–Draft orders. The COP template orders are currently shared with the COP practice editors / Blue Book. This is as far as we can go for now, but is also an area under review with updates to be provided when available AP3 closed.

3. Operations/Delivery Manager's Report – COP Senior Management Team- Mala Nair (MN)

Applications and Orders

The statistics have been shared and I hope you have had some time to review the figures.

Backlogs and recovery

We have been busy over the last 6 months with recruitment and have onboarded 13 new staff members. This is a success since our last meeting, as we have devised a plan to tackle the backlog with the orders. In April, we put together a small team of contract staff to help focus on this. I am pleased to confirm that we have made significant progress in catching up with this area of work.

We are currently issuing orders within 9 weeks of them being made. All orders in relation to hearings are now issued within 48 hours. I anticipate we will be in a good position with orders by the end of summer.

We ran a successful internship scheme again this year which proved popular and have 5 staff who will spend their summer with us.

We will continue recruiting for the next few months as we are carrying a few vacancies. Our plan for this quarter is to bolster the applications teams, both paper and e-applications.

E-applications is a new area of work which we are now upskilling more staff to deal with, in order to manage the high incoming volumes.

We continue to review our processes and have identified some areas where we felt changes would make a greater positive impact on our users. Further to wider consultation with the user research and accessibility team, we have now changed the format of the orders to make it more compatible with users who may have accessibility needs.

We still have some Local Authorities using cheques and card payments to pay for applications, which is causing some delays with chasing payments. The National team have been supporting us by writing out to Local authorities to confirm that Pay By Account (PBA) should be used for all Court of Protection applications from 1st July 2023. We have offered our assistance to support them where necessary.

P&A Digital process

The upfront notification process is now business as usual for all originating property and affairs deputyship applications. The submission platforms are

available on gov.uk at the landing page for the Court of Protection with payment links embedded into the digital journey.

Between January 2023 and end of May 2023, 3940 Property and affairs deputyship applications have been received by First Avenue House, 1854 of those have been digital applications which is 47% of this work. The uptake has been steadily increasing where in May, 86% of all property and affairs applications were made digitally. The average lifespan of an e-application in 2023 is 7 weeks.

The national team organised webinars for professionals on the 28th February and the 18th May to promote and increase the usage of the digital submission portal. We had over 450 attendees for both of these sessions. We are looking to organise further webinars as and when further improvements are made to the portal. We are also exploring possibilities to run sessions for charities supporting litigants in person, with a video to assist.

The national team are supporting with updating the website to ensure the links are more accessible and obvious to users.

As of this morning, we have further developed the online portal with the 'save and return' function. This allows users who are making their application for a property and affairs deputy on the digital form, to save and return to their application as and when they have more information. Comms have been shared with all users today.

The next enhancement we are working on is to include applications for a new or replacement deputy and the COP1A form. We will keep our users updated with any progressions.

MN followed on from the report with the good news that approval has been received to upgrade the Court's database system.

Introduction to the COP Senior Management Team

Mala Nair – Acting Operations Manager

Maureen Mohammed – Delivery Manager

Anthony Tang – Delivery Manager

Kamila Czmiel – Delivery Manager

Questions raised following COP report.

Doris Sheridan (DS) Sheridan Consult Ltd - Holborn House

DS shared that she is working on a review of COP forms on behalf of Coventry and Warwickshire ICB, to make their forms more accessible for users and suggested that it may be useful to share ideas outside of this group.

HHJH flagged that similar work has been already carried out by MENCAP in respect of 'easy read' for lasting power of attorney.

Caroline Bielanska (CB) Caroline Bielanska Consultancy confirmed that this information could be located at the MENCAP Trust Company website. It

was suggested that contact is made directly with CB and Joan Goulbourn (JG) outside of this meeting to take discuss any further work in this area.

HHJH suggested possible input from HMCTS via Jess Newton, if required.

CB enquired whether the new digital process was only for P&A deputy cases or whether trustee applications are also now accepted via the online portal.

HHJH advised that online portal is currently only to be used for the first P&A deputyship applications, or replacement deputy applications where the initial appointment was made under the digital process. It is hoped that this will soon be extended to include replacement deputy applications (where the first application also made online). But this development is a slow process. For now trustee applications will still need to be made on a separate paper application

Kate Edwards (KE) Simpson Millar enquired whether applications for non-contentious replacement deputies could be considered as the next type of case to be taken on to the online portal and asked whether an online priority list is in place.

HHJH advised that there is not a priority list in place, but that as the next steps are taken in the development of the online portal, definable characteristics such as described would be considered.

Alexandra Edwards (AE) JE Bennett Law asked whether the sale of property could be included alongside the deputyship application.

HHJH confirmed that it could

Martin Terrell (MT) Warners Law LLP enquired whether further directions sought on form COP9 could be filed by email, rather than by paper.

HHJH outlined that where is a deputy already in place using the digital process, the standard 21 days to file a COP9 online would apply. If outside the 21 days a paper application would need to be made.

DJ Beckley (DJJB) added that with regards to authority to sell and where further evidence has been requested, this is currently being referred to the COPEAPPS team by email.

The COP9 process was agreed to be confirmed via the minutes, please see as follows:

A COP9 may be made at the same time as the main application, uploaded with the main application documents. If a COP 9 application becomes necessary after the digital application has been made, it should be e-mailed to: COP_EAPPS@justice.gov.uk so that it can be added to the digital file by the court staff. The digital development team will be looking further into how the platform can be extended to include the facility for a digital COP9 application.

4. Update from the Mental Capacity Policy Team – Joan Goulbourn (JG)

Ministerial Update

Alex Chalk - Lord Chancellor (former previous junior minister)

Mike Freer – Junior Minister with responsibility for the MCA

Small Payments Scheme

The response to the consultation published in February 2023 advised that whilst respondents were in favour of the scheme there was no consensus on the required safeguards. A lack of awareness of the MCA in particular amongst parents and carers of young adults lacking capacity was noted, with the court of its own volition, continuing to work on improvements to its processes.

Liberty Protection Safeguards (LPS)

DHSC confirmed that the implementation of LPS will be delayed 'beyond the life of this Parliament. A working group continues via the CoP Rule Committee to seek improvements to the Re X process

Private Members Bill on Lasting Powers of Attorney

The second reading in the Lords has taken place and this is now awaiting a third reading, at a date tbc.

MCA Code of Practice

The MOJ are liaising with the DHSC with regards to progressing the updating the code, timetabling and the formal response to the consultations on both the code and LPS.

MCA Awareness raising.

A toolkit has been issued to raise awareness of the MCA. This is aimed at families, parents and carers of young adults.

<https://www.gov.uk/government/publications/making-finance-decisions-for-young-people-parent-and-carer-toolkit>

Issues with banks

Varying issues with banks have been raised re the types of accounts that can be held by deputies, with supporting reports provided by the PDF and APAD. Discussions are now in progress with UK Finance with regards to the difficulties faced on the banking side in respect of anti money-laundering legislation and the consumer duty guidelines in place by the Financial Conduct Authority and the impact of these on deputies and lay deputies. Please contact JG directly on this to raise any particular areas of focus

HHJH flagged that the financial issues raised by JG are currently part of a live case, with a decision to be made in due course.

Sheree Green (SG) Greenchurch Legal Services Ltd enquired re small payments whether a full deputyship application or one-off order should be sought.

HHJH noted for as point of information, it is possible for the court to make a one-off order when the supervision burden is considered to be disproportionate, but the limit of funds to be managed falling below that threshold is fairly low.

JG outlined the official line given is that an application should be made to court, for the court then to decide, based on the information provided, whether a one-off or full order required.

HHJH continued that it an application in the usual way and a best interests decision would be made by the Court.

CB noted that in relation to CTF issue there had previously been a sample of an application on Sky website, but this is no longer available. There is some information on the GOV.UK. **CB** and **JG** to liaise outside this meeting on this. **HHJH** commented that it would be useful for this information to be made public again.

CB/JG commented on the difficulty in finding hosts for this information and creating publicity.

5. Holly Chantler HC (Morrison Solicitors LLP) on behalf of a member of SFE Q1

Can you please ask why the Court is asking for witness statements as to why it is not in p's best interests to appoint a professional deputy. I have had two requests now of this nature in the space of two months. Are we supposed to include in our application that we have a)considered a professional appointment and b)the reasons why it is not in P's best interests.

HHJH reminded all that it is the Court's decision who should be appointed. The order made should make clear the reasoning, to give the opportunity to respond.

HC asked whether there are any general guidelines on when the Court would prefer a professional deputy.

HHJH confirmed no, but gave an example that where large damages involved it would be unlikely to persuade a decision maker that a family member is suitable due to experience, risk, conflicts etc.

DJ Ellington (DJSE) confirmed that a decision would be made on the particular circumstances and requested that this information be provided and explained up front.

6. Holly Chantler (Morrison Solicitors LLP) on behalf of a member of SFE Q2

“I’m acting for a lay applicant to be appointed as deputy for a person with an extremely common name, akin to ‘John Smith’. (no middle names which doesn’t help)

In my application I suggested that the court should consider specifying some further details – ie. “John Smith born [date] and of [address]” because otherwise, this order could technically apply to any ‘John Smith’ in the country.

The court have ignored this and issued the standard order which in my view is incredibly generic. Can the deputy now use this to obtain access to any ‘John Smith’ bank account in the UK?!

I don’t know whether to now spend time asking for a reconsideration, or wait and see how the banks respond to it. I may be overthinking it but if the banks do raise issues we will likely run out of time”.

HHJH commented that in principle further details on P, such as date of birth, could be specified on the order where appropriate.

7. Judith Naylor JN (Cumbria County Council)

Can we have some discussion about how to expedite an Urgent matter - what COP regard as urgent and the interplay between First Avenue House and local hubs where judges are waiting for applications to be sent to them.

HHJH responded that if there is a situation where a regional judge is advising that London FAH are not dealing with a matter, please invite the Regional Judge to inform HHJH of the perceived problem directly. This process is already in place and usually clears up any issue quickly. It is requested that template orders are used and that a separate P&A order is also drafted.

SG enquired on the urgent process for P&A matters. Is there a separate telephone number or email address to be used?

MN advised that these applications should be sent to Court of Protection Enquiries email: courtofprotectionenquiries@Justice.gov.uk and marked as urgent in the subject line of this email.

Alexander Wright AW (Boyes Turner LLP) raised in the event that P has regained capacity can this be marked as urgent?

HHJH advised that a paper application should be made, clearly marking that P has regained capacity. Such applications are standardly referred to the UBJ.

8. Alexandra Edwards (JE Bennett Law) AE

My firm wants to ensure that when labelling an application “urgent” on a P&A matter, we are doing so correctly. In short, when does the Court consider an application “urgent”? Examples:

Example 1: an attorney exchanges on the sale of a property and is subsequently removed before completion. The panel Deputy is not given authority to sell but cannot complete without it and completion is imminent?

Example 2: an application is made for authority to sell, or a trustee to be appointed etc. After 9 months nothing has been progressed by the Court? Will a COP9 stating the delay be considered urgent?

Example 3: A offer has been made on a property by a developer and Deputy is keen to accept and needs a quick exchange otherwise developer will move on, but needs authority to sell?

Example 4: P has no access to funds so want an Order giving restricted to access to a specific bank account so we can pay care home pending full Dep Order

– e.g. about to discharge from hospital and Social Services limited options for a home and client not want to accept LA suggested home

HHJH responded to examples as follows:

Example 1 - Yes, this should be flagged as urgent and is likely to be treated as urgent due to the significant risk of financial loss.

Example 2 – No, not necessarily as the delay may be elsewhere and not with the court

Example 3 – No, unless particular facts are provided to indicate that the developer will move on.

Example 4 – It would be unlikely for an order to be made to access an account but setting up a direct debit/standing order may be considered if there is a practical need.

DJSE added that authority for solicitors would be more likely to be considered.

9. AOB1

Alexander Wright (Boyes Turner) AW

Q1

Would the court consider an application to discharge the deputy in circumstances where P either attains or regains capacity as “urgent”?

Q2 on behalf of the PDF:

I and other members of the PDF have received orders authorising us to incur the costs of legal advice from teams within our own firms (what I call ACC orders). On occasion the authority to incur the costs has included that the other team’s legal fees are to be subject to assessment. Would the court agree that there is no power to direct that there be detailed assessment of costs incurred by P when a solicitor, who is not P’s deputy, undertakes work for and on behalf of P? If I have understood the CoPRs correctly:

1. The court can direct detailed assessment of any costs awarded by the court (r. 19.10). Fees for legal services provided to P are not costs awarded by the court.

2. Rule 19.13 provides for deputies' remuneration. Rule 19.13(3) allows the court to direct that there be detailed assessment of such remuneration. Fees for legal services provided to P, on the instruction of the deputy acting as P's agent, are expenditure by P. Such fees are not remuneration of the deputy.
3. The Court of Protection Rules do not provide a basis for detailed assessment of expenditure by P. The court should be invited to set-aside such a provision.

I have also had an instance where the terms of the order directed that the team instructed would be limited to charging the Guideline Hourly Rates, but that was a single instance and I appreciate the court would not comment on individual cases. It did mean that the costs for reconsideration were incurred by P to remove seven words from the order.

The above is raised because of the costs incurred by P in requesting reconsideration applications. If the court feels that my interpretation of the CoPRs is correct it would be helpful for all judges and ACOs to not include "subject to assessment" in the orders in such matters.

Q3

I believe this has been raised at the CUG before, but I would like to flag again how helpful it is for the court to include details of the court's considerations when making an order so we can better understand the rationale for decisions where the order doesn't approve the authority requested.

Q1 – dealt with earlier in meeting

Q2 HHJH responded that she could not opine on a point of law in the CUG setting. Note that the SCCO is usually willing to assess costs more widely than the specific instances in rule 19. Reminded the meeting of conflict of interest considerations.

HHJH noted that it was hoped that the review of the template orders currently in progress will bring greater consistency re ACC authorisation wording.

AW responded that the members are experiencing receiving different orders, with the practical impact of this being that work is not being taken on if it is subject to an assessment.

HHJH observed that orders can be challenged by reconsideration application as usual if considered necessary.

Q3 HHJH agreed that an explanation should be provided, but echoed Justice Poole's recent decision that it is sufficient to set out the basis of this decision only.

AOB2

Shadia Ousta Doerfel (SOD) London Borough of Islington raised a concern with regards to advocates behaviour at Court, and how this should be dealt with by the Judges, with an example given of inappropriate conduct during a hearing before a COP DDJ but not 'called out' by the judge.

HHJH expressed that she was sorry to hear of this experience and confirmed that it would be the Judge's responsibility to deal with conduct in a hearing and regulate the temperature of the proceedings. Suggested raising this with the COP Bar Association. Referred to the January 2023 Judicial Guidance "Statement of Expected Behaviour."

DJSE (as COP Diversity Inclusion and Community Judge) also referred to the statement of expected behaviour Jan 2023, and it was anticipated that the BAR Council would have the same in place. The Judge should regulate behaviour in Court, and it would not be amiss to raise this during a hearing if it was felt this has not been addressed.

Shared links:

<https://www.judiciary.uk/guidance-and-resources/statement-of-expected-behaviour/>

<https://www.cpba.org.uk>

DJ Mullins (DJMM) directed users to the BAR Standards Boards Code of Conduct, advising that complaints could also be raised with a head of chambers, directly with the Official Solicitor (where involved and because they presumably also have their own standards to ensure are observed) or to the BAR Standards Board and identified areas such as the prevention of racism, misogyny, bullying, micro aggression in Court.

Yagoda Subotic (YS) On behalf of APAD/Redbridge enquired whether the court is considering whether it would be appropriate for a PA deputy to manage direct payments.

HHJH advised that there is currently a live case dealing with this issue – a hearing has taken place, further written submissions were directed and it is anticipated that a written judgment will follow as soon as possible.

Nothing further raised.

Next meetings

General 18 October 2023 at 2pm MS Teams

P&A 17 January 2024 at 2pm MS Teams

Meeting ended 15:13

Court of Protection - Court User Group (P&A)

Open Actions

Meeting Date	Action Point	Owner	Deadline	Status	Description of Status
12 July 2023					
	No action points				