



Court of Protection

Minutes of Court User Group Meeting
Wednesday 26 April 2017 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

Senior Judge Carolyn Hilder (Court of Protection – Chair) (SJH)

Joanne Earley (Court Manager – Court of Protection) (JE)
James Batey (Authorised Court Officer– Court of Protection) (JB)
Heather Feast (Delivery Manager – Court of Protection)
Gillian Jurd (Technical Advisor – Court of Protection)
Paul Greatorex (Barrister 11kbw)
Keri Tayler (Barrister 42 Bedford Row)
Julia Lomas (Irwin Mitchell Solicitors) (JL)
Sir Alex Elphinston (Anthony Collins Solicitors)
Andrew Harding (Hugh James Solicitors)
Neil Cawthorn (PDS Solicitor)
Karon Walton (Tollers Solicitors)
Patricia Wass (Foot Anstey Solicitors)
Martin Terrell (Thomson Snell & Passmore Solicitors)
Lucy Nicol (Slater & Gordon Solicitors)
Rebecca Sparrow (Penningtons solicitors)
Alex Peebles (Duncan Lewis solicitors)
Caroline Bielanska (Legal Consultant) (CB)
Christine Bunting (Hyphen Law Solicitors)
Jane Faulkner (JMW Solicitors/COPPA)
Nicola Mackintosh QC (Solicitor) (NM)
Yvonne Mitchell (ADAP)
Duncan Boulton (Lay Member)
Ian MacKendrick (Frankel Topping)
Elaine Brown (Official Solicitor)

Elizabeth Jeary (Office of the Accountant General) (EJ)
Angela Johnson (OPG)
Joan Goulbourn (Justice & Courts Policy Group) (JE)
Nicole Jarrett-Francis (Brent Council)
Androulla Hadjisimou (Wandsworth Council)
Shadia Ousta Doerfel (Surrey County Council) (SD)
Humera Qureshi (London Borough of Islington)
Radha Pillai (London Borough of Islington)
Sharon Oppen (London Borough of Merton)
Vicky Sowah (Luton Borough Council)
Kevin Johnson (Costs Office)
| Sha^hnaz Patel (London Borough of Ealing)
James Beck (Official Solicitor)

Apologies

District Judge Susan Jackson
District Judge Glentworth
Eddie Fardell (Thomson Snell & Passmore Solicitors)
Hugh Jones (Hugh Jones Solicitors)
Helen Starkie (Helen Starkie solicitors)
Rachael Mitchell (London Borough of Enfield)
Matthew Blackwell (London Borough of Merton)
Mary Hampel (London Borough of Waltham Forest)
Janet Ilett (Official Solicitor)

Opening remarks

Senior Judge Hilder (SJH) thanked the attendees for coming and introduced herself as the newly appointed Senior Judge. She paid tribute to the significant contribution of her predecessor, Denzil Lush and wished him a long and happy retirement. Referring to the 9 months or so when the post of Senior Judge had been vacant, SJH thanked the resident judges for taking on additional workload as far as possible in that time, so that the backlog of matters to be addressed – although significant – was less than it might have been.

(SJH) thanked attendees for their positive response to the new arrangements for this meeting. As this was the first time the meeting had been held in a courtroom, she confirmed that the recording was switched off. She renewed the invitation made at the previous meeting for attendees to put forward any proposals as to the format of future meetings.

Apologies

(SJH) read the names of those who had apologised for not being able to attend.

Minutes and Action Points from previous meeting

Andrew Harding and Nicola Mackintosh said they had attended but were not listed as such. Their names would be added to the Minutes of record.

Court Manager's Report

Joanne Earley (JE) reported as follows :

Issue volumes

There has been a 3.5% decrease in the volume of applications received in the 6 months to March 2017 (14739 applications were received compared to the 15260 applications received in the previous 6 months). The number of welfare applications, including Re X has remained high with 415 welfare applications issued in March 2017.

The total volume of applications issued within the five day target in March was 92.16% against the target of 95% as compared to 89.17% when last reported in October 2016.

The volumes of DoLs applications received under S21A and Re X have continued to increase over the last 6 months, however the number of S16 have remained fairly steady.

The volume of applications returned in March 2017 was the highest level since recording this information. 485 applications were returned, 247 were from Solicitors and the main reason was due to the cheque not being made out correctly (123) closely followed by forms not being included (106). We are doing some work around the collection of fees to try and alleviate the need for the receipt of cheques..

Timeliness

The average number of 'weeks to disposal' has increased since last reported both for Judges and ACOs, for Property and Affairs (P&A) Deputyship, and for other P&A and H&W cases. The current target is 16 weeks.

Outstanding box work (paper hearings referred to a Judge) continues to increase and for March was 711 sitting at 31 days. It was pointed out that the level of judicial resource has been and continues to be lower than agreed needs

There were 3376 orders issued during the month of March 2017 which equates to 72.13% (just below the 75% target.) At the last report, 2413 orders had been issued (which equated to 77.83%.) The drop in percentages should not overlook the fact that, because of higher numbers of applications received (with the exception of March), actually more orders had been issued in the current reporting period.

Work Transferred to the Regions

All regions have seen an increase in the number of cases allocated to them. Section 21A applications remain the highest area for allocations however P&A applications have significantly increased. This is partly due to FAH catching up with a backlog of cases to be allocated to the regions and due to the impact of the case management pilot.

Changes to work going to the regions

If a welfare application has been made and transferred to a region to be heard and we subsequently receive a P&A deputyship application, these will now also be transferred to the region so that both applications can be dealt with by the same judge.

Matters arising from the report

The question was raised as to the level of training given to the regional judges. (SJH) explained that all COP- nominated judges were volunteers in the sense that they had responded to an 'Expressions of Interest' exercise. On selection, attendance at a three day induction training (previously this had been 2 days) was required; and then 'sitting in' for one day at First Avenue House (FAH) with a resident judge and another day with a ticketed judge in their own region strongly encouraged.

A concern was raised about matters dealt with in Birmingham, with an order taking from September to December to be issued, and there not being a dedicated Court of Protection phone line at Birmingham. (JE) said she had regular "dial in" meetings with the regions and would raise these. (SJH) pointed out that these matters would be better raised at the Birmingham Court User Group meetings.

(SJH) also said that she was in the process of establishing regular meetings with the regional lead judges. It is intended that such meetings may provide an opportunity for addressing any such difficulties.

(NM) described difficulties experienced when consent orders were sent to the court but not acknowledged. (JE) queried the expectations and whether these had been sent to the Court Enquiries inbox (where the target is for them to be dealt with within 10 days) or to the Hearings inbox (where they are dealt with on a daily basis.) If there was a continuing problem, please let her have details.

Update on Rules and Fees

Joan Goulbourn (JG) said that some of the members were part of the Rules Group and were aware that some amendments were introduced in March/April. The next tranche included a Practice Direction regarding serious medical treatment applications, also costs and fees.

The Transparency pilot was due to end in August but this may be extended until the end of September, to coincide with the introduction of new Rules.

It was queried if the Transparency Pilot was expected to continue and (JG) said it was planned to extend it.

(CB) asked whether there was any analysis of the number of public hearings, explaining that an American professor wanted to attend and was having problems identifying any.

(SJH) said that at First Avenue House the overwhelming majority of hearings were in public under the terms of the Transparency Pilot. Where any judge decided the hearing should not be in public, a copy of their decision was sent to the Vice-President. (JE) confirmed that public hearings are listed on the daily cause list.

Stayed cases in “ Re X” applications

(SD) raised a question about cases that had been stayed following the “JM” judgement. Surrey County Council had a number of these and asked if the court was aware of the Department of Health response to the Vice-President’s judgment, and the way forward.

(SJH) said that the Court could not speak for the MOJ but was aware of correspondence it had sent to the VP and to Applicants in stayed cases. There are currently approximately 200 stayed cases. A small number of requests to lift the stay had been received in the light of MOJ correspondence. They are likely to be referred to the VP.

Disclosure of Will of mentally incapacitated persons

(CB) explained that the Law Society, The Solicitors Regulation Authority, The Legal Services Ombudsman and STEP. have produced guidance, aimed primarily at solicitors, for the procedure when asked to disclose the Will of an incapacitated person to a deputy or attorney.

This was produced after consultation and is a ‘live’ document which may be revised as circumstances change. It is available through the Essex Street Newsletter [April 2017] and also through the Solicitors Regulation Authority A copy will be circulated with the finalised Minutes.

Pre-issue stage for pathways in Case Management pilot

The person who had wanted to raise this did not attend and so this item was not discussed.

Delays in issuing orders

Julia Lomas (JL) said that her main concern about delays had been covered by the Court Manager's report. However she was concerned that orders were not being issued in time for the service to take place within 21 days of the order being made.

James Batey (JB) said that for the last year or so orders provide for the service to be within 21 days of the order being issued. Please let the court know if this has not been addressed.

On a related issue, James Beck of the Official Solicitors was concerned about delays in the issuing of the embossed order allowing the Official Solicitor to investigate a person's assets. Financial organisations will not release information without an embossed seal.

(JE) explained that the embossing seal was only available at FAH due to the costs of purchasing and maintaining the seal. They are forwarded by email and dealt with on receipt, but sometimes there is a delay in them being sent from the regional courts. She confirmed that the regional courts had the templates and asked for any examples where this had not been done.

Elizabeth Jeary (EJ) said that the Court Funds Office also required documents validated with an embossed seal and that the previous meeting had indicated the embossed seal may be dispensed with. (JE) said that this was still a work in progress and there had not yet been consultation with stakeholders.

Directions being communicated by letter

(JL) raised the issue of directions from the court being communicated by letter rather than order, which caused problems if this needed to be enforced or reconsidered.

(SJH) confirmed that this issue has been addressed. The default position is that judges' directions will be formatted as an order, not a letter, including the name of the judge and (where appropriate) a R89 provision. If there were any problems in future, please let (JE) know.

Concerns with the appointment of Trust Corporations

(JL) was concerned about the change in the court's attitude to the appointment of Trust Corporations as deputies.

(SJH) explained that there had been a change in the Bond provider last autumn. The previous provider had maintained a list of Trust Corporations

which they had risk assessed and approved. The current provider does not. A question had arisen as to what information the court needs to be satisfied that a Trust Corporation is a fit and proper body to be appointed as deputy. Whilst that question is being determined, time limited orders are being made in respect of the Corporations on the list.

(JL) said that delays mean that they need to make a further application almost as soon as the time limited order was issued. They would not apply to the court unless at least interim funds were available and it can cause problems setting up care packages etc.

(SJH) appreciated the need for a speedy resolution.

(CB) asked if Trust Corporations could 'shop around' for alternative Bond providers. (SJH) confirmed that there was no formal requirement to use the official provider but (JL) said that there would be costs implications, as an alternative would be more expensive. Angela Johnson explained that the OPG did not monitor Bond providers other than the official one.

Instruction of other professional by professional deputies

(JL) raised concerns about the costs of the employment of external agencies. Her firm provides "wrap around services": if they engage internal departments costs are considered as part of general management; if they engage external bodies, costs are disbursements.

(SJH) considered that the CUG was not the appropriate forum to give any 'guidance,' and referred to a recent decision by Mr Justice Norris. As always, an application could be made if there were concerns in any particular matter.

(CB) raised concerns about some firms keeping all the issues, such as financial advice, 'in house' and whether this should be approved, as there is a potential risk of conflict of interest.

Any other business

There had been a problem about the issue of an application requesting reporting restrictions in a matter of serious medical treatment. (JE) explained that the court had issued the application, but the decision is one for the judge hearing the matter in the High Court. In any event, serious medical treatment now falls under the Transparency Pilot (amended PD 9E came into force on 1st March 2017).

A question was raised about the court becoming a 'paperless office'. (JE) explained that the court was not due to be looked at under Reform until the back end of the project and also there are a number of issues regarding the judicial IT, so it is likely to be a long way off. But both the admin teams and Judiciary are looking at what we can do locally to become more electronic.

(JL) said that the CICA had recently changed its approach to claims and requires the appointment of a deputy before it will start to process claims. She would like a 'fast track' process. (SJH) said an application should be made so that each case can be considered individually.

A complaint was made about difficulties in getting through on the enquiry phone lines. (JE) explained that about 450 calls were received in a day and naturally the court does not have the resources to answer all of these. Many of these take 10/15 minutes to deal with. The court is not resourced for this.

A data capture exercise had recently taken place. There were concerns about the number of calls requesting legal advice, which the court does not provide, and also chase up calls, when the case was clearly within the statutory waiting period. The majority of the calls were received from solicitors. These were wasting time. Much of the information requested was published on the GOV site and provided in letters and guidance notes. A suggestion that a 'solicitors' helpline' be established was declined.

It was announced that the Law Society accredited legal representative scheme should be started in August.

Rebecca Sparrow welcomed the opportunity to attend the meeting. Publication of meetings was discussed and it was asked how quickly the minutes would be available. (SJH) agreed that they would be drafted and distributed within a week, with attendees given a further week for any comments. The finalised minutes would then be sent and could be widely disseminated.

Date of next meeting

This was fixed for Wednesday 11 October 2017 at 2:00 at First Avenue House.

(JE) said that steps would be taken to advertise this as widely as possible, although we were not able to add this to the website.