



Court of Protection

Minutes of Court User Group Meeting
Tuesday 15 October 2019 at 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 of 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)

HHJ Eleanor Owens (South-East Region Lead COP Judge)

District Judge Susan Jackson (Judge – COP)

Amrit Panesar (Operations Manager / Court Manager – COP)

Emily Smith (Delivery Manager – COP)

Bolade Alake (Delivery Manager – COP)

Lorna Green (Authorised Court Officer – COP)

Ross Hamilton (Authorised Court Officer – COP)

Wendy Treadway (Authorised Court Officer – COP)

Tolu Somade (Business Support Officer to HHJ Hilder – COP)

Avtar Hall (Court of Protection Specialist Jurisdictions Team)

Carol Taylor (OPG Nottingham)

Yvonne Mitchell (APAD / Ealing Council)

Rosie Campbell (Irwin Mitchell)

Kate Edwards (COPPA)

Esha Kansal (Torbay Council)

Alexander Wright (Boyes Turner)

Helen Maxwell (HMCTS – SCCO)

Angela Smith (Abbotstone Law)
Jane Faulkner (JMW Solicitors LLP)
Holly Chantler (Morrison's Solicitors)
Alex Cisneros (Outer Temple Chambers)
Megan Christie (Linder Myers Solicitors)
Debbie Williams (Linder Myers Solicitors)
Neil Cawthorn (The PDS)
Francesca Gabbitas (Abbotstone Law)
Sara Isenberg (Royds Withy King LLP)
Shanaz Patel (London Borough of Ealing)
James Batey (Wilson Browne Solicitors)
Desmond Mohabir (Reading Borough Council)
Karon Walton (Hegarty Solicitors)
Kathrina Salter (Salter Kelly Solicitors / Law Society MHDC Committee)
Julie Akorley (Central & NW London NHS Foundation Trust)
Nahema Farooq – Rutland County Council
Janet Ilett (OSPT)
Jaswinder Dhillon (OPG)
Andrew Graham
L Parkhill (Cornerstone Chambers)
Jon Hopkins (Howden)
Daniel Edmundson (Chase De Vere Financial Advisers)
Caroline Bielanska (Caroline Bielanska Consultancy)
Uzmah Rasool (Osborne Morris & Morgan Solicitors)
Anuara Ali (London Borough of Islington)
Latoyah Thompson (OPG)
Michelle Weaver (OPG)
Nikki Bedford (Enable Law)
Zena Soormally Bolwig (Simpson Millar Solicitors)
Karen Noulton (Bexley Council)
Nicola Mackintosh (Mackintosh Law)
Emily Deane (STEP)
Robin Bailey (Chase De Vere Financial Advisers)
Joan Goulbourn (MOJ)
Eirwen Dorkins (Lewisham Council)
J Abraham ((Dawson Conwell Solicitors)
Rebecca Sparrow (PMC Ltd)

John Howard (OSPT)
Stuart Farmer (Howden)
Puja Desai (Anthony Collins Solicitors)
Elizabeth Perry (Irwin Mitchell)
Alison Meacher (Hardwicke Solicitors)

Introduction

Her Honour Judge Hilder (HHJH) introduced to the meeting HHJ Owens, The South-East Region Lead COP Judge; DJ Jackson; Amrit Panesar, the new Operations Manager who assumed her role on 14 October 2019; Lorna Green who will be handing over to the new Operations Manager to take up her new role as an Authorised Court Officer (ACO); Emily Smith, Delivery Manager; Tolu Somade, HHJ Hilder's Business Support Officer and Avtar Hall, member of the COP Specialist Jurisdictions Team.

1. Apologies

HHJ Sybil Thomas (Midlands Region Lead COP Judge)
Jill Weston (Mills & Reeve)
Ruth Meyer (Boyes Turner)
Helen Burnell (Mills & Reeve)
Martin Terrell (Warners Solicitors)
Melanie Williams (Freeths)
Rachael Mitchell (London Borough of Enfield)
Pamela Clarke (London Borough of Merton)
Gemma Eason (Osborne Morris & Morgan Solicitors)
Tom Crookes (Gateshead Council)
Jonathan Taylor (Investec Wealth & Investment Ltd)
Duncan Boulton (Lay deputy)
Alison Taylor (Frenkel Topping)
Robert Hurling (Hugh James Solicitors)
Julia Lomas (Irwin Mitchell)
Elizabeth Jeary (MOJ)
Kiran Vasudeva (NQP Ltd)
Rachel Turner (Miles & Partner LLP)
David Steene (Steene Law Ltd)
Clare Burke (Anthony Collins Solicitors)
Douglas Houghton (Anthony Collins Solicitors)
Donna Holmes (Anthony Collins Solicitors)
Elaine Brown (OSPT)
Hayley Mason (SEN Legal)
Jane Bennett (J E Bennett Law)
Ian Macara (Bennett Griffin LLP)

Lucy Nevill (Bennett Griffin LLP)
Christine Bunting (Hyphen Law)
Louise Nettle (Blake Morgan LLP)
Rosemarie Martin (Haringey Council)
Adrian Hawley (PIC Legal)
Amy Paxton (JE Bennett Law)
Elizabeth Cleaver (Burke Niazi Solicitors)

2. Minutes and Action points

Andrew Graham referred to item 5 of the minutes of the last meeting. He said that someone had complained about him, that he was behaving abusively at the last meeting. HHJH asked if he wished to request any amendment to the draft minutes of the meeting. He confirmed that he did not. Minutes then agreed. No action points were brought forward.

3. Court Manager's Report

Report given by Lorna Green (LG).

Applications received

- In the first 3 quarters of this calendar year, the court has seen a 12% increase in the total applications received when compared to the same period in 2018 (26,287 applications as compared to 23,403 applications being filed with the court.)
- The category of applications with highest numbers continues to be the property and affairs deputyships which increased by 5% with 11,960 being received during quarters 1-3 of 2019.
- During the same time frame there has been a 26% increase in the total volume of orders made, with 35,876 orders being made in quarters 1-3. This reflects the increase in the interim orders made this year, many of which related to the failure to comply with Rule 9.10.
- A snapshot of the disposals for September 2019 saw an increase of 1912 case disposals as compared to 1468 in September 2018.

Timeliness

ACOs

Property and Affairs Deputyships

- In September 2019 the average time to complete a property and affairs application was 34.1 weeks. 35.1% of these disposals for the month were made within 16 weeks.

Other Property and Affairs

- In September 2019 the average weeks to disposal of applications was 24.8 weeks with 53% concluding within 16 weeks.

DJs

Property and Affairs Deputyship

- In September 2019 the average time to complete a property and affairs application was 47.7 weeks with 16.7% being completed within 16 weeks.

Health and Welfare

- In September 2019 the average time to complete a health and welfare application was 53 weeks with 35% concluding within 16 weeks.
- It should be noted that the volume of health and welfare application disposed of in September 2019 shows a 100% increase for the same month in September 2018 (397 as against 198).

Other Property and Affairs applications

- The average time to disposal for other property and affairs application was 51 weeks with 40.4% of the month's disposals being dealt with within 16 weeks.
- New applications are currently being issued on day 6 with some interim applications on day 11. This is a significant improvement from the last Court User Group meeting reporting where the new applications were all at day 11.

Backlogs

- The court is still carrying backlogs of work throughout the court. Although the Court of Protection is not included in the HMCTS Reform Programme, the court continues to work with the jurisdictional support team to identify off the shelf toolkits used elsewhere in the HMCTS Reform programme which may be utilised in COP.
- The court is also working on a direct replacement for the current Case Record management system and looking to introduce front end scanning of applications in the future to allow electronic working to be extended.
- Currently the oldest property and affairs application awaiting consideration by the ACOs dates back to 11th July 2019.

Since the last meeting, actions taken to deal with the arrears include:

- A hit team of administrative staff was successful in ensuring that orders made by the judicial hit team were issued in a timely fashion.
- The court has successfully bid for a total of 350 additional judicial sitting days which will be used to bring down the arrears of work not only in the property and affairs area but also in the *Re:X* deprivation of liberty cases and other judicial box work. The attendance of a combination of District and Deputy District Judges have been secured who will be forming small 'hit' teams to utilise the additional sitting days allocated.
- Further 5 administrative posts have been secured which will be filled with agency staff pending the next recruitment campaign.
- The court will continue to bid for limited monthly overtime to tackle the arrears.
- The new Operations Manager has started with the court this week which will allow Lorna Green to finally take up her post as an additional Authorised Court Officer.

COP 9s

The number of interim applications remains high and continues to divert resources from dealing with the substantive applications. If an application is urgent, evidence should be included with the application when filed.

Rule 9.10 service of the application

Although new applications filed with the court do now mostly comply with Rule 9.10 (by seeking to identify at least 3 persons who are likely to have an interest that the application has been made), there are still many applications within the system where the applications are on hold pending compliance with the interim order made under this rule. This has undoubtedly led to a decrease in number of applications meeting the 16-week disposal target.

Over recovery of the Court application fee

A refund scheme is now being set up to allow court applicants who may have been inadvertently overcharged an application fee to apply for a refund. The scheme is due to go live on the 9th December 2019 and is expected to last around two years. Information about the scheme will be advertised via gov.uk website from the date the scheme launches. Those wishing to apply for a refund will be able to download an application form and submit this to HMCTS via post or email. The scheme will only be advertised via gov.uk however, a dedicated telephone and email helpdesk will be available for customers to contact. Staff in local offices will be able to direct enquiries to the helpdesk should they receive queries about the scheme once it goes live.

A question was raised about what actions needs to be taken for people to comply with Rule 9.1, and if there was any explanation on the gov.uk website to assist. LG explained that it is difficult to amend information on the gov.uk website but the issue letter has been amended to reflect the change.

3a. Update on the Mental Capacity Amendment Act 2019

Joan Goulbourn (JG) gave an update on the Mental Capacity Amendment Act 2019.

The Liberty Protection Safeguards (LiPS) scheme is due to come into effect in October 2020. A working group of the Rules Committee is looking into COP processes, including in respect of extant authorisations under the *Re-X* streamlined procedure. Extra judicial resources have been secured to address the arrears ahead of implementation of the new scheme.

The power of attorney refund scheme is ongoing and the supervision fee refund scheme has been launched. For existing deputies, OPG will contact them if they are due a refund. For closed applications (for example cases where P has recovered), an application will have to be submitted for consideration. Further information is available on the gov.uk website. For fixed costs, conveyancing and VAT, Caroline Bielanska is assisting the Rules Committee and the submission will be going to the group in December for approval.

A pilot for electronic filing at SCCO was launched on 7 October 2019. This will go live generally from January 2020. Practice directions are available on the SCCO pages and on gov.uk website. COP cases are also included in this pilot.

4. Misplaced COP20As and COP20Bs

Item raised by Latoyah Thompson (LT) (OPG).

LT stated that OPG were receiving a considerable number of emails and orders from the court directing COP20A and COP20B to be filed. The assumption appears to be that OPG has not filed the forms when in fact they have been filed. LT relayed information provided by court staff to the effect that the court was having admin difficulties dealing with the large backlog of COP20s. She asked if it would assist the court if OPG started filing these forms electronically rather than hard copy. A list of affected applications were provided before the meeting.

HHJH confirmed that COP20s should not be filed by e-mail. LG explained that there is a backlog of COP20s yet to be matched to the application files but in most cases, receipt of these forms has been logged on the court's case management system (casrec) so the matching process should not cause delay. The volume of COP20s received daily is massive, with 3-4 staff allocated to dealing with them daily. LG will address the specific cases on LT's list outside the meeting.

5. Interim deputyship orders that specify the date on which the appointment will end

Item raised by Latoyah Thompson (LT) (OPG).

LT stated that OPG currently files a COP9 seeking an order to extend an interim appointment if the expiry date of the interim appointment approaches before any further order of the court. Court staff have advised OPG that a COP9 is not required as it unnecessarily adds to the workload and an email querying when a final order will be issued will suffice. LT queried whether this approach is correct as the Public Guardian is of the view that a COP9 to extend the interim order is necessary to ensure P is not left without anyone managing his/her finances in the period it takes for the matter to be concluded.

HHJH confirmed that it would not be correct to say that a COP9 application in those circumstances is unnecessary – a formal application is required to extend the term of any appointment, and the application should be coming from deputies themselves. There may have been a degree of miscommunication i.e. if a COP9 has already been filed, it could be said that no further application is required.

6. Clerical mistakes or slip rules on court orders

Item raised by Latoyah Thompson (LT) (OPG).

LT stated that direction orders are currently sent electronically to dedicated OPG inbox before they are served in hard copy. At that point OPG checks the orders, identifies any clerical mistakes or slips and then email the orders back to the court for amendment. Court staff have advised OPG that a COP9 is needed to amend the orders under rule 5.15. LT would like clarification if the COP9 is necessary at that stage as the orders haven't been issued and are still in draft format.

HHJH confirmed that orders forwarded electronically to OPG are already issued – they just take less time to reach the OPG than the hard copy. Any application for correction under the slip rule does require a COP9.

7. Service of final orders (Rule 6.2)

Item raised by Latoyah Thompson (LT) (OPG).

LT stated that OPG is aware of Rule 6.2 which states an order or judgment of the court is to be served by the court unless the court directs otherwise. Recently there has been some confusion / disagreement between OPG and court staff regarding final orders. Court staff have not served the respondents or directed the PG (as applicant) to serve the respondents with the final order but advised the respondents that it is the responsibility of the PG to serve the final order when they contacted the court to try and obtain a copy. In some matters this has caused a complaint to be raised with OPG by the respondents (case number of the application provided). LT would like some clarification as to who should serve final orders on respondents as OPG is of the view that it is the court unless the PG is directed to do so pursuant to Rule 6.2.

HHJH confirmed that Rule 6.2 as quoted applies. The particular matter identified has been checked. In some cases, it could be that the deputies receive orders at different times because of variation in the postal system, even though they were sent out from the court at the same time.

Andrew Graham raised an objection to HHJH confirming consideration of individual cases within this agenda item but not similarly considering his own. He stated that he did not require any response to his objection.

8. Anonymised deputyship orders

Item raised by Latoyah Thompson (LT) (OPG).

LT explained that OPG has received a number of anonymised deputyship orders (majority drafted at the regional hubs). This has caused difficulties when the deputy has attempted to register the deputyship order with financial institutions as they cannot identify the anonymised individuals. OPG has even had some panel deputies refuse to act under such deputyship orders. OPG's understanding is that only non-financial orders should be anonymised when there is transparency order in place and therefore, property and affairs deputyship orders should state the name of deputy and P in full throughout the order. She is seeking clarification regarding this matter.

HHJH confirmed that deputyship orders should have clear identifiable details and any anonymised deputyship orders must have been issued by error. HHJ Owens expressed that 1 or 2 orders drafted in those terms were brought to her attention but others may have slipped through. She confirmed that a reminder would be given at the Reading hub. HHJH observed that property and affairs deputyship orders are issued from the central registry in London, which provides opportunity for further checking.

9. Delayed issue of COPDOL 11 applications

Item raised by Shadia Ousta Doerfel (SOD) (LB of Islington) and Kate Edwards (KE) on behalf of COPPA.

SOD expressed concern over the delay in issuing COPDOL11 applications which she stated is in the region of 6 months. HHJH explained that COPDOL11 applications are not formally issued until the first order is made by the judge. She acknowledged that there is presently delay in processing the Re-X applications due mostly to judicial shortages. Additional judicial resources have now been agreed. The original pre-KT stayed applications have been determined some time ago but new applications continue to be made without any R1.2 representative identified, and so they are stayed. The rate of referrals for General Visitor reports has been agreed with OPG as 10 referrals per week. The total number of Re-X cases awaiting determination is presently 2,015 with the oldest being 8 months old. HHJH confirmed that, with additional judicial resources secured, it is hoped that the backlog will be cleared before the LPS scheme is implemented.

KE confirmed that her question has been addressed by HHJH's explanation.

10. Delivery of bundles and position statements

Item raised by Alex Cisneros (AC) on behalf of COP Bar Association (COPBA).

AC talked about robing in COP, that consultation is ongoing at all levels with no time frame and if barristers have any comments, they should e-mail them to the COPBA. HHJH stated that the consultation is at tier 3 level only.

AC explained that Mrs Justice Lieven has expressed concern about the practice of position statements and bundles arriving late at court and has indicated that she will be looking at this issue. The COPBA is arranging a meeting with her and the Vice President (VP) of the COP to discuss this. AC said that if anyone has any comments about timings of position statements and bundles, they should email them to COPBA.

HHJH confirmed that timely filing of bundles and position statements is an issue at all levels and in all regions. She acknowledged that, in most cases, parties did their best to comply with directions and urged everyone involved to continue to do so.

11. Problems in deputyship orders

Item raised by Kate Edwards (KE) on behalf of COPPA.

KE expressed concerns raised by their members about the length of time taken for deputyship orders to be issued, and about orders being made which do not relate to what was requested in the application, for example directions to file copy Standard Authorisations where authority to sell property was sought.

HHJH replied that sometimes the judge with the conduct of the case takes a different view of the case to the applicant, which may explain why orders are made in terms other than those

sought. HHJH confirmed that a copy of the Standard Authorisation is likely to be required where the property to be sold was previously P's home. A COP9 application for reconsideration may be filed if it is felt that the order received does not address the request made in the application.

12. Service of orders on Local Authority applicant

Item raised by Kate Edwards (KE) on behalf of COPPA.

KE stated that a Local authority has asked if a copy of the order appointing a panel deputy can be sent to them (where they were the applicant) at the same time it is sent to the panel deputy. They report that court practice seems to be to send the order only to the deputy. HHJH responded that this will be taken on board.

13. P&A deputyship orders – exclusion of authority to:

- **Enter into / terminate tenancies** – raised by Yvonne Mitchell (YM) on behalf of APAD
- **OR to sell** – raised by Kate Edwards (KE) on behalf of COPPA.

KE explained that COPPA members have noted that orders are now typically restricting the deputy from buying or selling property without further order especially in panel appointments. This is felt to be detrimental to P, who will have to bear the costs of any additional application for such authority at a later date.

HHJH explained that unfortunately there have been cases where P's property had been sold prematurely, effectively removing an option from consideration in a disputed s16 or s21A application. For applications where P is currently living in the property, it is not likely that the deputyship orders would include authority to sell the property because the court will be concerned to safeguard P's living arrangements. DJ Jackson and HHJ Owens commented that some application forms do not contain sufficient information hence, order sought will not be made and further information requested. If P is residing in a care home, standard authorisation should be filed with the application.

A question was raised if restriction on sale and purchase extends to equity release. HHJH responded that specific authority to enter into an equity release mortgage will be required. Applications for such authority should include all necessary information about the particular mortgage scheme proposed.

YM asked about restrictions in the deputyship orders on authority to enter / terminate tenancy. HHJH confirmed that the court is likely to have the same concern about safeguarding P's living arrangements as with applications to sell P's home. The onus is on the applicant to provide evidence and reasons why the authority sought is in the best interests of P. Standard authorisation document should be included with these applications too.

14. Required forms

Item raised by Kate Edwards (KE) on behalf of COPPA.

KE stated that their members reported that they have been given contradictory information by court staff about the forms needed for particular applications. HHJH replied that court staff should not be giving advice at all. The requirements are set out in the Rules and Practice Directions.

15. Photographs of court as visual aid for P

Item submitted by Rachel Turner (RT) who was absent at the meeting.

RT wanted to know if the court would be willing to take photographs of the inside of the COP courtrooms and the waiting areas so that when ALRs or legal representatives instructed by litigation friends explain them to P, they can have the benefit of a visual aid. Currently, she can only find pictures of the outside of the courts. HHJH responded that she was not able to give promises but it seems a sensible request to be encouraged and she would take up this matter further.

RT also asked if it might be possible for official photographs of those judges who are willing for them to be released, to be made available. A visual aid would be most helpful in assisting P to understand who is making the decisions in their case and encourage P's participation in the proceedings. Someone commented that while preparing court packs for P, they can get information of county courts online however, no pictorial representation of a COP female judge without a wig is available. HHJH stated that she would consider this request further too. Applications for particular special measures in individual cases could be made through standard channels.

16. E-mails received out of hours to vacate next day hearings

HHJH reminded the meeting that court office hours end at 4.30pm. If an application is filed after 4.30pm to vacate the next day hearing, the applicant must assume that the hearing stands unless and until expressly informed otherwise, as the court has no facility to monitor out-of-hours applications.

It would be much appreciated if COP9 applications to vacate hearing included in the subject title of the e-mail "application to vacate hearing on [date]". This helps to prioritise and deal with the application quickly. HHJH stressed that until an order confirming that the hearing is vacated has been received, it should be assumed that the hearing will still be going ahead.

17. Any other business

- I. Christmas arrangement for urgent applications – court will be open as usual on 23 and 24 December 2019. Office will be closed for the Christmas break on 25, 26 and 27 December 2019. Urgent applications within the period should be filed with the out-of-hours judge at RCJ.

- II. An issue was raised about problems encountered with whom to contact for s49 reports. It was agreed that it will be discussed among the COPPA members.
- III. A question was raised about authority to purchase property abroad. HHJH confirmed that any proposal to purchase property abroad should be clearly expressed in the application. Such purchase entails moving funds outside jurisdiction and is therefore to be considered carefully.
- IV. A question was raised about e-filing with the court. HHJH explained that the court has no appropriate hardware or software for e-filing / e-bundles at the moment (other than the limited degree of filing by e-mail which is currently possible). Bundles should not be sent by e-mail but filed on paper.
- V. Emily Smith appealed to Local Authorities not to send e-mails by Egress Switch / secure portal as the court does not have the facility to open them.

Date of next meeting

Tuesday, 28 April 2020 at 2pm

at First Avenue House