



Court of Protection

Minutes of Court User Group Meeting
Thursday 8 October 2020 at 2.00pm
Held remotely via MS Teams

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)

District Judge Beckley (Resident Judge – COP)

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

District Judge Susan Jackson (Judge – COP)

Amrit Panesar (Operations Manager / Court Manager – COP)

Mala Nair (Delivery Manager – COP)

Ross Hamilton (Authorised Court Officer – COP)

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

Elizabeth Power – Paris Smith

Martin Terrell – Warners Law

Vani Chenganna – Harrow

Sue Bowler – Shoo Smiths

Alison Taylor – Frenkel Topping

Uzmah Rasool – Omm Law

Adrian Hawley

Rhiannon Evans – London Borough of Ealing

Angela Smith – Abbotstone Law

James Batey – Wilson Browne

Elaine Brown – OSPT
Francesca Gabbitas - Abbot Stone Law
Yvonne Mitchell – Ealing
Sara Isenberg – Royds Withy King
Craig Wain – No 5 Chambers
Jemma Cahan – Je Bennett Law
Caroline Bielanska
Richard Shearing - JE Bennett Law
Elizabeth Jeary
Latoyah Thompson – Office of the Public Guardian
Jane Bennett - Je Bennett Law
Michelle Weaver – Higgs and Sons
Clair Whittall - Higgs and Sons
Philip Martin-Summers - Higgs and Sons
Laura Horton - Higgs and Sons
Debbie Morrell-Williams – Linder Myers
Neil Cawthorn - PDS
Douglas Houghton – Anthony Collins
Ian MacKendrick – Frenkel Topping
Julie Akorley – NHS
Keith Clarke – Burke Niazi Sols
Robert Hurling – Hugh James
Gemma Eason – Omm Law
Holly Chantler – Morr Law
Clare Burke - Anthony Collins
Julia Lomas – Irwin Mitchell
Mathieu Culverhouse – Irwin Mitchell
Nahema Farooq – Rutland
Melissa Law – Edwards Duthie Shamash
Janel Ilett – OSPT
Shivangi Majithia – Ealing Council
Zena Bolwig – Mack Law
Esha Kansal – Torbay
Laura Nazar – Browne Jacobson

Celia Kitzinger
Rosemarie Martin – Haringey Council
Kelly Snowdon – Durham Council
Emma Story – South Tyneside Council
Desmond Mohabir – Cornwall Council
Olta Ponxha – London Borough of Brent
Sam Dorchell – Redcar Cleveland Council
Androulla Hadjisimou – Newham Council
Daniel Toop – Pennington’s Law
Grace Serwanga - Pennington’s Law
Zoe Bancroft – Investec Wealth & Investment Ltd
Kathrina Salter – Salter Kelly
Shivangi Majithia – Ealing Council
Joan Goulbourn - MOJ
Shadia Ousta Doerfel – Islington Council
Alison Meacher – Hardwicke
Christine Bunting – Hyphen Law
Eirwen Dorkins - Lewisham Council
John Howard - OSPT
Helene Maxwell - SCCO
Nikki Bedford – Enable Law
Pamela Clarke - SLLP
Rachel Turner – Miles & Partners
Siobhan Tempestoso
Bethany Crossley
Scott Friel
Jill Weston
Carol Knotts
Andrea Fletcher
Jonathan Hopkins

1. Apologies

Jonathan Taylor – Investec Wealth & Investment Ltd

Keith Clarke - Burke Niazi Sols

Gemma Eason – OMM Law

2. Minutes and Action points

Minutes of meeting held on 15th October 2019 agreed and approved. The meeting scheduled for 28th April 2020 was cancelled due to covid-19 restrictions.)

3. Operations Manager's Report

Report given by Amrit Panesar (AP).

Applications received

- In the first 3 quarters of this calendar year, the court has seen a 1.8% increase in the total applications received when compared to the same period in 2019 (23,400 applications in first 3 quarters in 2020 compared to 22,976 in 2019), notwithstanding the impact of the covid-19 pandemic.
- The category of applications with highest numbers continues to be the property and affairs deputyships. There had been a dip in number of applications in the early stages of the pandemic (8,268 applications issued in the first 3 quarters of 2020 compared to 10,596 in 2019) but numbers are now increased again.
- During the same time frame, there has been a 5.9% increase in the total volume of orders made, with 37,845 orders made in Q1-Q3 of 2020.
- The disposals for Q1-Q3 of 2020 saw 7.5% increase compared to the same period in 2019 (17,611 vs 16,388).

Timeliness

Disposal time For Judges			
	P&A deputyship (in weeks)	Other P&A (in weeks)	H&W (in weeks)
Disposal in Sep 2020	34.6	58.5	49.9
Average disposal (Sep 2019 to Aug 2020)	38.95	55.09	49.14
Trend	decrease	increase	increase

Disposal time for ACOs		
	P&A deputyship (in weeks)	Other P&A (in weeks)
Disposal in Sep 2020	21.14	31.8
Average disposal (Sep 2019 to Aug 2020)	29.17	28.17
Trend	decrease	increase

Backlogs

The court is carrying backlogs of work across all areas of work. However, there has been a significant reduction in arrears in many areas. For example, the number of orders made but awaiting issue is now down from 2995 to 573 (as of today). We are in the process of setting up an orders hub which will go live on Monday 19th October 2020. This will enable us to ensure orders are prioritised, so our service users receive the outcome of their application as quickly as possible. Our aim is to set a 3-day SLA (service level agreement).

- **Application backlog** – There remains an application backlog in the G1 Applications Branch. We are currently prioritising this work to ensure we get closer to the SLA of 5 days. More positively, the backlog in new Deprivation of Liberty applications is reduced from 586 in April to 15 as of today. (This includes both hard copy and electronic applications.)

Currently the oldest property and affairs application awaiting consideration by the Authorised Court Officers (ACOs) dates back to 17 August 2020. This figure has again on an upward trend due to holiday pressures. ACOs did not take any leave during the height of the pandemic. They deserve a break and we are confident we will pull this figure back. We have planned 'blitz weeks' where we will deploy additional judicial resource to assist with this backlog.

- **DoLS work** - The performance in this area of work has been encouraging in the face of difficulties: most of the work is either hitting or under 5 days old. The r-files which need judicial attention is the oldest category of work, with some files going back to April 2020. We are planning a 'blitz' with further deployment of judicial resource to bring this category of work more up to date.

All in all, our overall performance has held up reassuringly in circumstances of the pandemic and consequential staff resourcing issues. At the height of the pandemic restrictions, only 50% of our staff were working in the court building.

We have been able to take on new staff from the last recruitment campaign. They have been deployed to areas of work that require prioritising. Training is taking place to build our capability and we are looking to streamline our processes, so they meet the current and future business needs.

Remote hearings are now embedded and working well. It is a new way of working and we have training staff supporting the judiciary. It is likely that this new way of listing hearings will remain in some form for a while to come. We are now also holding attended hearings, in compliance with covid-19 requirements; and some hearings are conducted in a hybrid fashion. Our priority is to ensure we list our cases without delay whilst ensuring that our

service users, judiciary and staff remain safe at all times.

In relation to Covid, we have a current risk assessment in place in line with the government guideline. This can be requested if you need to see a copy. We have ensured the building is adapted so that all those using our floors are safe.

Julia Lomas commended the court on its effort to keep the work going despite the current pandemic period and asked whether filing of applications digitally pilot would be extended. AP responded that no timeframe has been given for this. IT issues are being worked through.

4. Delivery Manager's Report

Report given by Mala Nair (MN).

Electronic applications pilot

The Court of Protection is working together with the MOJ Digital Team on a pilot exercise for users to upload and send property and affairs deputyship application forms online. We have a small electronic-applications team set up to process these applications. This is a small-scale test to learn and evaluate whether accepting property and affairs applications electronically is feasible. Due to the pandemic, many professionals have changed the way they work. This pilot will help us learn how we can better support these changes.

We have so far received 185 applications of which 51 have concluded and a final order has been made. We have extended the pilot to a further 2 months to allow us time to receive a fair number of applications to assess the process. Further information on the pilot will be made available.

Upfront notification pilot

We are working closely with Her Honour Judge Hilder on a second pilot with an aim to test whether a process could be put in place, with relevant rule changes, to allow parties to be notified of an application prior to filing at court. We have a clear idea on a process that can work, but we are in very early stages. We will make available further information on this as we progress.

Shadia Ousta-Doerfel (SO-D) commented on the P&A pilot. She said her team were really impressed with the excellent turnaround and wondered what the next stage was for the upfront pilot. HHJH explained that the next stage of the pilot was to build in pre-issue notification point (subject to approval of necessary Rule changes). This development has not reached the launch stage yet but developments in planning are making rapid progress. SO-D also talked about 'Caselines' for online bundle and asked if the court can adopt it. HHJH said the request has been passed on to the relevant decision-makers - no positive response yet but it's on the list.

5. Update from the Mental Capacity Policy Team (MCPT)

Update given by Joan Goulbourn (JG).

i. Amendment to Practice Direction re VAT

Changes to PD19B and VAT issue have been drafted and are on way to ministers for sign off and to the President. Unfortunately, ministers had other priorities during lockdown but will now be considering this matter.

ii. Recent judgment of Master Whalan

SCCO has written practice notes in relation to the judgment which can be sent out to everyone.

iii. Liberty Protection Safeguards (LiPS)

LiPS has been put back to 2022. The MCPT will continue to work with HSC and other bodies. The court has a working group, not much work has been done but they will carry on working on further developments.

Regarding HAGUE 2000, they are working towards extending ratification to England and Wales. The timetable was initially set for April 2020 but has now been extended to Summer next year.

iv. Child Trust Funds

The first Child Trust Funds have now matured. There has been some publicity about the need to obtain appropriate authority to access these funds in respect of young adults who lack the relevant capacity. MOJ is having ongoing discussions with financial institutions to ensure that requirements are understood. Fee remission and / or part remission are available from the court and OPG (as usual) to help with such applications.

6. Current arrangements during pandemic

- I. Question submitted by Vani Chenganna (VG): will remote hearings remain the default position for the foreseeable future (in view of the recent government guidance) or are listing decisions are made on case-by-case basis?

HHJH responded that arrangement for hearings are and must be sensitive to the changing situation. Currently, most directions hearings are conducted remotely but decisions are made by on a case by case basis by the judge managing the case. Contested hearings can be conducted by physical attendance, remotely, or as a mixture of both. The court uses BTMeetMe, the Cloud Video Platform (CVP) or MS Teams to conduct remote these hearings, with varying experiences of success.

HHJH stressed the importance of following standard instructions on how e-bundles should be prepared. As situation changes, procedure might change gradually. For contested hearings, paper bundles might still be required, and the order will give instructions on how the bundle should be filed. DJ Beckley commented that hyperlinked bundle will help the judges massively and referred the meeting to the VP's guidance of 31 March 2020. HHJH also echoed his plea for hyperlinked bundles.

- II. Question submitted by Shivangi Majithia (SM): is the court able to accommodate attended hearings and if so, what is the protocol is in respect of such hearings?

Largely covered in previous discussion. A building-wide risk assessment has been carried out and it is available from the Court Manager upon request. Cleaning of surfaces within the building is being done on a frequent basis as safety of all is paramount. The attendance sheet sent out to parties for completion in advance of an attended hearing is shared with the security team. Only those notified to security in advance from this attendance sheet will be allowed in to the building. One-way system is marked out in our corridor space. Conference rooms and chairs are also marked out to ensure social distancing.

AP appealed to court users for support when in the building. Only two people should be using the consultation room at any time to ensure social distancing, conversations can be carried out in the corridors if necessary.

- III. Question submitted by Latoyah Thompson (LT): Is there any memorandum of understanding about notice of hearings? LT stated that they were getting notices of hearings sometimes only 4 days before the hearing date with the matters not listed as urgent hearings. This leaves them little time to prepare and instruct counsel etc. They tend to get very short notice from Birmingham and Leeds hubs in particular.

HHJH explained that she had been in touch with the regional lead judges at the named hubs and neither of them recognises the issue of short notice as a part of the ordinary processes in operation. There are of course pressures on listing and if a hearing slot becomes available at short notice, every attempt to use it will be made. Both of the Regional Lead Judges invite details of specific cases to be provided and offer to investigate the circumstances in question. (HHJ suggested that such further details could be sent to Tolu, who will arrange for forwarding as appropriate.)

7. Current statistics

- i. Question submitted by SM regarding waiting times for streamlined Re-X applications. SM asked what the current waiting times for streamlined Re-X applications are.

HHJH stated that at present, 489 applications have been received and are yet to be progressed. 57 of these are paper files while 432 are e-files with the oldest dated 10 June 2020. The challenge with the Re-X team is working remotely but the difficulties in this process are getting smoothed out. 247 Re-X applications are stayed – this is when no R1.2 representative has been identified so the case is waiting for referral to OPG for a report by a General Visitor. The 10 a week restriction is still in place. There is a spike in Re-X applications which is a reflection of the pandemic situation. 245 applications were received in February 2020 compared to 548 in August 2020. We are therefore preparing for a winter onslaught.

- ii. HHJH read out agenda item raised by SM regarding Accredited Legal Representatives – what is the current position?

HHJH confirmed that the ALR scheme is fully up and running. There are 94 ALRs on the HMCTS database but not all of them are currently active. So far this year 31 ALRs have been

appointed in 2020, with 10 of them self-nominating. Others are appointed from the database in strict rotation basis. There continue to be regular meetings between HMCTS and the Law Society about the operation of the ALR scheme, with no issues currently outstanding.

8. Court of Protection hearings inbox

Question submitted by Zena Bolwig (ZB): there have been a few occasions recently when documents have been filed by e-mail only to receive an automated reply stating that the court hearings inbox was full. How is the court dealing with this?

HHJH acknowledged that regrettably, on 3 or 4 days over the last two weeks, there was an issue with the inbox where some e-mails were received while some were dropped. It is fully understood how frustrating this is for everyone. Urgent steps were taken to address the issue, which – it is hoped – will not arise again. AP explained further that a digital housekeeping exercise has been carried out on the inbox to increase its capacity; and the issue of digital capacity has also been escalated. She requested that the issue is flagged with us straightaway should it happen again.

DJ Beckley expressed that the volume of e-mails received daily in the court hearings inbox is huge. He encouraged court users to ensure documents / applications for a hearing are filed on time – if left until the last minute, there is a risk that they will not be matched to the file on time to be accessible to the judge at the hearing. HHJH also reminded the meeting to be judicious with what they send to the court, in particular NOT adopting the habit of copying the court into general inter partes correspondence.

9. Digital developments

HHJ Owens introduced herself as the IT Liaison Judge who provides IT support to other judges. She is part of the national steering group and the national lead judge for CVP, working closely with reform and digitalisation. She explained that COP sits right at the end of digitalisation when compared to Crown, Family and Civil Courts. The overall plan is that there would be wholly digital access to all judges at the end, but in the interim, work around systems are being used. The pandemic rapidly accelerated the whole process. CVP is not the final product but an interim solution. There are hardware issues identified in court rooms, cabling around offices and a lot of work is going on to improve the court hardware issue.

HHJ Owens gave an update on the Document Upload Centre, which is being piloted in Oxford and Reading (not in London) and will be available for COP e-Bundles for cases heard at these centres. Document in pdf format is uploaded to cloud, staff and judges have full access while professionals and external users can read but not amend to promote security. It will be available to fee paid judiciary as of Tuesday.

In relation to Caselines, for those sites that are already using them, like Oxford, it is working well for them. It has been requested for FAH but not sure when or if we might get it.

In the South East hub, default position for all COP hearings is that they are held remotely, and they are encouraging video (CVP and MS Teams) as option for most hearings in Reading. She reported that around 100,000 hearings are conducted via BT MeetMe by HMCTS weekly. She implored the meeting not to e-mail bundles to Reading as most of them won't get through due to size restriction. They could use the cloud platform which is a secure method of filing the bundle. Attended hearing in wider SE is complicated by individual building risk assessment, which can be requested from the individual court centre manager.

10. Property and affairs deputy seeking to raise welfare issues

Question submitted by Caroline Bielanska (CB): following on from the *Re ACC* decision, p&a deputies would like clarification of the process to use to request directions where P may be unlawfully deprived of his liberty but the local authority - having been informed - does not take action. If the deputyship application was pending, a COP9 application could be submitted but otherwise would a COP1 application or a COPDOL11 application (without attachments) be preferred?

HHJH agreed that a COP9 could be used if the deputyship application was still pending but otherwise confirmed that the COP1 application form should be used with COP1B and COP3 filed in support.

11. AOB

- i. Question submitted by Mathieu Culverhouse (MC): how are urgent cases managed as between the RCJ and the regional hubs?

MC explained that a colleague had recently had an urgent welfare case initially heard as an out of hours application at the RCJ. The matter then needed to be transferred to a regional hub to continue as an "ordinary" welfare case. However, it appeared that the order and papers from the initial hearing were never sent to the regional hub and so the case ended up in limbo, with no further hearing being listed. Do the papers go to FAH in the first instance for onward transfer, or should the RCJ be sending them on directly to the regional hub? Or is the onus on the parties to ensure the transfer of the papers to the relevant hub?

HHJH confirmed that she would relay the concern to the Vice President and the COP Clerk at RCJ, Sinead Ahearne. If the case is of a type where regional issue would be appropriate, then the RCJ would normally send it directly to the relevant hub court. A case would only need to come to FAH if it is of a type where issue at FAH would be appropriate. The onus is not on the parties to transfer papers but, if the out of hours judge has made directions about issue etc, those directions should be followed; and if there is any falling into 'limbo', it would be helpful for parties to raise the matter directly with the COP Clerk at RCJ (although FAH staff will also help wherever they can).

AP acknowledged that there were in practice some issues with transfer of cases from RCJ to the hubs. A mapping exercise will be taking place to see if the process can be made clearer.

- ii. Question by Julia Lomas: has there been a change in approach with respect to purchase of property for P?

All judges present confirmed that there had not been. Each case is considered on its own merits. The more information provided with the application the better for the judge to form a view as to whether authority to purchase should be included in a deputyship appointment or not.

- iii. HHJH observed that the remote method of holding this meeting seemed to have worked well and offered the benefit of being able to accommodate more people at greater convenience to them. She welcomed people to let Tolu know any views they have about how the next meeting should be held. A final decision will be taken nearer the time and taking into account prevailing pandemic requirements.

Meeting ended at 3.20pm

Next meeting – Wednesday, 14 April 2021 at 2pm