



**Court of Protection
Court User Group Meeting
(General)
Wednesday, 20 April 2022 2pm
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

HHJ	Hilder (HHJH)	Senior Judge of the Court of Protection
DJ	Ellington	
DJ	Grosse	
HHJ	Owens (HHJO)	SE Regional Lead Judge
Tom	Gearing (TG)	HMCTS Court of Protection- Delivery Manager
Sean	Loughran (SL)	HMCTS Court of Protection - Operations Manager
Joan	Goulbourn (JG)	MOJ Mental Capacity Policy Team
John	Howard (JH)	Official Solicitor & Public Trustee
Doris	Sheridan (DS)	NHS Coventry and Warwickshire CCG
Phillip	Joseph (PJ)	London Borough of Ealing
David	Rees QC (DR)	5 Stone Buildings
Adrian	Hawley (AH)	Partners in Costs
Martin	Terrell (MT)	Warners Law LLP
Holly	Chantler (HC)	Morrison Solicitors LLP
Celia	Kitzinger (CK)	Open Justice Court of Protection Project
Nicola	Mackintosh (NM)	Mackintosh Law
Janet	Ilett (JI)	Official Solicitor & Public Trustee
Natalie	Cheesewright	HMCTS Court of Protection
Scott	Soley	HMCTS Court of Protection

Motin	Khan	HMCTS Court of Protection
Lorna	Green	HMCTS Court of Protection
Jennifer	Li	HMCTS Court of Protection
Elizabeth	Jeary	HMCTS Court Funds Office
Elaine	Brown	Official Solicitor & Public Trustee
Mark	Higgs	Official Solicitor & Public Trustee
Mandy	Giedrojć	Office of the Public Guardian
Zahrah	Jabeen	Office of the Public Guardian
Vanessa	Prendergast	HMCTS Senior Courts Costs Office
Julie	Akorley	Central and North West London NHS Foundation
Aisha	Alley	Southampton City Council
Tonina	Ashby	HCR Hewitsons
Georgina	Baidoun	Lay Deputy
Zoë	Bancroft	Investec Wealth & Investment Ltd
Rosie	Banks	Boyes Turner LLP
James	Batey	Wilson Browne Solicitors
Nikki	Bedford	Enable Law
Chloe	Brant	Anthony Collins Solicitors
Rebecca	Bristow	Shoosmiths LLP
Owen	Brown	Wrigleys Solicitors LLP
Neil	Cawthorn	The Professional Deputy Service Trust Corporation
Nicola	Cho	RMNJ Solicitors
Megan	Christie-Copeland	JMW Solicitors LLP
Mathieu	Culverhouse	Irwin Mitchell LLP/CoPPA
Emily	Deane	STEP
Alexandra	Edwards	JE Bennett Law
Madison	Emmett	Waddington and Son Solicitors
Tom	Evans	Tom Evans Law
Stuart	Farmer	Howden Insurance Brokers

Chelle	Farnan	NHS South West London Clinical Commissioning Groups
Lisa	Flynn	West Berkshire Council
Clare	Hall	North Tyneside Council
Samantha	Hamilton	Mullis & Peake LLP
Chantal UI	Haq-Weedon	Wilkin Chapman LLP
Vikki	Heard	Enable Law
Robyn	Hemmings	Freeths LLP
David	Hilton	CFG Law (On behalf of COPPA)
Eirian	Hitchmough	Royds Withy King Solicitors
Jonathan	Hopkins	Howden Insurance Brokers
Rachel	Jones	Hugh James
Esha	Kansal	Torbay Council
Jasbir	Lall	Reading Borough Council (ADASS)
Alison	Lamont	Wards Solicitors
John	Mackenzie	Warners Law
Caroline	Manningham	Burnetts Solicitors
Veronika	Maresova	JE Bennett Law
Alison	Meacher	Gate House Chambers
Ruth	Meyer	Boyes Turner LLP
Neil	Micklewright	London Borough of Islington
Desmond	Mohabir	Leicestershire County Council
Judith	Naylor	Cumbria County Council
Louise	Nettle	Blake Morgan
Thanuja	Oppilamany	Freeths LLP
Uzmah	Rasool	Osborne Morris and Morgan Solicitors
Hannah	Rodgers	Stonegate Legal
Kathrina	Salter	Salter Kelly Solicitors
Bernice	Scott-Field	Chair for the Association of Public Authority Deputyship (APAD)
Grace	Serwanga	Penningtons Manches Cooper LLP

Megan	Shaw	Odonnells Solicitors Ltd
Amanda	Shergold	Howden Insurance Brokers
Angela	Smith	Abbotstone Law
Emma	Story	South Tyneside Council
Annemarie	Strong	Bath & North East Somerset Council
Sara	Sutcliffe	Rotherham MBC
Rachel	Taylor	Penningtons Manches Cooper LLP
Eleanor	Vida	Miles and Partners LLP
Katrina	Vollentine	Wollens
Claraine	Walker	Higgs LLP
Karon	Walton	Footner & Ewing
Philip	Warford	Renaissance Legal
Michelle	Weaver	Higgs & Sons
Jill	Weston	Mills & Reeve LLP
Claire	Whittall	Higgs & Sons
Alexander	Wright	Boyes Turner LLP
Emma	Yemm	Churchers Solicitors
Angie	Zhen	Cheshire West and Chester Council
Sandeep	Arora	Liberata
Victoria	Park	Darlington County Council
Mark	Collins	London Borough of Bexley
Laura	Fox	Darlington County Council
Dianne	Martins	London Borough of Barnet
Rachel	Hergest	
Ritu	Ghosh	
Lucinda	France-Hayhurst	St Johns Buildings
	Emma(Guest)	
	Chris (Guest)	
	Phone Number Only	
	Phone Number Only	

1. Apologies

- DJ Beckley
- DJ Mullins
- DJ Jackson
- Mala Nair (Court of Protection – Operations Manager)
- Joe Payne (Court of Protection – ACO)
- Holly Mieville-Hawkins (Michelmores)
- Christine Leggett (Senior Courts Costs Office)
- Yvonne Mitchell (Association of Public Authority Deputies)
- Robin Bailey (Chase de Vere)
- Julia Lomas (Irwin Mitchell) apologies and farewell
- Polly Sweeney (Rook Irwin Sweeney)

2. Minutes and action points from previous meeting 27 October 2021

HHJH reviewed the previous meetings action points:

Action points

1. Updated re COP4 declarations held by public authority deputies (para 7 of 27 October 2022 minutes)

Sean Loughran (**SL**) HMCTS has liaised with the OPG and APAD and compiled the list of Local Authorities active in deputyship (approx. 160). This list is now being cross-checked with APAD via Yvonne Mitchell (YM). Carried over to the next CUG, with aim of confirming completion then. [Action point 1](#)

2. Issue raised by Michael Barrett (**MB**) of Burke Niazi - whether ALR training courses are to be resumed by The Law Society (para 11 of 27 October 2022 minutes). The Law Society has confirmed that courses are again being run, starting in May 2022.

3. The Court agreed to send key terms to be used in the streamlined procedures (para 13 of 27 October 2022 minutes). This has not yet been done – explanation and proposals to be addressed at point 7 in today's agenda.

HHJH offered the opportunity for comment re the action points and draft minutes, none received.

Minutes of meeting on 27 October 2021 approved.

3. Operations/Delivery Manager's Report – COP Senior Management Team – Tom Gearing (TG)

The statistics have been shared, up to Q4 of 2021.

Offered thanks to all court users, for supporting the ongoing administration of justice during this very challenging period. Staff and judiciary have shown remarkable resilience and flexibility, having adapted to new ways of working and constantly reprioritising, all while our users have been patient with our efforts to return the system to normal and recover backlogs.

Challenges and Recovery

Staffing has been an issue within HMCTS for some time now. The pandemic has exacerbated the situation with low attendance levels and high caseloads, and it continues to present challenges, also affecting staff morale and wellbeing.

We have kept the safety and well-being of our workforce in the forefront. We are regularly monitoring the situation, from providing a safe workplace to offering our staff and judiciary the support they need.

HMCTS introduced a new pay deal for staff in October 2021 and I am hopeful this will make us more competitive with other government departments. We have lost significant experience in the past few years and the pay offer should help improve recruitment and retention.

We have a few recruitment campaigns currently running at different levels and are hopeful we will fill our vacancies in the coming weeks. Our two Authorised Court Officer positions will be filled by the end of the month. We hope to see improvements in our backlogs, once the training plan for our new staff has been completed. Our key focus areas will be in the issuing of orders and our Court Enquiry Services, which includes our phones and emails.

Improvements

We are in regular conversation with the Office of the Public Guardian looking at ways to advance our collaboration working. We have made improvements in some of our processes such as service of orders, and the filing of applications and documents.

We recognise that the future will involve more use of technology and we are working not only on our internal processes but also on how we can progress digital transformation to ensure access to all.

We are continuously looking at our organisational structure and workflow, alongside having discussions with our staff on how best we can effectively allocate our resources.

E-application and upfront notification pilot update

We have received 1116 applications since the introduction of the e-applications pilot, which includes 247 applications filed under the more recently introduced upfront notification pilot.

787 applications have concluded with the appointment of a deputy and 298 applications are currently live.

The average lifespan has been distorted by a few outliers and therefore the median has been used to determine these figures, which is 12.6 weeks for the e-applications pilot and 6.9 weeks for the up-front notification pilot.

We were able to speak to some of our users in March and gain some very useful feedback on the pilots. Some of the improvements we are looking to make include a streamlined journey on the portal with fewer documents to upload and a wider rollout.

The e-applications pilot will complete two years on the 3rd May 2022. With effect from the 4th May 2022, we will be closing this pilot and will only be accepting applications filed under the upfront notification pilot. Communications to this effect have been shared with our users.

Document Upload Centre

The Document Upload Centre is now up and running in First Avenue House and a number of our professional users have signed up to use this service. We are aware that some of our regional hubs are not using it at full capacity and are working with them to improve the wider availability of this tool.

We are working alongside the judiciary, our stakeholders and our users and are actively encouraging contributions towards making improvements. We will use this feedback, together with the lessons learnt during the pandemic to build on our current processes and plans and ensure our future resilience to delivering a good service.

No questions raised following report.

Further to this update TG raised with users an issue identified by the Court that both solicitors and lay deputies are requesting updates on the progress of their applications, or confirmation of documentation receipt, by filing a COP9 application. Users were reminded that COP9s should only be used for substantive applications. The court acknowledges that current delays and response times are frustrating for court users but using a COP application to check progress or receipt of documents only generates additional work which further exacerbates delays.

HHJH confirmed that COP9's should not be used for requesting a case update.

No further questions raised.

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

Consultation on Small Payments Scheme November 2021 closed on 12 January 2022. There were over 2,000 responses to the consultation. Analysis now finished and looking at options to be put to ministers, with a view to the consultation response being published in the Spring.

Modernising Lasting Powers of Attorney Consultation closed in October 2021. Awaiting various clearances before the government response is published, hoped for later this month.

Revision of Mental Capacity Act Code of Practice Consultation and Liberty Protections Safeguards (LPS) came out in March 2022 for a 16-week consultation period, closing in July 2022. This includes revisions and updates to the main code and the proposals to the LPS. No LPS implementation date set yet. JG flagged that the Court would still be inundated with re X applications and understood the problems that this will create for the Court but advised that discussions are in place on ways to tackle this. A Rules Committee working group for LPS will meet to discuss both this going forward and a response to consultation.

Q. Doris Sheridan (DS) NHS Coventry and Warwickshire CCG
DS advised that she is currently working for two CCGs trying to clear backlogs of approx. 700 COP applications prior to the LPS coming in. Is there a preference for paper or electronic applications?

HHJH noted that this was a question that would be dealt with at point 7 of today's agenda.

Q Philip Joseph (PJ) London Borough of Ealing
PJ enquired whether the minutes of the LPS working group would be made available to users?

HHJH advised that normally minutes of internal minutes would not be widely shared but recognises that as much information sharing as possible will help everybody prepare for the significant changes which LPS implementation brings. Information will be shared as quickly as possible. **Action point 3**

5. Hourglass - Safer Ageing goes 24/7 - HHJ Hilder

HHJH shared, for information purposes, the notification that Hourglass (charity dedicated to safer aging and tackling elder abuse) is now providing a

24/7 helpline. Flyers available at First Avenue House reception. Hourglass is also making a presentation to COP judicial training courses.

Link shared by Adrian Hawley **(AH)** via MS Teams chat
<https://wearehourglass.org>

6. Costs on account – HHJ Hilder

HHJH advised that this issue has been raised at the recent Rules Committee meeting by Martin Terrell **(MT)** Warners Law LLP

Issue outlined: when a deputyship order is made it will include provision for authorisation in respect of fee charging. It has long been accepted that, in respect of general management, professional deputies may charge on an interim basis up to 75% of billed costs pending SCCO assessment. The same practice does not apply to subsequent applications (e.g. stat will), in respect of which a Deputy may therefore be expected to carry significant costs, both for the duration of the application and then for the time it takes for the SCCO to conclude the assessment (the SCCO also carrying significant delays). The Rules Committee discussions concluded with the decision that the Court could be asked, and could determine, under current rules, to grant a specific authority at the conclusion of the subsequent applications, to allow a professional deputy to take 75% of billed costs for the application pending SCCO assessment, subject to a safeguard such as an undertaking.

MT confirmed this summary and further raised that, since the initial deputyship application is also taking a long time to be processed, could there be a similar provision for of costs on account for this application?

HHJH confirmed that such a request could be included in the initial deputyship application.

HHJH requested that users please do not begin a back- dating process. Please take this approach only prospectively (for the reason that, otherwise, the burden of applications will just further exacerbate delays.)

MT confirmed that there was no desire to create more work.

HHJH confirmed that this has been raised with all resident judges.

John Howard **(JH)** Official Solicitor & Public Trustee enquired whether the court would look favourably on all parties (i.e. a represented party other than the deputy) to the second application (e.g. a stat will) receiving a payment on account or is this reserved to professional deputies?

HHJH confirmed that the main purpose of the Rules Committee had been to ensure that deputies were able to continue to function but equivalent applications from other could be considered.

HHJ Owens (**HHJO**) SE Regional Lead Judge asked if this information would be communicated further to the regions. HHJH confirmed that it would.

David Rees QC (**DR**) 5 Stone Buildings noted further to JH's comments that there are other lawyers, not just the deputy, to whom cash flow is important. As Chair of the COP Bar Association, in civil proceedings CPR there are often orders for payment on account. If the Court is making a costs order for costs of all parties to come from P's estate, could an equivalent approach also be taken e.g. to counsels' fees?

HHJH emphasised that this was beyond the scope of the Rules Committee discussions, but such an application could be made and would be considered on its merits.

7. Proposal for workshop re streamlined applications – HHJ Hilder

The process of streamlined applications under Part 2 of PD11A applies to non-contentious deprivations of liberty in the community.

HHJH noted that Liberty Protection Safeguards are not yet implemented, and there is no date for implementation on the horizon. So, we all need to make the streamlined process as best it can for some time yet.

HHJH acknowledged the significant backlogs at present, now extending beyond 12 months. Though this delay is difficult to accept, it is presently unavoidable. One of the causes of delay, which perhaps can be tackled, is errors in the applications of a type which means the Court has to return the application rather than progress it at first consideration. The Court has previously offered to provide a list of 'tags' to be used in labelling documents etc. so that the computer software correctly identifies documents without human intervention, but staff have come to the view that further improvements could also be achieved. So, HHJH proposes that a 'workshop' is held, to which court users would be invited, at which relevant staff and judges could together go through the most helpful practical aspects of completing the COPDOL11 forms and annexes.

The strong mood of the meeting was that the proposal would be enthusiastically taken up.

HHJH confirmed that the proposal would be progressed, aiming to set a date within the next 2 months or so. **Action point 2.**

HHJH return to a response to the question raised by DS at (4) and confirmed that the court did not have a preference to paper or electronic applications at the current time – both are accepted.

8. Celia Kitzinger (CK) – Open Justice Court of Protection Project

- [open justice and attendance at hearings for members of the public](#)

CK raised two issues on behalf of the Open Justice Court of Protection Project, supporting the judicial commitment to transparency and helping members of the public access and observe court hearings and to blog about them

1. Listings

CK noted that she understood there to be a template in place to be completed for Courtel to assist the public to understand listings. She advised that this does not seem to be working, with example given that contact information was not being shared for FAH and listing the issues of cases before the court is rarely included by the regions (Reading Hub). CK commented that this information really matters for observers trying to locate a hearing of interest/relevance to attend. CK also raised that most hearings are listed in private, which is not understood by the public as they do not understand they can request to observe these hearings.

HHJH confirmed that Courtel is where listings are published and that there is an HMCTS job card for listing on Courtel which should be uniformly by all courts. HHJH confirmed that this has been shared with all staff. HHJH highlighted that staff resources are very strained, especially in the regional hubs but this will continue to be shared and repeated.

HHJH concerned to hear that FAH contact details are not currently on the Courtel notice – they should be. Issue referred directly to the relevant FAH team leader to be resolved immediately.

HHJH confirmed that there is presently some difficulty with courts moving its listing procedures to a new software system called List Assist. HHJH confirmed that at present FAH is not currently using List Assist, not least because of difficulties noted in maintaining our transparency requirements on the Courtel lists. There is considerable work being done to address this as soon as possible.

HHJO was disappointed that issues raised by CK in respect of the SE Region had not been shared with SE HUB. HHJO confirmed that List Assist has been rolled out in the SE region and confirmed that it has caused some issues and some detail lost. HHJO confirmed that a standard form is completed and sent to Courtserve and that if there are issues these should be reported to the SE Hub team leader, as has been done previously.

CK continued that she believed that only approx. half of COP hearings were appearing on Courtel lists and felt that COP cases were often 'hidden' within other lists.

HHJH deeply regretted this new problem. She understood that CK had been able to explain the problem to the HMCTS person most involved with COP IT developments. CK confirmed that this was the case but was still waiting to see

an improvement. HHJH confirmed that this will be actively pursued until we find a solution.

CK noted that it was helpful to feedback the courts concerns in this area.

2. Transparency orders

CK raised the issue of transparency orders not being sent to public attendees and observers often having to rely on Judges to give a verbal account to them. CK noted anxiety from observers about what they can and can't speak about.

HHJH noted the degree of legal complexity in 'private' and 'public' hearings. Pre-pandemic, the 'ordinary' approach was that COP hearings were conducted in public subject to a 'transparency order' in the form of an injunction. The pandemic brought the need for remote hearings which, in line with the VP's Guidance of 31/3/22, are held 'in private' but with observation opportunities, as opposed to 'private' hearings in accordance with the Rules (e.g. DRH) where observation is not considered appropriate. HHJH acknowledged that some judges are using a 'transparency order' for the first type of hearing where an observer attends, whereas the approach in line with the statutory provisions in relation to 'private hearings' would be a *positive* order permitting publication of specified information.

CK commented that the issue sometimes seems to be that, although a 'transparency order' is in place, it is just not sent to the observer. This could be due to the court/counsel not having the observers email addresses?

HHJH advised that within busy list and with limited staff resources, the Court's priority is to manage the courts lists and support the hearing management for P first. CK acknowledged this but emphasised the cost to the judiciary's stated objectives of transparency and open justice – observers feel unable to give a public recounting of case, and in particular feel 'silenced.'

HHJH noted that this is regrettable and should be avoided where possible.

DR added, as a representative of the COP Bar Association, that it is not part of Counsel's job to provide orders to observers. This should not be expected and is a matter between the court and public.

CK enquired whose job is it to send out the transparency order, as this has usually been sent by a barrister?

HHJH emphasised that boundaries need to be maintained between those representing parties and observers. It is not Counsel's role to provide orders. This is an HMCTS role. But the priority is given to managing the list efficiently for the benefit of P. Sending an order to observers is only a part of this.

HHJH indicated that it is understood that the listing of private hearings is confusing for observers. She has requested that an amendment is made to

the listing template to include a simple 'yes/no' to an express question of whether observers can request to attend a hearing. [Action point 4](#)

9.Holly Chantler (HC) Morrisons Solicitors LLP on behalf of SFE members

- [Why are there so few finance and property cases reported in the Court of Protection? It seems that about 90% of reported cases deal with health and welfare issues. It is surely helpful to those practitioners like me who mainly deal with financial matters to see what decisions the Court is taking in finance applications.](#)

HHJH answered the question raised by HC in 3 parts:

1. The COP under the Mental Capacity Act 2005 is a maturing jurisdiction (now more than 14 years post implementation). In the early years of a new statute, there is much to be worked through; over time, approaches become more settled.
2. Nature of the work – the vast majority of P&A applications are not contested, therefore fewer opportunity for judgments arise. There are good reasons for seeking to avoid the costs to P of contested proceedings.
3. Volume of work – the rising trajectory of court workloads, and existing backlogs, both tend towards oral judgments wherever possible. (Transcripts can be obtained.) Written judgments require a lot of court time.

HHJH agreed the educative/information sharing benefits of written judgments and confirmed that they are encouraged wherever appropriate.

Q Nicola Mackintosh (**NM**) Mackintosh Law referred users to the guidance Sir James Munby 2014 on publication of judgments. HHJH noted that this Guidance does not *require* publication of judgments by Tier 1 judges, who do most of the p&a cases, although at FAH the District Judges are encouraged to put any written judgments onto BAILLI.

NM suggested that court users might find SCCO case reports useful.

10. AOB

David Rees (**DR**) raised on behalf of COP Bar Association the suggestion that time is allocated at the end of a hearing to draft the detail of order, rather than further negotiation taking place over days following the hearing and a contested order then being filed.

HHJH requested that parties please ask the judge if they seek more detailed terms of an order to be spelled out and endorsed the idea of orders being settled before parties leave court wherever possible. HHJH referred all to the recent memorandum by the President in the Family Court and indicated that the same broad approach should be adopted – brevity and speed of submission of draft orders are both to be expected.

HHJH enquired whether there were any further issues to be raised.

Nothing raised.

Next meeting scheduled for **19 October 2022 2pm via MS Teams**

End 15:12

**Court of Protection - Court User Group General
Open Actions**

	Meeting Date	Action Point	Owner	Deadline	Status	Description of Status
	27 October 2021					
Action point 1	27/10/2021	COP internal audit of LA COP4	COP	Carries on to the next CUG	TBC	In progress
Action point 2	27/10/2021	CaseFinder standard descriptors to be used. 20/04/22 workshop to be arranged	COP	Workshop to be arranged for users. Judiciary and staff, within 2 months	TBC	Date set 24/05/22
	20 April 2022					
Action point 3	20/04/2022	LPS Working Group meeting minutes - enquiry as to whether these can be shared with CUG	HHJ Hilder	To be discussed with LPS working group	TBC	In progress
Action point 4	20/04/2022	HMCTS to look into whether the courtel template can be adjusted to inform observers which hearing they are able to request to attend	HMCTS		TBC	In progress