



---

**Court of Protection Rule Committee 26 October 2021  
Minutes**

<b>Attendees</b>	
The Honourable Mr Justice Hayden (Chair) (VP)	Vice President of the Court of Protection
Her Honour Judge Hilder (HHJ)	Senior Judge of the Court of Protection
District Judge S. E. Rogers	
Farah Elahi	MOJ Policy
Joan Goulbourn (JG)	MOJ Policy
Maya Sooben (Minutes)	MOJ Policy
HHJ Marc Marin	
Alex Ruck Keene (ARK)	39 Essex
Martin Terrell	Warners Law
David Rees (DR)	5 Stone Building
Kate Edwards	CoPPA
Anuara Ali (AA)	London Borough of Islington
Shadia Ousta Doerfel	London Borough of Islington
Nicola Mackintosh	Mackintosh Law
Mary MacGregor	OPG Legal
Andy Butler	Surrey Social Services
Amrit Panesar (AP)	HMCTS
Jessica Newton	HMCTS
Nia Davies	HMCTS
Alex Nash	HMCTS
Katie Bourne	HMCTS
Mala Nair	HMCTS
Caroline Bielanska (CB)	Solicitor
James Beck(JB)	Office of the Official Solicitor and Public Trustee
Joseph O'Brien	St John's Buildings
Lorraine Cavanagh	St John's Buildings
Holly Chantler	Solicitors for the Elderly
Sophie Gowans	Judicial Office

### **Item 1: Apologies**

1. Kate Edwards
2. Janet Illett
3. Stewart Howard for Mary MacGregor (OPG)
4. Anuara Ali
5. HHJ Marin – who did not receive notification of the meeting.

### **Item 2: Update from VP**

The CoP has done extraordinarily well over the past 18 months. It is overperforming all the courts in UK by having every case that has gone to a judge being heard. This is down to the commitment from the Bar, the way they have been able to adapt their advocacy to video conferencing platforms and down to the judges. Unfortunately, CoP was not included in the Coronavirus Act which means how a case is heard is down to the discretion of the judge.

.

### **Item: Update from MOJ**

The consultation on modernising LPAs went out in July and closed on 13 October, over 300 responses received.

The Consultation on the updated MCA Code of Practice will include information on Liberty Protection Safeguards as well.

There is no update on when the Liberty Protection Safeguards will be implemented. The official guidance is still April 2022.

The Welsh language Practice Direction is with lawyers for drafting once completed it will be sent to the VP for approval and then ministers.

CoP fees increased on 30 September and income levels have been increased.

### **Item 3: Interim Declarations**

**ARK** - whether the rules on the availability of an interim declaration within the CoP rules (r.10.10(1)(b), CoPR 2017) needed to be revised following Hayden J's decision of **DP v LB Hillingdon [2020] EWCOP 45 at [40]-[41]**.

Many parties in P&A and H&W proceedings will insist on now avoiding any interim declaration regarding capacity on the face of the order, stating that s.48 MCA 2005 confers no express power to make declarations, only interim orders.

One counter argument is to look at the CPR. CPR 25.1(1)(b) makes express provision for interim declarations, albeit in the classic public law sense to provide

guidance to parties on the meaning or effect of a piece of legislation, or the lawfulness of a decision pending the final hearing of an application for judicial review.

**Action:** ARK and J. O'B to prepare a paper on the issues for the next meeting.

#### **Item 4: Report on Good Practice in the use of Technology**

SC has been chairing a group within the HIVE on the use of technology in court proceedings.

1. The VP stated that the use of technology has enabled greater participation by P in the process. It has allowed judges to visit P in hospital. E.g – it is unrealistic to expect a judge to travel up and down the country to visit P in hospital but with technology it allows you to visit numerous different P's remotely.
2. Emphasis is back on P to properly to participate in the proceedings.

SC report is drafted wider than the use of technology. It also talks about experts and clinicians of court. The VP admits that the quality of medical evidence is better and thus this is probably going to be a part of the future.

#### **Item 5: update on E&PA**

HHJ H –752 applications for the pilots; Phase 2 is “pre issue notification”. Average life span of a pilot case is 3 weeks from making the application to making the deputyship order. This is amazing and this is exactly the kind of service the court should be aiming for.

**Action** : MoJ To arrange for details of the pilot to appear on the judicial website.

#### **Agenda item 6: Update on statement of truths.**

HHJ Hilder has no update on the statements of truths. There were changes in the civil procedure as to the format of the statement of truths and we should query whether we should align ourselves with that.

**Action:** HHJ H, DR and HC will form a subgroup to look this and make a recommendation to the next rule committee.

#### **Agenda Item 8: Disclosure**

**N. McK** – recently parties have not been disclosing relevant information/documents for cases. They tend to only do it at the beginning of the case as opposed to throughout proceedings. Without full disclosure, it is difficult to form an opinion on what is being asked.

One way to get around this is to make an order reminding parties of their duty under

Rule 1.4(2)(f) to make disclosure on an ongoing basis.

**Action:** NMCK, DR, HC and ARK to form a small working party to consider the options with a paper for consideration by the Committee.

### **Agenda item 8: Costs Consultation**

**MoJ** reported that this work has been halted because resources were needed for work on the proposed small payments consultation.

### **Agenda item 9: Judicial Review and Courts Bill**

**DR** – The Judicial Review and Courts Bill (currently before the Commons). provides a statutory basis for making Online Practice Rules (and accompanying practice directions) for most courts and tribunals, including civil proceedings and family proceedings. However, it wholly omits any reference to the Court of Protection. Committee to consider making representations for the COP to be included within these provisions.

The VP will check the position with Mrs Justice L.

### **AOB**

The VP throughout the last 18 months has spent a lot of time explaining to the senior judiciary that CoP is not an annex of the family court. Especially with the appeals system, lay litigants and some judges don't know what the appeal route for a tier 2 decision is. There is a clear need to differentiate between the family division and CoP.

**Action:** Guidance from the VP or President needed to distinguish the two courts for practitioners and stakeholders. Committee members to consider how to take this forward.