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**Court of Protection Rule Committee 18 January 2022  
Minutes**

<b>Attendees</b>	
The Honourable Mr Justice Hayden (Chair) (VP)	Vice President of the Court of Protection
Her Honour Judge Hilder (HHJH)	Senior Judge of the Court of Protection
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
Shadia Ousta Doerfel	London Borough of Islington
Nicola Mackintosh (NM)	Mackintosh Law
Mary MacGregor	OPG Legal
Andy Butler (AB)	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 (LC)	St John's Buildings
Holly Chantler	Solicitors for the Elderly
Sophie Gowans	Judicial Office

**Item 1: Apologies**

David Rees  
Anura Ali  
Sarah Castle  
DJ Stephen Rogers

## **Item 2: Minutes and Actions from previous meeting**

To be discussed as Agenda items

### **Item 3: Update from VP**

The **VP** continued to praise how well CoP have been performing compared to other courts. This can be seen by the fact that CoP have zero backlog of health and welfare cases and with this performance the court has escalated very considerably in public awareness. The **VP** hopes that this will help attract more silks to CoP work and overall gain more resources.

The HIVE group together with officials at the Official Solicitors office, have pulled together a document with recommendations for post pandemic working processes in the CoP. The document brings to light the very different challenges the court faces at each level.

Since the start of the legal year (Oct 21) the **VP** returned to fully in person hearings.

### **Item 4: Update from MOJ**

#### **Implementation of the Liberty Protection Safeguards**

MoJ advised that DHSC had sent out notifications to organisations stating that given the impact of the pandemic on the sector and professionals to implement the LPS and the delays to the publication consultation on the code of practice, the original deadline for implementation by April 2022 cannot be met and a new date will follow shortly. The court will therefore continue to see volumes of *Re X* applications. MoJ / HMCTS are aware of the difficulties this will cause.

#### **Consultation on small payments scheme**

The consultation opened on 16 November 2021 and closed on 12 January 2022. Officials are analysing the responses with a view to publishing the government response in the Spring.

#### **Modernising Lasting Powers of Attorney**

This consultation closed in October 2021. MoJ are completing analysis of the responses and are drafting the government response which will also be published in the spring.

#### **Mental Capacity Code of Practice**

Publication of the consultation has been delayed due to changes of ministers in MOJ and DHSC The consultation will last for 12 weeks.

Both **ARK** and **AB** raised concerns about implementation of LPS. From a local authority perspective **AB** explained how he was apart of a discussion involved in

MCA code review with whether it should be coupled with LPS or to keep them separate. A decision was made to couple it with the caveat that the consultation programme was laid down for implementation in October 2021. It is now January 2022 and the consultation are yet to be published which puts strains and delays on LPS.

#### **Item 5: Implications for COP3 following the decision in *A Local Authority v JB* [2021] UKSC 52**

**ARK** spoke about this ruling and that the capacity of determination assessment needs to start with factual inability and then diagnosis. Therefore, the Committee is asked to consider whether it is appropriate to amend the CoP3.

**HHJH** -concerned that a broad review of the forms will take time. The BMA was on board with the current version of the CoP3

**CB** suggested that the Committee should consider changes. The Small Payments consultation has flagged up that there was a need to listen to voices concerned with the use ability of the forms. There is significant risk that in P&F matters people will avoid the court so what is happening is that someone arrives at a bank and persuades them to give money to someone else without involving the courts.

**LC** – suggested that there was a need to look across the board and that the BMA should be consulted about ideas for simplification

The **VP** agreed with HHJH's suggestion that a working group be set up to scope out the changes required.

**Action:** -Working group to discuss CoP3. Paper to be provided for the April meeting of the Rule Committee

#### **Item 6. Extension of e-P&A Pilots**

**HHJH** – two stages of the pilot 1) P&A applications online 2) pre issue notifications

- 932 applications and 67 pre issue
- 636 electronic applications concluded
- 48 of the latter stage concluded

Both stages of the pilot have shown to quite significantly reduce the time of filling in the application and final order. For example: a reduction from 20 weeks to 13.5 weeks for the second stage. The Formal review of the pilot will end this month with conclusions by the end of February.

**NM** praises that the pilot scheme is working but states that this will only work long term if we add resources to it. **HHJH** agrees and for that reason aims to keep the pilot running while we pursue funding.

**Action:** The VP will make a decision as to whether to carry on the pilot or not.

### **Item 7: Statement of Truth**

**HHJ H** –would like agreement from the Committee to go ahead with proposals to amend the format of the statement of truth which is used in CoP forms to bring it into line with the updated format that is used in the civil and family jurisdictions.

The statement of truth is tied in with committal proceedings and the CoP committal provisions are significantly out of date as compared to other jurisdictions. **HHJH stresses the essential need to have MOJ support on this to make further progress.**

### **Agenda item 8: Disclosure**

NM advised that the working party had met to discuss outstanding issues. 1) To plug a gap in the practice directions to disclose information regarding proceedings to health providers 2) address an issue increasingly parties have not been keeping the other parties properly updated on terms of general disclosure of essential info the course of a case.

**DR's** draft document was circulated to the rule committee to establish an agreed form of wording.

**Action:** Circulate the disclosure document once approved.

### **Item 8: AOB**

#### **Costs Consultation paper**

MoJ have had to shelve this temporarily due to more pressing resources needed for the small payments' consultation. MoJ hope to be able to get back to the cost's consultation paper around March along with the progressing the work around ratification of the Hague 2000 convention.

**HHJH** – Wished the Minutes to record formal thanks to DJ SR for all his work as a CoP Judge and as a member of the Rule Committee.

**VP** – Wished to extend congratulations to J. O' B and ARK on their respective appointments as QC and Honorary QC.