



**Court of Protection Rule Committee 7 February 2023
Minutes**

Attendees	
The Honourable Mr Justice Hayden (Chair) (VP)	Vice President of the Court of Protection
Her Honour Judge Hilder (HHJ)	Senior Judge CoP
Alexander Ruck -Keene (AK)	39 Essex
The Honourable Mrs Justice Theis (JT)	High Court Judge
HHJ Marc Marin	District Judge - Barnet Civil & Family
Joan Goulbourn (JG)	MOJ Policy
Sophie Gowans (SG)	Judicial Office
David Rees KC	5 Stone Buildings
Lorraine Cavanagh KC	St John's Buildings
Ellie Casey	MOJ Policy
Stuart Moore	MOJ
Mary MacGregor	OPG
Beronique Addington	MOJ
Alasdair Wallace	MOJ
Martin Terrell	Warners Law
David Edwards	OSPT
Elaine Brown	OSPT
Mala Nair	HMCTS
Caroline Bielanska (CB)	Solicitor
Holly Chantler	Solicitors for the Elderly
Shadia Ousta Doerfel (SD)	Surrey County Council
Andy Butler	Surrey County Council
Jess Newton (JN)	HMCTS
Joseph Hilditch,	Judicial Office
Nicola Mackintosh	Mackintosh Law
Anuara Ali	Islington Council

Item 1: Apologies

Sarah Castle – Official Solicitor
Janet Ilett – Deputy Official Solicitor
Sophy Miles – Doughty Street
Joe O' Brian (J O'B)

Item 2: Minutes and Actions

The Minutes were accepted.

Item 3: Update from VP

VP announced his time as Chair of the Rule Committee is coming to an end this Friday 10th February and introduced Mrs J. T (**JT**) as next Chair.

VP thanked the meeting attendees for their dedication and asserted what an effective the video conferencing function has been for these meetings. **VP** thanked **AK** for his dedication and help. **VP** thanked **HHJ** for her invaluable contributions. **VP** thanked the High Group, and the staff of First Avenue House for their incredible work throughout the pandemic.

LK thanked the **VP** for his service on behalf of the group, especially seeing the Court of Protection through the pandemic and for Tier 3 and policy cases heard by his Lordship, and wished **JT** an excellent term as Chair.

Item 4: Update from MoJ

MoJ welcomed **JT** and introduced MoJ as Rule Committee secretariat.

Private Members Bill on LPAs championed by Stephen Metcalf MP had 2nd reading on 9th December; the bill is now in committee stages.

Practice Directions and Rule changes – a statement of truth has now been brought in and upfront notifications in relation to applications for property and affairs deputyships (formerly the e-pilots), and the use of the Welsh language had been signed off and uploaded to the judicial website. Further changes for the judicial website and gov.uk are in progress.

Small Payments - Response to the consultation (Jan 2021 - Jan 2022) hopefully will go out in the next few weeks. No consensus on having a scheme but CoP was firmly supported as the correct avenue.

Joint MoJ / DHSC consultation on the revised MCA Code of Practice & the proposed Liberty Protections Safeguards - closed on 14th July 2022, with over 600 responses received. The Code of Practice redraft for MCA and LPS in progress. LPS implementation date yet available.

AB asked if there might be a severing of MCA code from the LPS. **MoJ** iterated that this has been raised internally and is being discussed

Item 5: Fixed Costs

CB led a discussion on fixed costs. The working group on costs met on 10 October 2022 to review PD 19B (Fixed Costs). The PD is out of date especially in relation to

conveyancing costs. Consideration needs to be given to how non-regulated professional deputies 'commercial deputies' are provided for. **CB** iterated there was no consensus, but fixed costs document has been drafted.

CB asked the group for their thoughts on the proposal of monthly billing for solicitors.

DR raised concern and iterated external supervision was needed to ensure solicitors are not treating estimates as a 'blank cheque' book. **VP** commented that fixed costs does not provide sufficient remuneration. **MM** shared concern about blank cheque book. **HHJ** requested time to consult on the paper with First Avenue House, but initial thoughts are that the estimate to the OPG acts as safeguarding as they must be notified if estimates are changed.

HC raised concerns about the current wording in the draft and highlighted the importance of the OPG fee checks during deputies' annual assessment.

DR suggested picking up on this topic when First Avenue house have had input. There was group agreement to this.

Item 6: Closed Court Hearing Guidance

VP outlined a case in Nov 2022 where Mr Justice Poole had been running closed and open court proceedings in the same case, and the subsequent Open Justice and press coverage. The VP requested J. O'B and two others to form a sub-committee to look into guidance on closed hearings. The Committee received a submission from Professor Celia Kitinger requesting press presence in closed CoP cases.

VP iterated this is not a proportionate measure; closed court should be kept closed for minimum period necessary for safeguarding. **VP** revealed the Sub-Committee all came separately to that same conclusion, and the response document is with the CoP President. **VP** will issue as guidance on 8th Feb.

Item 6 - Updates from the various Working Groups

COP3 - **HHJ** provided an update:

New CoP3 form has now been presented to the **VP**. Specific amends to the form were discussed including defining P as 'the person' rather than a longer legal description. **VP** approved this. Amend to original COP3 when BMA consulted on the form – do we need to record this on current iteration? **VP** suggests taking bullet point out.

HHJ requested before Monday 13th February further comments/amends from the group be submitted to **MoJ** who will pass to **HHJ**. – **ACTION POINT**

Rule 9 - **VP** led the group on a detailed discussion of the paper concerning Section 9. of the Senior Courts Act regarding the regime for authorisation of a Judge to act as a Judge of the High Court in Court of Protection cases

There have been instances where Tier 2 judges have heard Tier 3 cases. **VP** iterated it is appropriate for cases to be heard by judges of the correct tier. It is suggested that an amendment is made to Practice Direction 2A, to enable Judges authorised under section 9(1) SCA to be authorised to sit as a Tier 3

VP iterated that a clear steer from the President needed and thanked colleagues for the work that went into the document. – **ACTION POINT**

Item 7: Signatures in Property and Affairs deputyship online journey

MoJ updated that a digital application process specific for property and affairs deputyship is currently in development. The digital journey contains a request for a typed signature rather than an e-signature. **MoJ** asked for clarity from the group as to if a typed signature was adequate.

A discussion followed and **JN**, **HHJ** and **VP** agreed that a typed name is acceptable. **VP** highlighted that control of an e-signature is loose so it may as well be typed in.

The consensus was that a typed signature is sufficient for the online journey, **so the motion was approved.**

MoJ agreed to make the change to the practise direction.- **ACTION POINT**

Item 8 Frequency of Rule Committee Meetings

VP would like future meetings to be held in person. There was a suggestion of having an extra meeting in the summer, but no group consensus was reached.

MoJ advised that there were still difficulties in obtaining access to 2QBM in the RCJ.

JT shared at the last FPRC meeting she chaired there was a hybrid model and indicated this model worked well.

SG commented that she had raised this as an Agenda item as she wanted views as to whether the Committee should have two meetings in the summer term.

Item 9: AOB

Nil.