



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
via Microsoft Teams
At 10.00 a.m. on Monday 1 November 2021

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
District Judge Williams	District Judge
Fiona James	Lay Magistrate
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Melanie Carew	Children and Family Court Advisory Support Service
Rob Edwards	Children and Family Court Advisory Support Service (Cymru)
Tony McGovern	Solicitor
Graeme Fraser	Solicitor
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from His Honour Judge Godwin, District Judge Branston and Mrs Justice Knowles.
- 1.2 The Acting Chair welcomed members of the public to the Family Procedure Rule Committee's ('the Committee') annual Open Meeting.

MINUTES OF THE LAST MEETING: 4 OCTOBER 2021

- 2.1 The minutes were approved as a correct and accurate record of the meeting.

ACTIONS LOG

- 3.1** MoJ Policy provided a brief update on the status of the action points not listed for discussion elsewhere on the agenda.

MATTERS ARISING

Migration of FPR 2010 to Gov.uk and bringing the current content up to date

- 4.1** MoJ Policy informed members that the Government Digital Service's timetable for the migration of the procedure rules to Gov.UK had been delayed and as a result the contract for reflecting the Family Procedure Rules (FPR) on the justice.gov.uk website has been extended for a further 12 months to May 2023. The Committee asked whether anything could be done to expedite the progress.
- 4.2** MoJ Policy advised that progress has been made in updating the web pages to correct identified errors and agreed to send a progress update to members outside of the meeting.

ACTION

ACTION POINT 1: The Secretariat to send the Committee an update on the website areas that have recently been corrected.

Opposite Sex Civil Partnerships Implementation

- 4.3** MoJ Policy confirmed that there have been further delays to Government Equalities Office's (GEO's) work on the Statutory Instrument (SI). The intention is that a further update will be provided in the New Year.

ACTION

ACTION POINT 2: To return as an agenda item in February 2022.

Guidance for Drafting Orders

- 4.4** The President of the Family Division ('the President') confirmed that he intends to review the draft memorandum with the intention that it be issued in the next few weeks. The President thanked those involved in the drafting of the document.

Upcoming FPRC SI

- 4.5** MoJ Policy advised that the Committee's next FPR amending SI, which includes a new rule to enable permanent provision in relation to the bulk scanning of documents and to reflect the necessary legislative changes made in the Divorce, Dissolution and Separation Act (DDSA) 2020, will be brought in draft to the Committee in December for consideration, with the intention that it be laid in January 2022.

Enforcement of Financial Remedy Awards

- 4.6** The Enforcement Working Group is scheduled to meet over the next two weeks to discuss priorities and next steps for this work. A further update will be provided at the Committee's December 2021 meeting.

ACTION

ACTION POINT 3: Issue to return as a full item at the December FPRC meeting.

Guidance for Trial Witness Statements

- 4.7** The question of whether to make FPR provision to mirror Civil Practice Direction 57AC had been discussed at the October meeting. It was agreed then that this would be more suitable for a memorandum from the President, rather than provision in the FPR or supporting Practice Directions. The President noted that a memorandum regarding the drafting of witness statements has been prepared and he will be considering the draft. The Committee agreed that the issue does not need to return at a future meeting, as this is a matter for the President.

H v An Adoption Agency Judgment

- 4.8** MoJ Policy updated the Committee on the proposed next steps in relation to this issue. The Committee agreed that a small Working Group should be formed to look at the potential for amendments to the current rules, new PDs and alterations to forms. MoJ Policy invited those who would like to be part of the Working Group to make themselves known to the Secretariat.

ACTION

ACTION POINT 4: Members who would like to join the Working Group to make themselves known to the Secretariat.

ACTION POINT 5: Issue to return as a full agenda item in December with a covering paper.

Special Measures Update

- 4.9** HMCTS reported on the number of sites which required additional protective screens or curtains.
- 4.10** Further work will also need to be undertaken to consider rooms, such as District Judge chambers, which are too small to accommodate protective measures. Some of these spaces provide further challenges as many are without separate entrances. The Committee suggested that further work be undertaken outside of the Committee with the lead Family Judge on the Domestic Abuse.

ACTION

ACTION POINT 6: HMCTS to contact the lead Family Judge on Domestic Abuse.

Public Law online system

- 4.11** HMCTS advised that following the President's conference, it was agreed all interlocutory applications and emails must go to the allocated Judge. The Courts and Tribunals Service Centre have been informed and conversations are still happening with local courts to ensure processes are in place to deal with the situation where there is no response from the judge to whom communications are initially sent.

Deed Poll Name Changes

- 4.12** MoJ Policy updated the Committee on the feedback received from the Senior QB Master on the number of pre-pandemic applications to officially change their names or their children's names using

the deed poll process. Additional work is underway to address outstanding issues and a further update will be provided at the Committee's December 2021 meeting.

ACTION

ACTION POINT 7: MoJ Policy to return in December with an implementation timetable.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy reported that no new priorities had been added to the table. Three issues were covered under the matters arising; and a further three issues from Tier 1 and two each from tiers 2 & 3 were covered as part of the wider agenda.
- 5.2 MoJ Legal noted that further amendments to PD36M were pending, to require use of the online public law system by local authorities in additional courts.

STANDING ITEM: PRIVATE LAW REFORM

- 6.1 MoJ Policy updated the Committee on the progress made in relation to the Private Law Reform Investigate Approach pilot since the October 2021 meeting. The approach taken to the draft Practice Direction (PD) reflects the views of the Harm Panel, the Private Law Working Group and the Private Law Advisory Group.
- 6.2 The Committee welcomed the work undertaken to reach this stage but asked for assurances that consideration has been given to the additional work required of legal advisers and District Judges and the resulting need for protected time for gatekeepers.
- 6.3 MoJ Policy asked the Committee for feedback on several sections, such as those covering returning cases and the initial child assessment.
- 6.4 Members asked whether an accompanying one-page summary document which details the key changes and procedures in plain English could be produced to assist Litigants in Person. MoJ Policy confirmed this has been considered and the Committee noted that if it was to be developed a Welsh language version should also be produced.
- 6.5 The Committee asked for an updated timetable be provided including the work necessary in producing a one-page summary, at the December 2021 Committee meeting. The Committee also offered to undertake some of the relevant work on the pilot Practice Direction by email in advance of the December 2021 meeting if this would assist with meeting the required deadlines.

ACTION

ACTION POINT 8: MoJ Policy to return to the December 2021 with a revised timeline and an updated draft PD based on today's discussions and reflecting any email comments received.

ACTION POINT 9: The Committee to send thoughts and suggestions for further amendments to MoJ Policy by email.

DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

- 7.1 MoJ Policy stated that the DA Working Group is due to meet on 18 November 2021 to further discuss the draft cross-examination PD and related consultation in parallel with the draft statutory guidance, and the draft PD on section 91(14) orders.

- 7.2** The Committee stressed the need to prioritise this work ahead of the proposed May 2022 finalisation of this exercise. MoJ Policy reassured members that the work was still on track to meet the previously agreed deadlines.

DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION UPDATE

- 8.1** MoJ Policy informed that the delivery date for the DDSA implementation project has been confirmed for 6 April 2022 and MoJ is on track to meet that date. A set of SIs are currently being drafted by MoJ Policy to make the consequential legislative changes required by the DDSA, amendments to Family Proceedings Fees Order and the Family Procedure Rules.
- 8.2** MoJ Policy added that the digital team are continuing to build the new online platform for online applications. MoJ Policy confirmed that the most complex paper forms would be finalised shortly following further comments from the DDSA Working Group, and the remaining forms will be looked at in accordance with the relevant part of the Rules in the coming weeks. MoJ Policy confirmed they are working with digital and communications colleagues to ensure guidance and online pages, particularly gov.uk, are updated ahead of the launch date.
- 8.3** MoJ Policy and the Committee asked for thanks to be officially recorded for the hard work of HHJ Waller who has contributed to this exercise towards reaching this position.

SUBSTANTIVE ITEMS

MIRRORING RECENT CPR AMENDMENTS IN THE FPR: APPEALS

- 9.1** Members indicated they supported aligning the FPR with the recent changes to the Civil Procedure Rules (CPR) Parts 40 and 52. The Committee favoured including the changes in the upcoming FPR amending SI, but recognised that other work may need to be temporarily de-prioritised to accommodate this. A further update will be provided at the Committee's December 2021 meeting.

ACTION

ACTION POINT 10: MoJ Policy and Legal to provide further update on work in December 2021.

INFORMATION SHARING – IMMIGRATION PROCEEDINGS

- 10.1** The Committee discussed the request from the Home Office to use documents originating from family proceedings in the immigration decision making process.
- 10.2** The Committee noted that an existing protocol is in place and will need to be examined both in terms of how it is working as well as whether any amendments to the wording are needed. Members felt that without looking at the protocol they would be unable to fully consider the ramifications of the options suggested by the Home Office. The Committee asked that the issue return to the December 2021 agenda, with a focus on the existing protocol.

ACTION

ACTION POINT 11: Issue to return as a full agenda item in December 2021.

SUMMARIES OF THE FPR FOR UNREPRESENTED PARTIES

- 11.1** MoJ Legal introduced the summaries and noted a number of questions for the Committee's attention. Members were largely content with the summaries but noted some specific points which required clarification. Members thanked the judicial assistants who had been involved in the drafting process. It was agreed that the summaries (once amended as discussed) could be published on the Justice website. Text should be added to invite feedback – by May/June 2022.
- 11.2** The Committee asked whether there will be simple guidance on how to conduct a case. It was understood that there may be a cross-jurisdictional Committee considering the preparation of such guidance. Enquiries should be made to establish whether guidance about how to conduct family proceedings is being considered by that committee.

ACTIONS

ACTION POINT 12: MoJ Policy to make contact with the cross jurisdictional Committee to establish the position on any draft guidance on how to conduct a case.

ACTION POINT 13: MoJ Policy and Legal to amend the draft summaries as suggested by the Committee in today's meeting and then arrange for them to be published on the Justice website.

ACTION POINT 14: Committee to review any feedback provided on the summaries at the next Open Meeting in 2022.

OPEN SESSION

- 12.1** The session was then opened up to questions from Open Meeting attendees who previously expressed an interest in raising points for the Committee's attention. The Acting Chair explained that due to time constraints, supplementary questions will be responded to in writing by the Secretariat.
- 12.2** The full set of questions and the relevant responses can be found in Annex A.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

a) Civil Procedure Rule Committee

- 13.1** MoJ Policy reported that the Civil Procedure Rule Committee has established a new Sub-Committee to begin a long-term project on simplifying the CPR.

b) Court of Protection Procedure Rule Committee

- 13.2** MoJ Policy reported that they had recently met with the Secretariat of the Court of Protection Rule Committee. Although no significant issues were flagged, the two secretariats have arranged to have regular meetings going forward and any relevant activity will be raised under this item.
- 13.3** The Committee advised that cross jurisdictional work covering Civil and Criminal has been put in place under the work on Domestic Abuse Act implementation work and asked for any future relevant updates from this group to be included under this slot.

ACTION

ACTION POINT 15: FPRC Secretariat to ensure Criminal Procedure Rules Committee Secretariat are plugged into this work.

FORMS WORKING GROUP UPDATE

- 14.1** MoJ Policy advised that following their most recent meeting, the Forms Working Group have asked that several issues be raised again within the DA Working Group and that both working groups should work more closely to take this exercise on further. The Forms Working Group will next meet on Thursday 25 November 2021.
- 14.2** The Committee considered an issue in relation to the accompanying documentation to the Parental Responsibility Agreement forms and asked for further detail on the extent of the issue before considering it further.
- 14.3** MoJ Policy provided the Committee with an updated timetable for work on the D81 form and associated guidance including next steps and when it is expected to be completed. MoJ Policy agreed they will provide a further progress update at the December meeting alongside a near final version of the form.

ACTIONS

ACTION POINT 16: MoJ Policy to provide an update on the Parental Responsibility Agreement forms at the December 2021 meeting.

ACTION POINT 17: MoJ Policy to provide an update on the D81 form at the December 2021 meeting.

DRAFT DECEMBER AGENDA

- 16.1** MoJ Policy advised that the draft agenda will be amended to reflect any changes following this Committee meeting.

ANY OTHER BUSINESS

- 17.1** The Committee were made aware of an issue that has been raised in relation to oral renewal of Permission to Appeal (PTA) applications. This will be brought forward to the December meeting.

ACTION

ACTION POINT 18: PTA applications issue to be added to the December agenda.

- 17.2** The Acting Chair thanked those attending the Open Meeting for the interest shown in the work of the Committee and added thanks to the officials who prepared the papers and facilitated the meeting on the day.

DATE OF NEXT MEETING

- 18.1** The next meeting will be held on Monday 6 December 2021. This will be a hybrid meeting so will be undertaken in person at QB1M, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
November 2021
simon.qasim3@justice.gov.uk

Family Procedure Rules Committee – Questions for the Committee at agenda item 12

Question	Response
<p>Whether part 6 of the Family Procedure Rules is to be amended to reflect service of documents through the Public Law Outline portal or is this covered under rule 6.34 deemed service “other electronic method”?</p>	<p>The Committee said that they have been considering this question and topic over the past few months following the updated Practice Direction 36M (PD36M) to ensure smooth transition and maximise efficiency for the local authorities uploading and entering documents to the system. The Family Procedure Rules are precise and relatively technical in order to set out matters of practice and procedure accurately and to cover the wide range of circumstances that might come before the court. Pilot Practice Direction 36M already modifies the Family Procedure Rules 2010 so that where a legally represented party consents to this, the court can effect service of documents by sending the party's representative an email notification including a link to where the document can be accessed on the online service. Whenever a document is filed on the online service which another party is entitled to see, an email notification will automatically be sent from the online system to other legally represented parties who are registered to use the online service, so they can view the document. If a party is not legally represented, they cannot access the online service, so documents will be served by the court or other parties in the usual way - for example, by post or personal service, or by email where the party has agreed to being served in that way. As the pilot online public law system is still under way, the Committee will continue to consider progress in this area and any possible amendments, as applicable from February 2022.</p>
<p>Are all participants involved in DA cases, DA and Coercive Control trained?</p>	<p>The Committee said that the FPRC is predominantly concerned with ensuring the right court rules and practice directions are in place to provide guidance on domestic abuse, and we have already updated PD12J to take account of the new definition of domestic abuse, as well as FPR 3A and PD3AA to take account of the new family court special measures provisions in the DA Act, all of which came into effect on 1 October. We are working on further changes to practice directions in relation to other changes brought in by the DA Act, including the prohibition on cross-examination and clarification of section 91(14) of the Children Act 1989. More widely, judicial training is the responsibility of the Judicial College. All judges and magistrates are required to undertake regular training on domestic abuse, which is being refreshed in the light of the changes brought in by the DA Act. The Ministry of Justice and Home Office are working with other agencies, including the police and the Crown Prosecution Service, to ensure that existing training and guidance is updated to reflect the latest developments in particular as more provisions in the DA Act are introduced.</p>
<p>In “F v M [2021] EWFC 4”, The Hon. Mr Justice Hayden commented on the suitability of Scott Schedules for evidencing domestic abuse cases, particularly where there are continued themes of</p>	<p>The Committee said that questions concerning the value and effectiveness of Scott Schedules in domestic abuse cases have been raised by Hayden J and discussed further in the four linked Court of Appeal domestic abuse appeal cases handed down in March 2021. It is important that the family court properly recognise patterns of abuse that may not be captured by a list of specific incidents and that court procedures enable applicants and respondents to provide evidence of</p>

Question	Response
<p>coercive control. What plans are there to address this in the family court, and to implement more accurate methods to identify coercive control and its implications on the victims, including the children?</p>	<p>coercive and controlling behaviour. There is a clear need to look in more detail at the options for moving away from the use of Scott Schedules. The Committee will consider any necessary rule and/or practice direction following initial consideration by the Private Law Working Group; and the President of the Family Division said that he was pleased that Hayden J had identified difficulties associated with Scott schedules.</p>
<p>At court I was informed by my own legal team that to question the evidence of the 'trusted professional' would 'look very bad' for me. Using Subject Access Request documents from the LA, which had never been made available to the court, I was later able to have my complaints regarding numerous serious falsehoods in social work evidence upheld. I therefore ask, does any mechanism exist for holding social workers to account for lack of veracity of their evidence in care proceedings?</p>	<p>The Committee said that there are a few mechanisms to hold social workers accountable for their professional conduct. The Department for Education has set clear standards to strengthen the social care system and improve social work practice and safeguarding across the country. Qualified social workers must follow clear expectations set out by the Department for Education in the Post Qualifying Standards which set out the knowledge and skills that practitioners working with children and families should have. Social Work England, which is the regulatory body for social workers in England, have also set professional standards that determine the threshold necessary for safe and effective practice. They set out what a social worker in England must know, understand and be able to do after completing their social work education or training. The Committee said that if a member of the public has any concerns about a specific local authority and/or social work practice, they are encouraged to make a formal complaint to that local authority in the first instance. If they remain dissatisfied with the way their complaint has been handled the complaint could be directed to the Local Government Ombudsman. A concern can also be raised about a social worker by contacting Social Work England, however, they can only help if the complaint is about a social worker's fitness to practise and the social worker is registered with them. Social Work England are required, as a regulator, to undertake investigations into individual social workers where they are made aware of concerns about a social worker's conduct or competence. The Committee said that additional contact details including the relevant website details will be sent out to the participant who raised this point outside of the meeting.</p>
<p>As technology, regulatory changes and case law have opened the opportunity to provide access to justice from new providers at lower cost, what are the committees plans to look at extending the definition of 'non-court dispute resolution processes' beyond Mediation and the requirement for a MIAM? Will the committee consider the extension of the Family Mediation Voucher Scheme to include other 'non-court dispute resolution processes' such as coaching and</p>	<p>The Committee said that they are keen to explore options for non-court solutions beyond mediation and welcomes viable alternatives that will help separating families. The impact of the Mediation Voucher Scheme will be assessed by the Ministry of Justice in order to inform any future policy measures around alternative dispute resolution. The Ministry of Justice is currently undertaking a public call for evidence regarding wider alternatives to dispute resolution which concluded last week. This will further inform thinking on dispute resolution processes.</p>

Question	Response
negotiation services rather than just mediation?	
Does the Committee feel that parents who are only out of prison because they are in custody of children are likely to be the better parents than those who have not been convicted?	The Committee said that its remit, when established by the Courts Act 2003 as an advisory non-departmental public body, is to be responsible for making rules governing the practice and procedure to be followed in family proceedings in the High Court and the family court. The question posed falls outside of this and is therefore not one that has been considered or discussed within this Committee. The Committee are therefore unable to express a view. However, the Committee suggested that if the participant who raised this point still believes that the question does have a bearing on the work of the Committee, then they should consider raising this in writing to the Secretariat and the Committee would endeavour to provide an appropriate response.
Whilst the PD36R and PD36Q are being extended through to early next year, what is the committee's view on something similar continuing beyond?	The Committee said that Practice Directions 36Q and 36R have been implemented to provide the family courts with the flexibility to divert from the Child Arrangements Programme in order to address pressures created by the pandemic. The Committee is keen to continue this flexibility post pandemic and for this reason we have agreed to the implementation of Practice Direction 36Y. PD36Y will come into place when the current Covid-related pilots (PD36Q and PD36R) come to an end and will allow for a seamless continuation of these flexibilities. PD36Y will mirror the modifications currently in place under PD36Q and PD36R. The PD will pilot for 12 months to allow for analysis of the impact of different approaches.