



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
via Microsoft Teams
At 10.30 a.m. on Monday 6 December 2021

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Godwin	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)
Michael Seath	Justices' Clerk
Tony McGovern	Solicitor
Graeme Fraser	Solicitor
Bill Turner	Lay Member

Guest:

Mrs Justice Knowles	High Court Judge
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ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Mr Justice Mostyn and District Judge Branston.

MINUTES OF THE LAST MEETING: 1 NOVEMBER 2021 AND FEEDBACK FROM THE 2021 OPEN MEETING

- 2.1 The minutes of the November 2021 meeting were approved as a correct and accurate record.
- 2.2 The Secretariat reported that a questionnaire had been sent out to the members of the public who attended the Open Meeting on Friday 3rd December and that the feedback received in the immediate aftermath of the Open Meeting was extremely positive.

ACTIONS LOG

- 3.1 MoJ Policy provided a brief update on the status of the action points not covered by the agenda.

MATTERS ARISING

Update on Justice Website Corrections

- 4.1 MoJ Policy provided a short update on the work they have undertaken to correct anomalies identified on the FPR webpages and outlined the planned next steps to address these.

PD36M changes

- 4.2 MoJ Legal confirmed that further changes to PD36M are ready for inclusion under PD Update No 10 of 2021.

ACTION POINT 1: MoJ Legal to confirm with the President when Designated Family Judge (DFJ) consent to the mandating of the online system in their areas has been received.

Summaries of the Family Procedure Rules (FPR) for Unrepresented Parties

- 4.3 MoJ Policy confirmed that the consolidated FPR summaries have been added to the Justice site under the 'Foreword and Summary of the Rules' tab.

ACTION POINT 2: MoJ Policy to send the Committee a link to the summaries.

ACTION POINT 3: MoJ Policy to contact the relevant Judicial Assistants to thank them for their work in drafting the summaries.

Oral Renewal of PTA Applications

- 4.4 MoJ Policy reported that the issue had initially been scheduled for discussion at the December 2021 meeting but following consideration by MoJ Policy and Legal it was agreed that further background material would be necessary first. The issue will be included on the February 2022 agenda instead and will be added to the Priorities table as a Tier 2 project.

Adoption Online Pilot PD

- 4.5 HMCTS reported that work is underway to develop a process to allow for adoption order applications to be made and progressed via an online system. Officials anticipated that the system will be available for use from early 2022, initially for post-placement order adoption applications with other types of applications being added over time.

- 4.6 The Committee agreed it would be preferable for members to consider the relevant Practice Direction before it is finalised and asked to be kept sighted on work relating to Parental Orders.

ACTION POINT 4: HMCTS to adapt work programme to include seeking the Committee's view into the process.

ACTION POINT 5: Issue to return as a substantive agenda item in February 2022.

Guidance for Trial Witness Statements

- 4.7 The President of the Family Division ('the President') noted that a memorandum regarding the drafting of witness statements has been prepared and he will consider the draft. The Committee agreed that the issue does not need to return at a future meeting.

PD36Q Update

- 4.8 MoJ Policy updated the Committee on the obligation on DFJs to share information regarding variations to CAP within their local justice areas with relevant parties.

ACTION POINT 6: To return with a further update in February 2022.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy reported that several new priorities had been added to the Committee's Priorities Table.
- 5.2 MoJ Legal reported no further update in regard to the PD annex.

STANDING ITEM: PRIVATE LAW REFORM

- 6.1 MoJ Policy provided a further update following the paper presented in November 2021 on the development of the Investigative Approach core pilot model. MoJ Legal subsequently provided a detailed overview of the specific changes that had been made to the draft pilot Practice Direction since it was last seen by the Committee. Members made a series of points about the drafting and the impact of the changes on existing PDs.
- 6.2 The Committee agreed that the final draft of the PD should be sent to the President and the relevant MoJ Minister for approval.

ACTION POINT 7: MoJ Policy to confirm with HMCTS about sending the C8 to Cafcass.

ACTION POINT 8: MoJ Legal to work with Justices' Legal Adviser member outside of Committee to clarify wording on provisions for Justice Legal Advisers.

ACTION POINT 9: MoJ Legal to incorporate feedback from Committee members into the final draft of the PD.

DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

- 7.1 MoJ Policy updated the Committee on proposed New Practice Direction 3B, which covers the the prohibition of cross-examination in person in family proceedings.
- 7.2 MoJ Policy further updated members on the plans for consulting on the new measures and the proposals for statutory guidance that are planned to accompany the proposed measures.
- 7.3 The Committee asked for clarification in certain areas of the proposed statutory guidance, particularly in relation to the section relating to the 'alternative means to cross examine'.

ACTION POINT 10: The Committee (and the Domestic Abuse Working Group) to be given the opportunity to see the responses to the consultation as early as possible.

SUBSTANTIVE ITEMS

UKSC GvG

- 8.1** MoJ Policy gave an update on the work on the International Family Working Group (IFWG) on the implementation of the UK Supreme Court judgment in G v G.
- 8.2** The IFWG recommended that PD12F should be amended to insert a reference to the '*Practice Guidance on Case Management in International Child Abduction Cases*' once it has been finalised, but that in the meantime a small change to PD12F should be undertaken straight away.

ACTION POINT 11: MoJ Policy to provide a further update in February 2022.

DEED POLL NAME CHANGES

- 9.1** MoJ Policy updated the Committee on the timetable for the remaining work involved. The Committee raised concerns in relation to the disparity between adult and child fees for name changes and asked whether consideration should be provided within the timetable if no further movement is made on the fees issue.

ACTION POINT 12: Issue to return for an update in February 2022.

MEDIATION VOUCHERS UPDATE

- 10.1** MoJ Policy provided the Committee with an update on the Mediation Vouchers programme, reporting that the scheme has been very successful and usage numbers have increased during its life. The Committee said that they recognised the importance and effectiveness of the programme and hoped that it will continue to expand.

ENFORCEMENT OF FINANCIAL REMEDY AWARDS

- 11.1** MoJ Policy provided an update on the recent meeting of the Enforcement Working Group in which it was proposed that a new standard directions order for general enforcement applications be piloted for a year from the end of May 2022. MoJ Policy asked for the Committee's agreement to this recommendation.
- 11.2** The Committee advised the proposals would benefit from some additional fine tuning from those with direct enforcement experience but agreed that this could take place within the existing timetable for the development and implementation of the pilot. A concern was also raised regarding the level of judiciary who should issue the order.

ACTION POINT 13: MoJ Policy to return with an update in February.

DRAFT RULES MIRRORING CPR PROVISIONS ON SEEKING PERMISSION TO APPEAL AT ADJOURNED HEARINGS

- 12.1** MoJ Legal spoke to changes recently made by the Civil Procedure Rule Committee (CPRC) regarding changes to Parts 40 and 52 of the Civil Procedure Rules (CPR) in relation to when applications for permission to appeal may be made. The Committee took the decision in November 2021 to mirror the changes to the CPR in the FPR 2010 amending SI which is due to be laid in January 2022. However, the Joint Committee on Statutory Instruments (JCSI) subsequently reported the CPR changes for defective drafting and the Committee were asked whether they would wish to follow the CPR drafting as it stands or to remedy the issues picked up by the JCSI.
- 12.2** The Committee stated that although preference was given to mirroring the changes made to the CPR, that they would prefer to adopt the alternative approach which spells out the proposition more explicitly. MoJ Legal confirmed that this preference will be drafted for inclusion within the upcoming SI.

JCSI REPORT IN RELATION TO THE FAMILY PROCEDURE (AMENDMENT No.2) RULES 2021

- 13.1** MoJ Legal noted that the Family Procedure (Amendment No. 2) Rules 2021 had been reported by the JCSI for not citing section 79(1) of the Courts Act 2003 as one of the powers under which the SI was made, and for not being clear about the level of consultation which underpinned the measures in the SI. The Committee agreed that this will need to be kept in mind when the Committee makes future decisions on who and when, and in what manner, they consult with in relation to proposed amendments to the FPR.

FAMILY PROCEDURE (AMENDMENT) RULES 2022

- 14.1** MoJ Policy set out the timeline to be achieved in order to meet the proposed laying date for the Family Procedure (Amendment) Rules 2022. Committee members noted the point at which they will be asked to sign the SI.
- 14.2** The Committee agreed that an advance copy of the Rules could be sent to the author of the 'Red Book' under embargo, at the same time to which it goes to members for signing.

ACTION POINT 14: MoJ Policy to arrange for the author of the 'Red Book' to receive a clearly marked "not for forwarding" copy of the Family Procedure (Amendment) Rules 2022.

H v AN ADOPTION AGENCY JUDGMENT

- 15.1** MoJ Policy updated the Committee on the establishment of the Working Group set up to consider Mr Justice Macdonald's second judgment in the case of H v An Adoption Agency and presented a timeline for when the group should meet and consider the issues raised. The Committee agreed to the proposals regarding the remit and timeframe for the Working Group's activities.

INFORMATION SHARING – IMMIGRATION PROCEEDINGS

- 16.1** MoJ Policy updated the Committee on their latest engagement with Home Office officials.

- 16.2** The Committee agreed there were concerns around the additional resource and time implications presented by the current proposals for resolving the issue and recommended that the Secretariat hold further discussions with Home Office officials before proceeding.

ACTION POINT 15: Secretariat to discuss the issue further with Home Office officials and return with an update in February.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

a) Civil Procedure Rule Committee

- 17.1** MoJ Policy met with the Secretary of the Civil Procedure Rule Committee and no specific point of interest was raised in discussion.

b) Court of Protection Procedure Rule Committee

- 17.2** MoJ Policy reported from the meeting with the Court of Protection Rule Committee. No specific point of interest was raised in discussion.

FORMS WORKING GROUP UPDATE

- 18.1** MoJ Policy reported that the Forms Working Group meeting scheduled for 25 November 2021 had been postponed as consideration of the standalone DA form has been referred to the DA Working Group; and data in relation to the potential Parental Responsibility Agreement form issue is not available. A further update will be provided in February 2022.
- 18.2** MoJ Policy presented the D81 form for the Committee's approval. MoJ Policy reported that time has been factored into the amendment timetable to deal with the language updates as part of the Divorce Dissolution and Separation Act (DDSA) changes at a later date as part of the ongoing implementation project.
- 18.3** The Committee asked for clarification on the impact of those divorces in the system within the system when the form comes into operation and noted a wording amendment in relation to pensions expert reports.

ACTION POINT 16: MoJ Policy to return in February with an update on the Parental Responsibility Agreement form.

ACTION POINT 17: MoJ Policy to consider the points raised on the D81 Form.

DRAFT FEBRUARY 2022 AGENDA

- 19.1** MoJ Policy advised that the draft February agenda will be updated following this meeting.

ANY OTHER BUSINESS

- a) Guidance for drafting orders**

20.1 Members noted that guidance, raised at the October meeting which is aimed at streamlining the process of amending and finalising an order, had now been finalised and agreed recognition of this should be formally recorded in the minutes.

b) New Family Law Act form

20.2 The Committee discussed concerns, raised by some District Judges, about the new Family Law Act (FLA) (Apply for a non-molestation or occupation order) form. The Committee noted the concerns raised and referred the matter to the Secretariat for follow-up work.

ACTION POINT 18: MoJ Policy to ensure colleagues at HMCTS are aware of the concerns raised.

c) Electronic access to family files

20.3 The Committee discussed judicial access arrangements and whether it was appropriate for all judges to have access to electronic family files across England and Wales.

20.4 HMCTS outlined the access arrangements and planned data protection safeguards which have been agreed and the process for implementing them. HMCTS reassured the Committee that there is also the ability for the Lead Judge in each area to monitor the position.

20.5 The President asked for further information about how further safeguards are being implemented.

ACTION POINT 19: HMCTS to return in February with a short paper on this.

d) Relationship between Guidance Notes and the Rules

20.6 The Committee discussed the relationship between guidance notes and the Rules. Members noted that it might make sense to link content on the Rules online with the President's guidance.

ACTION POINT 20: MoJ Policy to consider how to progress this query.

e) Data breaches and Police disclosure

20.7 MoJ Policy raised an issue relating to data breaches and police disclosure, which had been referred to the Committee following consideration by the Family Business Authority. The Committee agreed it should return as a substantive issue at the February 2022 meeting.

ACTION POINT 21: MoJ Policy to bring a paper to the February 2022 meeting to support a full item on the topic.

DATE OF NEXT MEETING

21.1 The next meeting will be held on Monday 7 February 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

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