



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE

In person at QB1M, Queens Building, Royal Courts of Justice

And remotely via Microsoft Teams

At 10.30 a.m. on Monday 7 February 2022

Present:

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| 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 |
| District Judge Branston | 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 |
| Graeme Fraser | Solicitor |

Guest:

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| Mrs Justice Knowles | High Court Judge |
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ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from His Honour Judge Godwin, Tony McGovern and Bill Turner.
- 1.2** The Secretariat has received extremely positive responses to the questionnaire sent out to those who attended the 2021 Open Meeting. A majority of the returns favoured future Open Meetings continuing on a remote basis. The Committee agreed with this approach.

- 1.3** The Acting Chair congratulated District Judge Williams on being appointed as a Circuit Judge. An advertisement seeking expressions of interest is due to go live shortly with the intention of having a replacement District Judge member of the Committee in place by either the June or July Committee meetings. In the meantime, HHJ Williams has agreed to stay on in the role.
- 1.4** The Committee welcomed the introduction of a new combined bundle of meeting papers. The Committee asked whether further work could be undertaken to provide a paginated version with a hyperlinked index.

ACTION POINT 1: The Secretariat to add hyperlinks and pagination to the March FPRC bundle.

MINUTES OF THE LAST MEETING: 3 DECEMBER 2021

- 2.1** The minutes of the December 2021 meeting were approved as a correct and accurate record.

ACTIONS LOG

- 3.1** MoJ Policy reported that the 21 actions recorded following the December meeting have update reports provided for within the February agenda. The only point not covered by the February Agenda related to the work undertaken to provide summaries of the Family Procedure Rules (FPR). The Secretariat confirmed they have contacted the three Judicial Assistants involved in the drafting of the summaries to thank them for their work.

MATTERS ARISING

Update on Justice Website Corrections

- 4.1** MoJ Policy updated the Committee that the FPR webpage anomalies identified in December 2021 have now been remedied.
- 4.2** MoJ Policy also confirmed that the justice.gov platform has been upgraded to support the home for the FPR. This existing platform will continue to support the necessary information until the migration to the new webpages can take place.

Private Law Reform: investigatory approach pilots

- 4.3** MoJ Policy reported that Practice Direction (PD) 36Z has been signed by both the President of the Family Division ('the President') and the relevant Minister, thereby confirming launch of the pilots in Dorset and North Wales on 21 February 2022.
- 4.4** MoJ Policy advised that a successful 2-day remote training session was completed on 25 and 26 January 2022 for both court areas. The President praised the work which had gone into the process so far and urged the Committee to look at the PD.

Family Procedure (Amendment) Rules 2022

- 4.5** MoJ Policy confirmed that the Statutory Instrument was laid in Parliament on Monday 17 January 2022.

Opposite Sex Civil Partnership Implementation

- 4.6** MoJ Policy reported that further delays have been encountered which means that colleagues in the Cabinet Office will be unable to lay the SI until later in 2022.

ACTION POINT 2: Issue to remain on matters arising in March 2022.

PD36M Update

- 4.7** MoJ Legal stated that PD36M has now been amended to mandate use of the online public law system by Local Authorities in 55 courts. The remaining family court locations (East London and the Central Family Court) will be mandated by 28 February for use of the online public law system. PD Update No. 1 of 2022 extended the pilot PD until 31 March 2022, at which point the intention is to replace it with a permanent PD under Part 41 FPR 2010.

ACTION POINT 3: Update on PD36M to be provided to the Committee for March 2022.

Enforcement in Financial Remedy Awards

- 4.8** MoJ Policy reported that the Enforcement Working Group's met on 19 January 2022. At this meeting it was agreed that, whilst preparation work is still needed for the pilot, the aim would be to start this pilot from 1st July 2022 and run for a year. The pilot will initially involve three courts, with a further three courts being used as comparisons to determine how the data will be captured.
- 4.9** The Committee recorded particular thanks for the work of MoJ Policy on the introduction of the amended D81 form.

ACTION POINT 4: Meeting of the Enforcement Working Group to be arranged before Easter as well as in August.

Information Sharing - Immigration Proceedings

- 4.10** MoJ Policy advised that they are currently working with the Home Office and HMCTS to develop an alternative solution following the Committee's view in December 2021 that neither of the proposals put forward were suitable.

ACTION POINT 5: Item to return with a further update in March 2022.

Cross Examination and Pilot PD for Notifying the Police about Part 4 FLA 1996 orders

Cross-Examination

- 4.11** MoJ Policy reported that the consultation on Cross-Examination provisions is still underway.

Pilot PD for Notifying the Police about Part 4 FLA 1996 orders

- 4.12** MoJ Policy stated that a pilot PD to improve notification processes to the police for Non-Molestation Orders and Occupation Orders with powers of arrest has been drafted. The pilot will run in the North Yorkshire police area for one year, ideally starting this February. The DA Working Group is

scrutinising the drafting of the PD on behalf of the Committee and the President has agreed to sign it out of Committee.

PRIORITIES TABLE AND PD UPDATES

- 5.1** MoJ Policy reported on the workstreams which are due for discussion as part of the February 2022 meeting.
- 5.2** The Committee asked whether updates could be provided on those areas mentioned as 'to be confirmed', especially 'one family/one judge'; information sharing; and feedback from the Harm Panel to be provided at a future meeting.

ACTION POINT 6: Secretariat to update Committee on the workstreams listed as 'TBC' in the Priorities Table following updates with relevant MoJ Policy owners.

STANDING ITEMS

DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

- 6.1** MoJ Policy updated the Committee on the proposed changes which stem from Section 67 of the Domestic Abuse Act (DAA).
- 6.2** The Committee were concerned that the PD focussed exclusively on domestic abuse and proposed that amendments to 91.14 be re-drawn to correspond with Court of Appeal decision EA1749 amongst other points of reference.
- 6.3** MoJ Policy requested that any further feedback members have be shared by 11 February 2022 so that an amended draft can be considered by the Domestic Abuse Working Group and subsequently presented at the March 2022 meeting.

ACTION POINT 7: The Committee to provide full comments on the new draft PD for MoJ consideration by 11 February via email.

ACTION POINT 8: Item to return as a full agenda item for the March 2022 meeting with an amended paper.

SUBSTANTIVE ITEMS

DEED POLL NAME CHANGES

- 7.1** MoJ Policy updated the Committee on their progress on deed poll regulation reform and reiterated their aim of meeting the April 2022 implementation target date.

ACTION POINT 9: Issue to return for an update in March with to provide relevant material and for a full update on the cost issue.

ONLINE SYSTEMS FOR MAKING PRIVATE LAW AND INJUNCTION APPLICATIONS

- 8.1** HMCTS reported on the plan to pilot an online system for legal representatives to submit section 8 Children Act 1989 applications through the CCD (Core Case data) digital platform, which is scheduled to begin in April 2022. Legal representatives will be invited to take part in the pilot based on the

number of applications they issue and the courts they use. The pilot will run in two courts per region.

- 8.2** The Committee noted the need for the system to be flexible, so it can, for example, respond to any future changes made to the Child Arrangements Programme. It also needs to facilitate listings in appropriate local courts and tasks being undertaken administratively. The Committee also suggested that a trial system to enable courts to test the new processes for making online private law and injunction applications be established to help with training.

ACTION POINT 10: PD amendments and/or new PD for 'Online System for Making a Private Law and Injunction Applications' to be presented to Committee at March 2022 meeting.

UKSC G v G – UPDATE ON A NEW RULE AND PROPOSED REVISION OF PD12F

- 9.1** The Committee was informed that in January the Working Group considered a new Chapter 6A for Part 12 of FPR on return proceedings with linked asylum claims. A revised draft rule would be considered at the WG meeting on 10 February 2022, intending to present a draft to the March Committee meeting. The WG was very firmly of the view that PD12F on international child abduction proceedings needed a complete overhaul; it was aware of the numerous priorities of the Committee.

ACTION POINT 11: Overhaul of PD12F to be raised again in March discussion of priorities.

DATA PROTECTION AND POLICE DISCLOSURE

- 10.1** MoJ Policy updated the Committee on a number of unauthorised disclosures resulting from the process of making and serving police disclosure orders. The Committee referred to the 2013 Protocol and Good Practice Model on Disclosure of Information in Cases of Alleged Child Abuse and Linked Criminal and Care Directions Hearings' and to note the Committee's steer that the Protocol requires revision. The Committee advised further consideration of the issues was necessary and proposed that both short- and long-term solutions should be put forward in a further paper.
- 10.2** The President noted that the issue reinforced the need for dialogue between those involved in the family and criminal jurisdictions, which reinforced the need to re-establish the Criminal-Family Interface Group. MoJ Policy advised that further work is required, which needs to be considered against existing resource capacity.

ACTION POINT 12: MoJ Policy and Legal, HMCTS and Committee to consider paper for March 2022 to include background and short- and long-term solutions.

ACTION POINT 13: Secretariat to make Criminal Procedure Rule Committee Secretariat aware of discussions around the issue.

ORAL RENEWAL OF PERMISSION TO APPEAL (PTA) APPLICATIONS

- 11.1** Proposals have been made to amend the FPR provision relating to permission to appeal. MoJ Policy introduced the issue, noting that any solution should take into account the impact on the commonalities between the FPR and the Civil Procedure Rules. The Committee agreed work should be undertaken to amend the FPR in the way proposed by a Committee member, but noted consultation may be a requirement before any changes are made.

ACTION POINT 14: MoJ Policy and Legal to prepare a paper outlining a timeline for the next steps, draft FPR changes and consideration of the need for a consultation for the April 2022 meeting.

FGM AND FM PROTECTION ORDERS / POLICE NOTIFICATION - REVIEW

- 12.1** MoJ Policy updated the Committee on the operation of pilot PD36W. Feedback from stakeholders indicated that the pilot has been operating successfully and no significant concerns have been identified.
- 12.2** The Committee agreed that in light of the positive evidence presented, the pilot should be made permanent. MoJ Policy agreed to take forward the work in putting in place an initial extension of PD36W, to allow for amendments to be made to the FPR later this year.

ACTION POINT 15: MoJ Policy and Legal to progress work to make permanent provision for what is currently provided for in pilot PD36W.

WORK OF THE FAMILY JUSTICE COUNCIL

- 13.1** The Acting Chair presented an update on the role of the Family Justice Council (FJC).

ACTION POINT 16: Recruitment exercises undertaken by the Family Justice Council to be circulated to the FPRC.

ADOPTION ONLINE PILOT

- 14.1** HMCTS presented proposals to pilot the use of the online adoption system by applicants and local authorities/ adoption agencies to start, progress and participate in adoption order proceedings in post-placement cases.
- 14.2** The Committee asked for assurances around stress-testing and specific aspects of the proposed online system. HMCTS confirmed that these matters will be discussed further within the Judicial Working Group and the Committee will be updated accordingly.
- 14.3** A draft pilot Practice Direction to underpin the first release of the online adoption application system was put to the Committee. There were no comments on the draft.

ACTION POINT 17: HMCTS to take forward specific points raised by the Committee.

ACTION POINT 18: Pilot Practice Direction to be put in place to support the online system.

ACCESS BY JUDICIARY AND NON-PARTIES TO HMCTS ONLINE SERVICES

- 15.1** HMCTS provided an overview of how access to Civil, Family and Tribunal Reformed services will be managed following a request made by the Committee in December 2021 for further details.

E-BUNDLE GUIDANCE

- 16.1** The Committee discussed the need for clarification on e-bundles and whether PD27A still applies especially in light of the recent President's guidance issued in December 2021. The Committee also discussed the need for 'lead-in periods' when efficiency statements are issued.

ACTION POINT 19: MoJ Policy and Legal consider whether PD27A ought to be amended in light of the recent Guidance from the President and the recent FPR Efficiency Statement.

ACTION POINT 20: MoJ to bring an update and timeline for this work to the April 2022 meeting.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 17.1** The FPRC Secretariat met with the Secretariats for the Civil, Criminal and Court of Protection Rule Committees in advance of the February 2022 meeting. No issues were raised for the Committee's attention.

FORMS WORKING GROUP UPDATE

- 18.1** MoJ Policy reported that no further issues have been added to the forms list at present. Therefore, no meeting of the Working Group has been arranged in the near future.

FPRC WORKING GROUPS

- 19.1** MoJ Policy presented a table which named the members of the current FPRC working groups. The Committee asked whether updates could be made to the Enforcement Working Group and recommended that the working groups dealing with the Divorce, Dissolution and Separation Act 2020; and the G v G decision be added to the list.

- 19.2** The Committee said that recent changes at Resolution and the Family Law Bar Association (FLBA) should be reflected.

ACTION POINT 21: Enforcement Working Group to be amended to reflect a change in membership.

ACTION POINT 22: Divorce Group to be recorded and kept on record until relevant sign-off period.

ACTION POINT 23: International Family Working Group to be added to the list.

ACTION POINT 24: The Secretariat to contact Resolution and the FLBA to update their membership details on their relevant Working Groups.

DRAFT MARCH 2022 AGENDA

- 20.1** MoJ Policy said that the draft March 2022 agenda will be updated following this meeting.

ANY OTHER BUSINESS

a) Financial Remedy

- 21.1** The Committee raised concerns in relation to the operation of the contested Financial Remedy digital system. MoJ Legal asked whether details of these concerns could be provided in writing so that they can be taken forward with the relevant team. The Chair indicated that any such details should be provided by 11 February.

ACTION POINT 25: The Committee members to speak to the Lead Judge in the Financial Remedies Court to provide written instances of concern.

ACTION POINT 26: Paper on the issue to be prepared for March 2022 meeting.

b) Transparency Review

- 21.2** The Committee briefly discussed proposals for media reporting pilots put forward by one of the sub-groups of the President's Transparency Implementation Group (TIG).

ACTION POINT 27: MoJ Policy and Legal to prepare a scoping and timeline paper on Transparency-related pilots for March 2022 meeting.

c) Fast Track Procedure

- 21.3** MoJ Policy reported that the issue raised by members on fast-track procedure for cases with assets of less than £250,000 has been passed onto the relevant MoJ team and will be considered alongside other existing priorities.

ACTION POINT 28: this item to be added to the Committee's priorities table.

d) Family Justice Young Peoples Board (FYJPB)

- 21.4** The Committee were updated on the recent Family Justice Young People's Board's (FYJPB) book launch which introduced a collection of members experiences including attendance at family court.

ACTION POINT 29: Secretariat to circulate link to FYJPB book to all members.

e) Pensions

- 21.5** Members noted the recent funding application submitted by the Pensions Advisory Group to Nuffield to review work already undertaken.

DATE OF NEXT MEETING

- 22.1** The next meeting will be held on Monday 7 March 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.

Simon Qasim – Secretariat
February 2022
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