



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 March 2022

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
His Honour Judge Godwin	Circuit Judge
District Judge Suh	District Judge
Her Honour Judge Williams	Representing District Judge
District Judge Branston	District Judge
Fiona James	Lay Magistrate
Poonam Bhari	Barrister
Melanie Carew	Children and Family Court Advisory Support Service
Michael Seath	Justices' Clerk
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 Her Honour Judge Raeside, Rhys Taylor, Rob Edwards and Tony McGovern.

MINUTES OF THE LAST MEETING: 7 FEBRUARY 2022

- 2.1 The Committee asked for the minutes of the February 2022 meeting to be updated at Paragraphs 10.1 and 10.2 to include references 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.

- 2.2 Aside from the changes to Paragraphs 10.1 and 10.2 the Committee approved the minutes as a true record of the February 2022 meeting.

ACTION POINT 1: FPRC Secretariat to update the section on Police disclosure and data protection to include reference to the protocol.

ACTIONS LOG

- 3.1 MoJ Policy reported that those areas not included on the agenda for this meeting have either been completed or are currently in progress.

MATTERS ARISING

Update on Justice Website Corrections

- 4.1 MoJ Policy reported that no new issues have been raised since the update provided in February. The new regime for checking new entries has been introduced and is working well.

Opposite Sex Civil Partnership Implementation

- 4.2 MoJ Policy reported that the situation remains unchanged from the information delivered at the Committee's February 2022 meeting.

ACTION POINT 2: Issue to remain on Matters Arising for the April 2022 meeting.

Practice Direction Update No 2 of 2022

- 4.3 MoJ Policy reported that Practice Direction Update No 2 of 2022 has been signed off by both the President and Lord Wolfson and has been placed online.

H v Adoption Agency Judgment Working Group

- 4.4 MoJ Policy reported that the first meeting to be chaired by Mr Justice MacDonald has been arranged for 17 March 2022. Details on the Agenda and the Working Group's remit are still to be confirmed.

Information Sharing - Immigration Proceedings

- 4.5 MoJ Policy advised that the intention was for this workstream to be covered as a full update however, unfortunately, feedback is still to be received from the Home Office.

ACTION POINT 3: Issue to return as a full item for the April 2022 meeting.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy reported that several new priorities have been added to the Committee's Priorities Table since the February 2022 meeting.

- 5.2 Those items in the Priorities Table that were previously listed as 'TBC' have been updated to provide a fuller explanation of current progress following a request from the Committee at its February 2022 meeting.

STANDING ITEMS

DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

a) Cross Examination

- 6.1 MoJ Policy reported that the FPRC consultation relating to the proposed New Practice Direction 3B closed on 11 February. Work has commenced to consider the responses received. It is hoped that the item will be brought back to the April FPRC meeting following consideration by the DA Working Group.

ACTION POINT 4: Issue to be discussed further in April 2022, if appropriate consideration by the DA Working Group and preparatory work has taken place.

b) S. 91(14) Orders

- 6.2 MoJ Policy explained that following comments from the Committee on the drafting of new PD12Q at the February 2022 meeting, MoJ Policy and MoJ Legal would need to redraft sections and seek the input from the DA Working Group before returning to the Committee with an updated draft.

ACTION POINT 5: A full item on s91(14) orders to be provisionally moved to the April 2022 meeting.

DIVORCE, DISSOLUTION AND SEPARATION ACT

- 7.1 MoJ Policy gave a progress update on the implementation of the Divorce, Dissolution and Separation Act 2020 (DDSA) in light of the coming into force date of 6th April. This included an update on the legislative changes made in recent months.
- 7.3 MoJ Policy advised that work is also continuing on court forms and that in response to the point raised in relation to relevant email addresses, that the current position of the usual address will continue.
- 7.4 The Committee asked whether there had been consideration of paragraphs 7, 8 and 9 of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973. Discussion on whether a rule or practice direction that considers the process of the application for a conditional order under the new rule 7.10 to be a trial or first trial followed.

ACTION POINT 6: MoJ Policy and MoJ Legal to consider Domicile and Matrimonial Proceedings Act 1973 issue out of Committee.

SUBSTANTIVE ITEMS

PD36Q and PD36R Update

- 8.1 MoJ Policy presented options in relation to PD36Q and PD36R which are provisions linked to the coronavirus pandemic and at present stated to expire at the end of the day on 31 March 2022.
- 8.2 The Committee agreed that PD36Q and PD36R should lapse as planned at the end of March 2022, at which point PD36Y will automatically come in to force. The Committee also agreed that PD36Y be updated slightly to include the wording “in light of and following the pandemic”.
- 8.3 The Committee discussed the pilot evaluation and the need to reflect the effect of the pandemic on Magistrates’ work, an area being currently looked at.

ACTION POINT 7: MoJ Policy to prepare a paper summarising lessons learnt from PD36Q and PD36R, and outlining plans for further learning from PD36Y for the April FPRC meeting.

ACTION POINT 8: The Committee agreed that PD36Q and PD36R should lapse as planned at the end of March. PD36Y to be amended as agreed by the Committee.

ONLINE SYSTEMS FOR MAKING PRIVATE LAW AND INJUNCTION APPLICATIONS

- 9.1 HMCTS updated the Committee on the work which has begun on the administrative reform of private law and domestic abuse services (PRL), to put in place the ability to create and submit applications via an online service (CCD) and, in time, to progress cases via CCD. Initially, the service will only be available to certain legal representatives, but access will increase over time.
- 9.2 The Committee asked whether further clarification could be provided on a number of points of operational detail, for example how the level of urgency on each case will be determined when it is forwarded to the Southampton National Business Centre to ensure that there are no delays. HMCTS responded to these queries. The Committee considered the proposed new Practice Direction to underline the new online system and raised two points of detail.
- 9.3 HMCTS stated that the intention is to return to the Committee in summer 2022 ahead of the pilot being extended to allow citizens to submit applications using CCD and when piloting of the use of the CCD system to case manage all aspects of private law and Family Law Act injunction applications begins.
- 9.4 Subject to addressing two points of detail raised by the Committee, it was agreed that the proposed new pilot Practice Direction to underpin the online system should be submitted to the President and then to the Minister for approval.

ACTION POINT 9: New pilot PD to be finalised by MoJ and HMCTS and be submitted to the President and then the Minister.

LEGAL BLOGGERS AND PD30B

- 10.1 MoJ Policy noted that Practice Direction 30B, which covers transparency in appeals, was not amended at the same time as other provisions when the legal bloggers scheme was piloted and later made permanent. The Committee agreed that the relevant changes should now be made as it was an oversight, rather than an explicit decision at the time of the original changes.

ACTION POINT 10: MoJ Policy and Legal to progress changes to PD30B as part of a future Practice Direction Update so that the provision for media representatives is mirrored for legal bloggers.

TRANSPARENCY

- 11.1** MoJ Policy advised that a policy paper outlining the implications regarding the President's Transparency Implementation Sub-Group proposals for a media reporting pilot would be brought to the April 2022 meeting, together with a proposed timetable for their implementation. The Committee were keen that the issue is fully discussed at its April 2022 meeting.

ACTION POINT 11: MoJ Policy and Legal to return with a policy paper for the April FPRC meeting.

POLICE DISCLOSURE AND DATA PROTECTION

- 12.2** MoJ Policy introduced the issue, referencing the proposed short-term solutions to ensure that confidential contact details are not disclosed to parties on orders for police disclosure. The Committee advised that they were of the view that a combination of the options for the short-term Public Law solution should be progressed.
- 12.3** The Committee asked whether clarification could be provided on how this work would be taken forward in working with two unrepresented parties; and where the police redact information, then who would check the detail.
- 12.4** The Committee agreed that the recommendations in relation to the Private Law proposals should be adopted, but that a further paper looking at the operational practicalities and the potential need for wider consultation should be prepared for April.
- 12.5** The Committee suggested that HHJ Moradifar should be made aware of the potential changes due to his work with on the current Standard Orders.

ACTION POINT 12: MoJ and HMCTS to progress work on the short-term Public Law solutions agreed by the Committee.

ACTION POINT 13: MoJ Policy, HMCTS and MoJ Legal to prepare a paper for the April FPRC setting out the draft PD and FPR changes necessitated by the short-term Private Law solutions. Paper will also set out the operational impact of any proposed changes and the plans for any form of consultation.

ACTION POINT 14: Mrs Justice Knowles to make HHJ Moradifar aware that work on the Police Disclosure issue is being progressed.

FINANCIAL REMEDIES ONLINE

a) Feedback on use of contested FR online system

- 13.1** HMCTS spoke to the issues raised by the Committee at the February meeting.
- 13.2** The Committee welcomed the update and the plans that are being put in place to resolve concerns raised by courts and users about the online system. The Committee also welcomed the fact that the contested and consent online systems will, from early April, be

able to be used for financial remedy applications associated with civil partnership orders and for maintenance pending suit applications.

- 13.3 HMCTS further reported that a range of videos and training tools are currently being worked on in consultation with the Judicial College.

ACTION POINT 15: Further update on the contested FR system work to be scheduled for the April 2022 meeting.

b) Amendments to PD36N (contested FR online) and PD41B (consent FR online)

- 13.4 MoJ Legal updated the Committee on amendments to Practice Direction 36N and to Practice Direction 41B, which if agreed will be included in Practice Direction Update No. 3 of 2022. These amendments will reflect the fact that, once section 1 of the DDSA comes into force, it will be possible to apply online for most financial remedies in connection with all matrimonial or civil partnership proceedings, not just in connection with divorce proceedings.

- 13.5 The Committee agreed to the proposals, subject to PD36N being extended to the end of 2022 rather than to the end of September 2022. HMCTS agreed with this suggestion.

ACTION POINT 16: Amendments to PD36N and PD41B to be finalised. PD36N to be extended to the end of 2022.

MEDIATION VOUCHERS UPDATE

- 14.1 MoJ Policy stated that an extension of the scheme's end date of 30 September 2022 was included in Practice Direction Update No. 2 of 2022. The successful take-up has led to an extension being sought for the next financial year. The Committee welcomed this news and asked whether it was intended to issue a press release with the relevant data for further information.

ACTION POINT 17: Secretariat to work with MoJ Policy to include acceptable level of information on the current scheme outcomes in the March 2022 minutes.

G v G – INTERNATIONAL FAMILY WORKING GROUP

- 15.1 MoJ Policy reported that the International Family Working Group (IFWG) met on 10 February 2022 and agreed to take account of the then forthcoming judgment on a child abduction case with linked asylum claim (Re R) before submitting a revised draft rule to the Committee. It is envisaged that this be brought back to the Committee in April.

DEED POLL NAME CHANGES

- 16.1 MoJ Policy presented the Committee with guidance drafts which have been prepared for applicants and new statutory declaration forms for the new process, including draft guidance for deed poll applicants on completing the C100 family form.
- 16.3 The Committee noted the previously discussed fees issue and whether clarification could also be provided on the proposed level of judge who would deal with the process.

ACTION POINT 18: MoJ Policy to make the MoJ Fees Policy Team aware of the Committee's view of the timing of work.

ACTION POINT 19: Deed Poll name changes to return as a substantive update for the April 2022 meeting.

BULK SCANNING

- 17.1 The Committee agreed a draft new Practice Direction 5D which will make permanent (as opposed to pilot) provision for bulk scanning of documents. It replaces pilot Practice Direction 36O and pilot Practice Direction 36K. The intention is to include it in Practice Direction Update No.3 of 2022 which will come into force on 3 April 2022 – the same date as new r5.8 FPR comes into force.

ACTION POINT 20: MoJ Legal and HMCTS to add new PD5D to future PD Update.

SLIP RULE REVIEW

- 18.1 MoJ Policy presented the findings of a review they had undertaken on the operation of Practice Direction 29D, which indicated it is functioning as intended. The Committee welcomed the findings of the review.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 19.1 The Secretariat reported they had met with the Secretariats of the other rule committees and that no issues had been highlighted for the Committee's attention as part of these conversations, although the 'Police Disclosure and Data Protection' issue was specifically noted to the Criminal Procedure Rule Committee Secretariat.

FORMS WORKING GROUP UPDATE

- 20.1 MoJ Policy said that the next meeting of the Forms Working Group has been arranged for 16 March 2022. The focus of the meeting will be on the proposed changes to a suite of existing forms to reflect the implementation of all cross-examination provisions as part of the Domestic Abuse Act implementation. Discussion will also take place on a standalone form which has been cleared by the Domestic Abuse Working Group.

FPRC WORKING GROUPS

- 21.1 MoJ Policy presented a table which named the members of the current FPRC working groups.
- 21.2 The table will be updated further to reflect that Mr Justice Peel will replace Mr Justice Mostyn on the Enforcement Working Group from 25 April 2022, and that Graeme Fraser and Rhys Taylor have been added to the Enforcement Working Group with immediate effect. Rhys Taylor has also been added to the Costs Working Group

ACTION POINT 21: FPRC Secretariat to update the Working Group membership table following comments received at this meeting.

DRAFT APRIL 2022 AGENDA

- 22.1 MoJ Policy advised that the draft April 2022 Agenda will be updated to take account of the outcomes of the March 2022 meeting.

ANY OTHER BUSINESS

a) Toxicology

23.1 The Committee were informed that correspondence (which was also sent to the President) addressed to Lord Wolfson had been received from an MP on behalf of a business in their constituency which raised concerns about the approach to toxicology testing in the family courts and how the subsequent evidence is used. MoJ Policy reported that a 'Task and Finish Group' had been established to look at the issues involved in greater detail.

b) Legal Professionals and levels of confidentiality

23.2 The Committee noted a suggestion in the judgment in LS v PS that the level of confidentiality in respect of Financial Dispute Resolution appointments should be "dialled down" if a party has acted with unambiguous impropriety. The Committee agreed not to take any further steps on this suggestion.

c) Data Collection Project

23.3 The Committee were informed of progress made on compiling details of the outcomes in financial remedy applications, which it is hoped will provide a useful guide to parties seeking to resolve financial matters. The Committee noted that some Rule changes may be necessary further down the line.

d) District Judge Member of the Committee

23.4 The Committee were informed that the advertisement seeking expressions of interest for the District Judge member of the Committee has gone live with a closing date of 25 March 2022. The Committee were encouraged to raise this with all relevant qualified individuals who may have an interest.

DATE OF NEXT MEETING

24.1 The next meeting will be held on Monday 4 April 2022. This will be a hybrid meeting and it will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat
March 2022
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