

Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting

Friday 13th May 2022 (held remotely, via video conference).

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)
Lord Justice Birss, Deputy Head of Civil Justice
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman QC
His Honour Judge Bird
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Apologies

District Judge Cohen; Mr Justice Holgate (Item 6), Mr Justice Swift (Item 6).

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls (MR), opened the annual public meeting and was pleased to welcome the 29 public attendees, along with various officials from across Government, who joined the meeting to observe the committee in session.
2. Praise was extended to everyone who supports the essential work of the Committee. In particular, it was noted that this is Lizzie Iron's last annual public meeting, because her term of office comes to an end in October, having reached the maximum six year duration on the Committee. Ms Iron has made an extraordinary contribution to civil procedure, ensuring the non-lawyer's perspective is heard loud and clear and considered as part of the Committee's deliberations.
3. A personal welcome was expressed to District Judge Paul Clarke as the newest member. DJ Clarke sits at the County Court at Burnley and joined the Committee in February this year, following DJ Parker's elevation to the Circuit Bench.
4. Carl Poole, the Secretary to the CPRC, was thanked for his exceptional hard work over what has been a very busy and, at times, difficult year.
5. The weight, breadth and pace of Committee work is extensive, illustrated, in part, by the number of CPR Updates, so far this year there have already been nine PD Updates, in addition to the mainstream SI, which exceeds the usual volumes.
6. Current examples of principal projects include the simplification work undertaken by Mr Justice Kerr and the s.2(7) Sub-Committee, comprising Isabel Hitching QC and Lizzie Iron. (Item 3 below); the Service Sub-Committee (Item 4 below) led by Tom Montagu-Smith QC, along with other members, most of whom are co-opted: Paul Lowenstein QC and Sam Goodman together with judicial co-optees: Mr Justice Chamberlain, Mr Justice Foxton and Mr Justice Miles is also significant.

7. Looking ahead, the MR spoke of an exciting year ahead for civil justice generally. The recent enactment of the Judicial Review and Courts Act 2022 provides, amongst other measures, a statutory foundation to a new Online Procedure Rule Committee, intended to oversee the creation of the digital justice system, furthering the co-operation between the Civil, Family and Tribunal jurisdictions and enabling regulation of the pre-action space. This and other reforms illustrate the positive modernisation of justice in this country. Another key area of upcoming work concerns Costs. In his capacity as Chair of the Civil Justice Council, the MR took the view that a Costs Working Group should be established. It is chaired by Lord Justice Birss and is looking, holistically, at various aspects of costs (Guideline Hourly Rates, Costs Budgeting, Pre-Action and the effect of Fixed Recoverable Costs reforms on other aspects of costs) because, the way they all interact, is very important. Recommendations are, therefore, anticipated in due course. (The public questions (Item 7 below) also refer.)
8. The MR hands the Chair to Birss LJ, Deputy Head of Civil Justice.

Item 2 Minutes, Action Log & Matters Arising

9. The Minutes of the meeting on 1st April 2022 were **AGREED** and the Action Log was duly **NOTED**.

Item 3 Section 2(7) Sub-Committee

10. The Chair reiterated the MR's comments as to the value and importance of this work, endorsing thanks to all concerned.
11. This item comprises five elements. The proposals in relation to Parts 14, 15 and 16 were first before the Committee on 4th March 2022 and have since been consulted upon. As such, the drafting has been revised to take account of the consultation responses and is, therefore, now ready for final determination. Kerr J expressed gratitude to the three respondents who submitted comments in response to the related consultations: the Forum of Insurance Lawyers (FOIL); the Association of Personal Injury Lawyers (APIL) and James Petts (Barrister). The comments and analysis were set out in detail together with tracked change drafting, which was duly **NOTED** and discussed.
12. The proposals regarding Part 17 and 38 are yet to be consulted upon, they arise following the last meeting and at which the Lacuna Sub-Committee raised related points. The proposed reforms to Part 19 are also new, having not yet been consulted upon and as such, as with Parts 17 and 38, are before the Committee for decisions in principle, prior to consultation.
13. Throughout, the language has been simplified and clarified, where necessary, and changes have been made to ensure gender neutrality.
14. Each was discussed in turn, a summary follows:

CPR Part 14 & PD 14 - *post consultation proposals* CPR(22)16

15. In reviewing the consultation responses, some suggested revisions were not deemed suitable for adoption because they were introducing substantive changes not already in the existing Part 14 and thus outside the scope of the project; and/or because of insufficient need, for example, the proposal that a new provision be introduced to bind a party by an admission unless and until it is withdrawn in accordance with the rules. Other proposals appeared to provide for unnecessary bureaucracy/complexity, which the reforms are seeking to remove. However, the proposed revision to r.14.1(2)(a) to make it clear that an application regarding pre-action admission is determined by a Judge and is not an administrative function, is recommended for adoption.

16. It was **RESOLVED** to approve, subject to final drafting, the amendments to CPR Part 14 (Admissions) and to dispense with Practice Direction 14.

17. **Action:** In consultation with Kerr J, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Part 15 - post consultation proposals CPR(22)17

18. Isabel Hitching QC was pleased to confirm that all the respondents to the consultation welcomed the work and mostly supported the shortening of the rules. The consultation on Part 15, also included an item of Lacuna (from 4th March 2022 meeting) wherein the draft of Rule 15 incorporated changes to r.15.4(2) and r.15.11(1)(c) to make clear that a defendant who applies for summary judgment or to strike out a claim need not file a defence before the application is heard. This is already the case for summary judgment, but the Rules are not clear, as illustrated in *King v Stiefel* [2021] EWHC 1045 (Comm) at [28] – [45]. The underlying rationale is to avoid wasted expenditure in the event that the application is successful, and the same rationale should apply where a defendant applies to strike out a claim. So that an equivalent approach is adopted in those circumstances, further revisions to address this issue were proposed in relation to r.24.4(2) and r.3.4 by way of a new sub-rule (7).

19. One respondent raised a substantive point of principle regarding a defendant applying to strike out a claim. The Sub-Committee take the view that an application for a strike out is based on the viability of the claim on the face of the particulars of claim. A claimant should not, therefore, be ‘ambushed’ by not having sight of a defence. Further, if the court considers that there is any ‘ambush’ it can vary this usual rule under its general case management powers and order that any strike out application be heard after the service of a defence. In any event, the view is that this point is outweighed by the reasons given for the change in the consultation material and accordingly, no change is recommended.

20. The issue of “signposting” was also raised in response to the consultation, such as with the reformed r.15.4(2). The proposed reform retains the references to the rules (in other Parts of the CPR), which was felt important so that users can cross refer, but it removes the summaries of each of the rules referred to therein. The feedback raises a point of principle, which was discussed. Ms Hitching emphasised that the concern has been carefully considered. It was noted that it was not raised by either of the other respondents. The concern is primarily for Litigants in Person (LiP). Junior lawyers will be under supervision and will, as part of their continuous professional development, develop familiarity with the rules and requiring them to check the express provisions cited is not considered to be either unduly onerous or confusing. As to LiP’s, it was noted that no LiP had in fact responded. Nor had a body which might be seen as representative of lay consumers (which did respond to a prior consultation).

21. Lizzie Iron (lay advice sector representative) was content with the deletion of these signposts and ventilated the view that a LiP who needed help to navigate the rules, is likely to need more help than a signpost could provide and there are sources available to access that extra help.

22. On balance, therefore, the Sub-Committee remain of the view that clarity and usability has not been compromised by brevity and it is not proposed to reinstate the signpost narrative, and this was **AGREED**.

23. The drafting of r.15.10(4) and r.15.11(2) was discussed, with helpful input from Alasdair Wallace (Drafting Lawyer) whereupon it was **AGREED** to amend, “should” to, “must” because the related provisions were a requirement within the rules.

24. A discussion ensued as to whether form numbers should be expressly included in Part 15, because there are a variety of options available as to what can constitute a defence. It was **AGREED** to remove form numbers from the drafting of the reformed Part 15.
25. It was **RESOLVED** to **approve, subject to final drafting and adoption of the above points, the amendments to CPR Part 15 (Defence and Reply) and to dispense with Practice Direction 15.**
26. **Actions:** In consultation with Isabel Hitching QC, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Part 16 & PD 16 - post consultation proposals CPR(22)18(a) and (b)

27. Kerr J provided an overview of the consultation responses, before addressing each point in turn.
28. HHJ Jarman QC observed the need for the final drafting to reflect the necessary linguistic variances for Wales, in consequence of the Renting Homes (Wales) Act and this was **AGREED**.
29. The proposal to retain the PD in a revised form attracted reasonably extensive feedback during the consultation. Some alternative drafting options were also aired, for example for para 6.3(5) concerning “impecuniosity” and para 12.2 re attaching documents to the statement of case. In relation to para 6.3(5), DJ Clarke noted that in his experience this is not a topic on which a LiP will need to use the rules and as such, there is merit in using text that reflects the relevant legal test and was anxious not to avoid unintended consequences, if the drafting is changed significantly, on a subject where there is authoritative case law. The counter view was that it is not necessary to relay substantive law in the rules. Kerr J proposed another drafting option for para 6.3(5), thus, “if the claim relates to credit hire, whether the claimant could afford to pay in advance to hire a replacement car and, if not, why not (‘impecuniosity’)”. The Chair made clear that this is not intended to change the law of credit hire; this concerns a pleading requirement and the Committee’s aim is to reflect language that is in general use and thus understandable. This was **AGREED**.
30. At para 9.2, it was **AGREED**, in response to the feedback, to reintroduce the text, “seek the court’s permission” in the last sentence after the new text of, “a party may”.
31. In what is the new draft para 11.3, it was **AGREED**, in response to the feedback, to retain the text, “relied on” at the end of the sentence after, “limitation period”.
32. In what is the new draft para 14.2, it was **AGREED**, in response to the feedback, to replace the proposed text, “wishing” [to amend a statement of case...] with “seeking to”.
33. It was **RESOLVED** to **approve, subject to final drafting and adoption of the above points, the amendments to CPR Part 16 (Statements of Case) and the supplementing Practice Direction 16.**
34. **Action:** In consultation with Kerr J, Drafting Lawyers/Secretariat to include in the upcoming CPR Update as part of the October 2022 in-force cycle.

CPR Parts 17 & 38 - proposed amendments CPR(22)19 & LSC2022-07

35. At the last meeting, the Lacuna Sub-Committee (LSC) reported on recent case law developments which highlighted a possible need to address certain drafting issues and in particular the interaction between amendment and discontinuance of claims, causes of action and proceedings. It was, therefore, resolved that the s.2(7) Sub-Committee

consider the issues concerning Part 17 and Part 38, together, (meaning the review of Part 38 is considered earlier than anticipated).

36. In addition, the LSC have raised a matter concerning CPR 17.4(2). Dr Anja Lansbergen-Mills explained that it flows from a public question at last year's open meeting on 14th May 2021 and is in response to the decision in Goode v Martin [2001] EWCA Civ 1899 regarding amendments to statements of case and limitation periods.
37. In Goode v Martin, the question arose as to whether CPR 17.4(2) permits an amendment to the claim out of time, to rely on facts raised by the defence, that had not been pleaded in the statement of claim.
38. The Court of Appeal found that it did so permit, and held that CPR 17.4(2) should be interpreted consistently with the CPR's Overriding Objective and with s.3(1) Human Rights Act 1998 and the Article 6 ECHR right of access to the court, and having regard to the broader terms of s.35(5)(a) Limitation Act 1980.
39. The LSC further note that the decision in Mulalley & Co Ltd v Martlet Homes Ltd [2022] EWCA Civ 32 appears to have fully confirmed the point.
40. The LSC conclude that whilst CPR 17.4(2) gives effect to this condition, it is drafted in more restrictive terms than s.35(5)(a) Limitation Act and as such a drafting proposal to amend r.17.4(2) in line with construction that is now to be afforded to it following Goode v Martin could be advanced and included within the s.2(7) Sub-Committee's Part 17 rolling consultation (albeit that the point is distinct from the work of the s.2(7) project). It is also proposed to specifically consult in parallel with the Heads of Division, and any other appropriate persons.
41. It is felt desirable that the meaning that the law gives to the rules is readily ascertainable on their face and such an amendment facilitates accessibility of that rule to LiP and promotes access to justice more generally.
42. The following amendment to r.17.4(2) was proposed and **AGREED**:

"The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings."
43. In reviewing the proposed drafting revisions to Part 38, Mr Justice Trower proposed a revision to the proposed draft r.38.7(2) to insert "form and the claim" after "claim" and in consequence remove, "~~which~~". This was **AGREED**.
44. It was **RESOLVED** to **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 17 (including the reformed r.17.4(2)) and Part 38, **AND ARE FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
45. **Actions:** (i) Sub-Committee to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, at the earliest opportunity. **Post Meeting Note:** *Part 17 & 38 material published as part of the rolling consultation on 24th May 2022, the closing date for comments is 21st June 2022.* (iii) LSC consult in parallel with the Heads of Division, and any other appropriate persons.

CPR Part 19 & PD 19 A, B & C – proposed amendments CPR(22)20(a) and (b)

46. Ms Hitching QC confirmed this had not been before the Committee, substantively, until now. As such, it is for approval in principle, subject to the rolling consultation. Part 19 is a substantial CPR Part.
47. During the course of this review, the Sub-Committee has been made aware of suggestions by some practitioners that the courts could usefully review the provisions in relation to Group Litigation Orders (GLO). However, no substantive amendments are being proposed, because the Sub-Committee think the concerns may be best addressed by court guidance, rather than revising the rules. However, if amendments were deemed necessary, they would require consultation which is beyond the scope of a s.2(7) rolling consultation. Nonetheless, they feel that the present exercise is a worthwhile one and will provide a better foundation for any wider substantive consultation, enabling it more clearly to be seen how the perceived problems can be best addressed. In the meantime, it would assist those seeking to understand and apply Part 19.
48. The Senior Master, Chief Chancery Master and Master Cook (who regularly deal with GLOs in practice) agree with this approach, to whom thanks were expressed. They have also confirmed that they are content with the proposed amendments to Part 19 and have suggested some changes to the administrative details set out in PD 19B, to ensure it reflects present practice, and these have been incorporated.
49. Section II is quite long and technical, and necessarily so, accordingly the proposed changes are minimal.
50. In summary it is proposed to:
- merge PD 19A (which dealt with Section I) with the rule i.e. dispense with PD 19A;
 - reduce the scope of PD 19C with some text imported into the rule and duplicative and obsolete text deleted. (As this PD deals with what is Section II of the rule it has been renumbered PD 19A so that it is the first remaining PD). The remaining scope of the PD is very limited, but on balance, it is considered that the guidance is sufficiently valuable for it to be retained;
 - PD 19B has been reduced in scope with some text imported into the rule and duplicative text deleted; the question of whether to include address details (at para 11) is to be left open, subject to the consultation and further determination;
 - change the numbering within the rule (to run sequentially); this was raised by the Council of Circuit Judges during previous consultations;
 - introduce gender neutral language;
 - consider some consequential/form related issues, for example the possible creation of a prescribed form (using the model annexed to PD19C).
51. It was **RESOLVED** to **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 19, **AND ARE FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
52. **Actions:** (i) Sub-Committee to provide final consultation material to the Secretariat (ii) Secretariat to facilitate publication as part of the rolling consultation facility, at the earliest opportunity. **Post Meeting Note:** *Part 19 material published as part of the rolling consultation on 24th May 2022, the closing date for comments is 5th July 2022.*

**Item 4 Service Sub-Committee (PD6B: Gateways for Service Out of the Jurisdiction)
CPR(22)21 & Annexes: Category 1, Categories 1-2, Categories 1-3**

53. The Chair paid tribute to Tom Montagu-Smith QC, the Sub-Committee and its co-opted members, including Sam Goodman and Paul Lowenstein QC for their extensive and significant work.
54. Mr Justice Foxton was welcomed to the meeting and to whom particular thanks were also expressed; it was noted that his contributions have been invaluable, which included detailed liaison with the Lord Chancellor's Advisory Committee on Private International Law (PIL), chaired by Lord Mance.
55. Thanks, were also noted for the assistance of MoJ International Law Policy, who have reviewed the proposals and have no material comments.
56. Mr Montagu-Smith set out the background. The task being to consider whether changes are required to the 21 jurisdictional gateways found in paragraph 3.1 of PD6B. The gateways define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction and as such, they are central to defining the scope of the territorial jurisdiction of the Courts of England and Wales.
57. It has been necessary to carefully consider each gateway and the changes proposed with the purpose of seeking to ensure that the scope of the gateways match the policy objectives underpinning the existing gateways. As a starting point, this was aided by a paper, entitled "*The Jurisdictional Gateways – Some (Very) Modest Proposals*" by Foxton J (which has been published in Lloyd's Commercial and Maritime Quarterly in March 2022). The paper identified 10 possible amendments to the gateways. Secondly, the concern regarding the ability of the Courts to assist parties seeking to obtain information from non-parties where assets have been removed from the jurisdiction has been carefully considered. The issue has been particularly acute in cases where a party has needed to identify the destination of money or cryptoassets and the increasingly important context of ever advancing digital working.
58. Consultation has been undertaken. Overall, the responses were very positive and supportive of the review. Detailed comments have been received from members of the PIL Committee. The focused consultation generated responses from the Law Society, Bar Council and Judiciary. All of the feedback received has been carefully considered and, where appropriate, changes have been made to the proposals in consequence. This has also led to a suite of other amendments aimed to address some further issues raised in reported decisions or commentaries. Thanks were expressed for the careful and considered submissions of all respondents. The Sub-Committee is also grateful to Thomas Raphael QC for his assistance, both in relation to the topic of gateways for anti-suit injunctions, and in relation to a number of other issues.
59. However, some concerns were raised regarding the breadth and widening of some proposed gateway changes. Some others are calling for a more radical approach, but which the Sub-Committee felt was beyond their current scope. It was, therefore, recognising that the proposals are unlikely to address all concerns raised and as such, the proposals have been categorised into three groups to aid CPRC consideration and to serve as a process to triage decision making.
60. The full suite of proposals, of which there are in excess of 20, consist of amended and new gateways within PD6B together with some other proposed rule changes. The Sub-Committee's report sets out each proposed amendment in detail. The report was duly **NOTED** and discussed. Birss LJ asked to deal with the principle first, with any remaining points of detail being determined out-of-committee.

61. It was highlighted that of the six proposed changes in Category 2, Gateway 6(d) (concerning contract claims where there was a jurisdiction agreement in favour of the Courts) had been previously deleted as part of the package of changes on 6th April 2021 (pursuant to the Civil Procedure (Amendment) Rules 2021, SI 2021/117) which introduced a new service provision permitting service out of the jurisdiction without permission.
62. However, it has been pointed out that the differing terms of the old gateway (6)(d) and CPR 6.33(B) may have opened up a potential lacuna. This is because the revised wording does not naturally lend itself to the case where the claimant does not contend that the defendant is party to the contract, and the injunction is sought on the basis that if the defendant wishes to assert it is, it must comply with the English jurisdiction clause. To address this issue, it is proposed to amend CPR 6.33(2B) to add in a new sub-rule (c) for clarificatory purposes and this was **AGREED**.
63. Foxton J presented the proposed reforms under Category 3 regarding unlawful interference, which were discussed. The Sub-Committee accepts that this category of proposals may be seen as a significant extension of the letter and spirit of the current gateways; indeed, the drafting process has proved particularly challenging.
64. HHJ Jarman QC welcomed the addition of “Wales” (jurisdiction of England and Wales) throughout the amendments.
65. The MR commended the Sub-Committee for the speed, spread and importance of the work; acknowledging its complexity. He observed that in some cases the reforms are overdue and the proposals should be viewed positively. Category 3 is not as radical as may be perceived; indeed, they are welcomed by the Queen’s Bench Masters as practical proposals and this was agreed. Overall, he supported all the proposed changes.
66. Mr Montagu-Smith explained the ancillary issues identified in the report. Essentially, threefold, as follows.
67. Service of applications and orders. The position where proceedings are served within the jurisdiction, but subsequent applications have to be served out of the jurisdiction, or where the defendant submits to the jurisdiction, are not expressly addressed. In response to the consultation, the Law Society suggested that the right to serve such documents out of the jurisdiction on a defendant should follow automatically from permission to serve the claim being granted. Having carefully considered this, the Sub-Committee agree.
68. Whether a new gateway for claims relating to cryptoassets should be introduced, given the sharp rise in such cases. It was **NOTED** that the Law Commission has recently announced its intention to consider the conflicts of law issues raised by cryptoassets and accordingly, any proposals for reform in this area would be best addressed once the Law Commission has completed its work and this was **AGREED**.
69. Whether a general gateway for applications against non-parties should be introduced, which was also raised by the Law Society, to provide a solution to a problem which arises in particular in applications for charging orders. The Sub-Committee do not consider that a general rule permitting service of associated applications on non-parties can be justified, at least without significant further thought and consultation. The scope of such a rule would be very broad and conflict with caselaw. Following consideration, the prevailing view is that the particular problem identified with charging orders can be addressed by a more targeted amendment to CPR Part 73 to make it clear that where service of the application notice, outside of the jurisdiction, is required, the permission of the court is not required for service and this was **AGREED**.
70. It was **RESOLVED** to **approve, subject to final drafting:**

- suite of reforms proposed across Categories 1 - 3 to amend and create new gateways within PD 6B Service out of the Jurisdiction;
- amendments to CPR Part 6 Service of Documents;
- amendments to CPR Part 62 Arbitration Claims;
- amendment to CPR Part 73 Charging Orders;
- await the conclusions from the Law Commission's review concerning cryptoassets before taking further action on this topic.

71. **Actions:** Tom Montagu-Smith QC (and Foxton J) to finalise drafting and submit to MoJ drafting lawyers and Secretariat for review and incorporation into the next mainstream CPR Update, due to be published in July and in-force in line with the October 2022 cycle.

Item 5 Damages and Money Claims (DMC) Committee (PD51ZB and PD51R) CPR(22)22

72. The Chair welcomed Mr Justice Johnson to the meeting and conveyed thanks for the important work he and the DMC Committee are doing within the reform programme. This praise was endorsed by the MR, observing that the reforms represented transformational change within the civil justice system, and he supported the principle of additional developments in order to further speed up the process and, in turn, access to justice. Lizzie Iron extended thanks to Birss LJ for his extensive work and leadership during the earlier stages of digital development, which introduced the Online Civil Money Claims (OCMC) service and formed a foundation for further reforms.

73. Johnson J gave a brief overview of the two pilot schemes, namely the OCMC Service (operating under PD51R) and the Damages Claims Portal (DCP) Service (operating under PD51ZB). Both systems work, there have been no significant difficulties since the launch of DCP, and feedback is good. Usage has increased since legally represented claimants were required to use the service for damages claims within its scope, with more than 9,000 claims having now been brought via DCP.

74. Following the last meeting, when it was resolved to amend PD51ZB to require represented defendants to also use DCP, with effect from 2nd June 2022 (pursuant to the 145th PD Update), the vast majority of damages claims will be issued, and defended, online, with direction questionnaires also being completed online. The next stage is to extend the coverage beyond direction questionnaires to cover judgments in default, initial direction orders and applications. This will mean claims will no longer have to "drop out" of the system to be managed on paper after direction questionnaires, thus allow claims to remain in the system for longer. To do so, a further suite of amendments to PD51ZB are required. OCMC will also be expanded to allow for applications to be made, and thus, equivalent amendments to PD51R will be needed.

75. The Chair confirmed that the drafting was yet to be finalised and that could be done by the DMC Committee (on which CPRC members served) and with the assistance of MoJ legal, in the usual way. Any significant issues would return for further consideration by the CPRC.

76. It was **RESOLVED** to **approve, subject to final drafting**, the necessary amendments to cover judgments in default, initial direction orders and applications within the pilot services governed by PD51ZB and PD51R respectively.

77. It was **NOTED** that a number of the proposed amendments are for the purposes of tidying up or clarifying existing drafting.

78. **Actions:** In consultation with Johnson J, HMCTS and the Secretariat, Drafting Lawyers finalise the drafting for incorporation into a (standalone) PD Update at the earliest opportunity.

Item 6 Environmental Reviews CPR(22)24

79. Enemo Amaechi (DEFRA Policy) and Ruth Davis (DEFRA Legal) were welcomed to the meeting.
80. This was first before the CPRC in June 2021 and was last considered at the March meeting, since when further consultation has taken place with the judiciary, MoJ policy and drafting lawyers.
81. The Chair set out the background. The Environment Act 2021 (“the Act”) introduced the statutory Office for Environmental Protection (OEP), which has been fully operational since January 2022; Section 38 of the Act establishes a new mechanism for environmental review and thus bespoke amendments to the CPR are proposed. The changes can be summarised as follows and each was reviewed in turn:
- amendments to Part 46 (Costs Special Cases) by inserting a new Section VII Environmental Review Costs;
 - amendments to Part 54 (Judicial Review) by inserting a new Section III;
 - introduction of a new PD 54E Environmental Review Claims.
82. Ms Amaechi was very grateful for the collaborative work undertaken since the March meeting, and for the input from Mr Justice Kerr and His Honour Judge Jarman QC, with especial thanks extended to Mr Justice Holgate (Planning Court Liaison Judge), Mr Justice Swift (Judge in charge of the Administrative Court) and Lord Justice Dingemans (Vice-President of the Queen’s Bench Division), as well as officials. The issues concerning time limitations and costs were now satisfactorily addressed and this was duly **NOTED**.
83. The policy intention remains to mirror existing judicial review procedures and only deviate where not doing so would conflict with the provisions and policy intent of the Environment Act 2021; some illustrative examples were provided and duly **NOTED**.
84. District Judge Clarke raised some typographical errors, however, it was confirmed that they had been already been raised by Holgate J out of committee and a perfected set of drafting had been provided.
85. It was **RESOLVED** to **approve** the amendments (introduction of Section VII to CPR Part 46, introduction of a new Section III to CPR Part 54 and introduction of PD54E) for inclusion in the next mainstream Update, due to be published in July, as part of the October 2022 common commencement date cycle.
86. **Actions:** (i) Drafting Lawyers and Secretariat to include in the upcoming SI/PD Update (ii) In consultation with the Secretariat, DEFRA to work with MoJ/HMCTS officials to effect operational delivery.

Item 7 Public Question Forum

87. Birss LJ chaired the public forum and thanked everyone for submitting their questions. Some questions have already been covered by substantive items; the following questions were answered, thus:

No.	Question	Answer
1	<p>Fixed Recoverable Costs/Part 36 Will the new FRC rules provide for a costs penalty for defendant who accepts a Claimant Part 36 Out of time but before trial. Will any uplift Apply to Counsel's fees also?</p>	<p>Birss LJ advised that MoJ Costs Policy are not doing any work on late acceptances of Part 36 Offers and it is not covered in the QOCS consultation (as part of the FRC work) which is limited to the Supreme Court case of <i>Ho v Adelekun</i>.</p> <p>However, the questioner was invited to write in with more detail, if there is a specific problem in practice to be considered.</p> <p>The consultation (which closes on 20th June 2022) can be seen here: https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation</p>
2	<p>Disclosure Pilot Scheme Does the Committee envisage that there will be further changes to the Disclosure Pilot Scheme and when does the Committee think final implementation will take place? Will there be a further extension after December 2022?</p>	<p>The MR explained that the Disclosure Pilot operates in the Business & Property Court under PD51U and has been reviewed, modified and extended since its introduction on 1st January 2019. Its current expiry date is 31st December 2022.</p> <p>The Disclosure Working Group (which reports to the Chancellor of the High Court) is working on this. No decisions have been made on whether it is made permanent or rolled out beyond the Business and Property Courts and if it is extended into other jurisdictions there would likely be a consultation.</p> <p>The CPRC anticipates a further report, from them, in due course.</p>
3	<p>QOCS/Part 36 Is it the Committee's intention to revisit CPR 44.14(1) and the QOCS position surrounding late acceptance of a defendant's Part 36 offer in order to enable a defendant to receive credit (up to the maximum of any damages and interest recovered by the claimant) for any costs entitlement post expiry of a defendant's Part 36 offer?</p>	<p>As with the answer to Q.1 (above) Birss LJ advised that MoJ Costs Policy are not doing any work on late acceptances of Part 36 Offers and it is not covered in the QOCS consultation (as part of the FRC work) which is limited to the Supreme Court case of <i>Ho v Adelekun</i>.</p> <p>However, the questioner was invited to write in with more detail, if there is a specific problem in practice to be considered.</p> <p>The consultation (which closes on 20th June 2022) can be seen here:</p>

		https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation
4	<p>RTA Small Claims Are there any plans to introduce Alternative Dispute Resolution (ADR) into the RTA Small Claims Protocol as originally intended?</p>	<p>His Honour Judge Bird explained that there are no current plans to add in any additional dispute resolution processes to the RTA Small Claims Protocol or the Official Injury Claim (OIC) service.</p> <p>The Written Ministerial Statement published on 27 February 2020 (https://www.gov.uk/government/speeches/implementation-of-the-whiplash-reform-programme) set out that no practicable solution for ADR could be found and it would not form part of the service.</p> <p>The OIC Service and the PAP and PD27B which underpin it, was therefore designed so that rather than an adjudicator being appointed (via the portal, as initially proposed) such matters now go to the court to determine. However, it was emphasised that it has been designed with the aim of disputes being resolved without the need to go to court. Accordingly, the “A”(Alterative) in ADR is the OIC service itself.</p> <p>More generally, work is ongoing to build ADR and mediation into civil justice processes.</p>
5	<p>Guideline Hourly Rates In 2021, the Master of the Rolls accepted increased Guideline Hourly Rates. Despite the increase in hourly rates it appears no changes have been proposed to the £1,500.00 cap for Provisional Assessment. With the increase in GHRs this sees a real-terms cut in the time available to undertake the same level of work. Other caps such as the 1% and 2% for Costs Budgeting will naturally adjust. Are there plans to review the cap for Provisional Assessment under CPR r47.15(5) and alter them to take into account both the increased GHRs and inflation? The working party for Guideline Hourly Rates made clear in their final report that this is a matter for the Civil Procedure Rules Committee.</p>	<p>Birss LJ explained that the Civil Justice Council (CJC) has set up a Costs Working Group, of which he was the Chair.</p> <p>The Working Group is taking a holistic approach, overall. One aspect being the broader principles of Guideline Hourly Rates (methodology etc, rather than detail). The Group’s work also intends to look at the issues/guidance regarding pre-action costs and the differences between contentious and non-contentious litigation, which were raised in the <i>Belsner</i> case.</p> <p>The aim is to produce a report for consultation soon, with a final report in the Autumn.</p>
6	<p>Guideline Hourly Rates The Sub-Committee for the review into hourly rates floated a number of ideas following consultation in its final report. Will the CPRC revisit the other</p>	See the answer to Q.5 above.

	<p>recommendations to include an annual update of GHRs based on an appropriate SPPI index or a full review within 3 years? This would aid avoidance of the GHRs stagnating and becoming unreliable as they have previously.</p>	
7	<p>Aldred v Cham At the last open meeting in 2021, the committee confirmed an intention to amend CPR 45.29I(h) to address the issues which arose in the Court of Appeal case of <i>Aldred v Cham</i>. Despite the proposed extension to fixed costs on the horizon, it appears that any changes to CPR 45.29I(h) still remain undone. Can the committee clarify whether the change(s) will be undertaken and ultimately remedy the semantic issues caused by 'characteristic' versus 'feature' of a dispute.</p>	<p>Mr Justice Trower explained that the CPRC's decision in May 2021 was a decision in principle, subject to the wider work on FRC which is ongoing. The Costs Sub-Committee is due to report back to the CPRC in due course. The anticipated timetable overall for introduction of the FRC reforms (which also aim to address the <i>Aldred</i> point(s)) is April 2023.</p>
8	<p>Fee Remission Last year, the CPRC indicated they would be looking at the issue of where a party had chosen not to seek a fee remission. Since then we have had conflicting judgments most notably in the cases of <i>Ivanov</i> and latterly <i>Gibbs</i>. Given this remains a live issue in many cases, is this something the CPRC are still looking to address and if so are they able to provide any indication as to how?</p>	<p>Birss LJ provided an answer.</p> <p>Although the issue is noted by the CPRC (having been previously considered by the Lacuna Sub-Committee), any further work is currently paused to allow MoJ time to consider the policy implications. MoJ Policy's work is ongoing and although MoJ Fees Policy is in liaison with the Secretariat as to CPRC programming, at this stage it is not possible to set out any further detail because it is still being considered.</p>
9	<p>Statement of Cost/N260 The Electronic Statement of Costs pilot ended on 31 March 2022 with efforts to be shifted to revising the existing N260, are the committee able to give any indication as to what kind of changes may be anticipated and a timetable as to when we may expect to see such changes?</p>	<p>Mr Justice Trower explained that the CPRC decided, following consultation, to discontinue the Pilot for Summary Assessment (PD51X) with effect from April 2022.</p> <p>However, a number of relatively minor changes to Form N260 are being considered. These fall into two categories.</p> <p>Firstly, a request arising from the CJC's Guideline Hourly Rates Report, for consideration by the CPRC of adding a certificate as to the location of where the work was done to Form N260.</p> <p>Secondly, a number of suggestions arising from our own consultation of some possible changes to the Form N260 to make it more user-friendly for practitioners and the judiciary.</p> <p>The Costs Sub-Committee is looking at these and will then liaise with the Forms Sub-Committee and</p>

		HMCTS as to the practicality of making changes and the timetable for issuing these before bringing these back to CPRC for approval.
10	<p>Electronic Service Could the CPRC please commit to modernising electronic service and removing the stringent requirements of para 4.2 PD 6A CPR?</p>	<p>Tom Montagu-Smith QC explained that the Service Sub-Committee would be looking at this very soon.</p> <p>The CPRC recognises the need to review the rules on service and in established a Service Sub-Committee in May last year. Since then, the Sub-Committee's focus has been on PD6B and the service out provisions (Item 4 on today's agenda) and once that important piece of work is concluded, the intention is that work will start on other aspects of service, such as the rules regarding electronic service.</p> <p>Other more modest changes to modernise the language concerning electronic communication etc (such as Fax and Disk) was reformed as part of the amendments in the 140th PD Update, which came into effect on 6th April 2022.</p> <p>It was also observed that the Damages Claim Portal includes a system, which is essentially electronic service (via MyHMCTS) where both parties are legally represented.</p>
11	<p>Scope of Service amendments: the minutes indicate the "<i>focus has been PD6B and the Gateways (which define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction) and thus the mechanics, rather than looking at broader issues of jurisdiction</i>". Is the CPRC able to provide any indication on the general nature of the amendments to the gateways please? Are the amendments focused on clarifying specific issues or areas of uncertainty within each gateway? Is consideration being given to moving the gateways back into the body of CPR 6?</p>	<p>This was answered by virtue of agenda item 4 (see above).</p>
12	<p>Spring consultation on Service Reforms: the February 2022 minutes indicate that there will be a focused consultation in Spring 2022. Will this consultation be open to the wider public or is it, for example, likely to seek views from specific stakeholders? Can interested parties ask to be included in the</p>	<p>This was answered by virtue of agenda item 4 (see above).</p>

	consultation?	
13	Timing/publication of Service amendments: are the revised rules expected to be available prior to them taking effect as part of the Autumn 2022 update, please?	Birss LJ explained the intention is to publish the amendments in July (when the SI is laid before Parliament), in advance of the October coming into force date.
14	Disclosure Pilot Scheme The mandatory (save for limited exceptions) Disclosure Pilot Scheme (PD 51U) currently operating in the Business and Property Courts is scheduled to end on 31 December 2022. When will decisions be taken regarding what will happen after 31 December 2022, and when will the plans for the future be communicated to practitioners? It seems likely that the scheme might become permanent, but is there any possibility that it might also be extended to other courts?	Please see the answer to Q.2 (above)
15	Belsner v Cam Legal Services Ltd Will the CPRC be monitoring the appeal to the Court of Appeal of <i>Belsner v Cam Legal Services Ltd [2020] EWHC 2755 (QB)</i> (and other solicitor/client costs cases to be heard before the end of July) with a view to considering whether amendment to CPR 46 is needed (as well as with regard to fixed costs reform)?	It was noted that Q.5 and Q.6 and their answers (above) also refer. Accordingly, it was confirmed that this is being considered, as part of the CJC's Costs Working Group.
16	Fixed Recoverable Costs What is the current expected timing for the SI implementing the extension of the fixed recoverable costs regime, and the planned implementation date, please?	Mr Justice Trower highlighted that the Fixed Recoverable Costs consultation (which includes related points on QOCS and Vulnerability) was published on Monday (9 th May) inviting comments by 20 th June. The accompanying material explains that the intention is for the rules to be approved by the CPRC at/by the December 2022 meeting, so that the FRC reforms are implemented in April 2023. The consultation and information on how to submit views can be seen here: https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#fixed-recoverable-costs-frc-consultation
17	Statement of Costs/N260 The new statement of costs for summary assessment pilot scheme (PD 51X) is not	This was answered by Mr Justice Trower in response to Q.9 above.

	<p>being renewed following its expiry on 31 March 2022. However, the December 2021 CPRC minutes indicated that Form N260 was to be considered further and that any proposed revisions would return to the CPRC "in the New Year". What is the current position on this please?</p>	
<p>18</p>	<p>Signposting in the Rules The approach in drafting PD 51U has been to incorporate express references to the duties owed to the court by the parties and their legal representatives. In the interests of clarity (particularly for litigants in person), is the practice of signposting duties, within the CPR, likely to be extended?</p>	<p>Mr Justice Kerr answered this question.</p> <p>The four year disclosure pilot applies (from 1.1.19) in the Business and Property Courts only, not across the board. It occupies over 50 pages of the printed rules (eg. White Book) and predates the setting up of the s.2(7) Sub-Committee in April 2021.</p> <p>The Sub-Committee's first priority to simplify the mainly generic rules applying to all CPR governed proceedings and occupying the first 30 Parts of the CPR; particularly with the needs of unrepresented parties in mind.</p> <p>As for signposting, there are pros and cons: too many signposts mean too much tiresome cross-referencing; too few signposts can promote the repetition and duplication we seek to eliminate.</p> <p>The committee therefore try to strike the right balance, on a case by case basis, using signposting sparingly, only where we consider the pros outweigh the cons.</p>
<p>19</p>	<p>Simplification of the Rules As part of its project to try to simplify the CPR, the CPRC has recently sought views on CPR Part 14 (Admissions), Part 15 (Defence and Reply), and Part 16 (Statements of Case). Which areas/rules will be considered next?</p>	<p>Mr Justice Kerr explained that the priority is to simplify the mainly generic rules applying to all CPR governed proceedings and occupying the first 30 Parts of the CPR.</p> <p>The s. 2(7) Sub-Committee's work started with a report in early May 2021 reviewing the first 30 Parts and commenting on the potential for reducing their length and in some cases dispensing with PDs or merging their content into the rules.</p> <p>The approach is to take the Parts broadly (with some exceptions) in numerical order.</p> <p>Thus far, proposals for simplifying changes, using the CPRC's online rolling consultation facility, to Parts 2, 3, 4, 7, 8, 14, 15, 16 and (out of numerical order) 49. Following the decision under agenda item 3 (above) the next suite of proposed reforms to be consulted upon concern Parts 17 alongside (out of numerical order) 38 and Part 19.</p>

<p>20</p>	<p>Covid-19 Are any CPR changes envisaged in the light of lessons learned from the operation of the rules during the height of the Covid-19 pandemic?</p>	<p>The MR observed that much of the lessons learned concern technology, for example, the use of remote and hybrid hearings where that is appropriate.</p> <p>Open justice principles are very important and to which the recently enacted Police, Crime, Sentencing and Courts (PCSC) Act has given further effect.</p> <p>The CPRC considered PD51Y (Video or audio hearings during the coronavirus pandemic) at its March 2022 meeting and decided to amend the expiry date (to 25th March 2023) to extend and decouple it from the Coronavirus Act.</p> <p>In doing so, it was understood that the other provisions of PD 51Y did not need to be continued because the PCSC Act (at the time a Bill) was expected to insert a new section 85A into the Courts Act 2003. The commencement order for which, is expected in/around late summer 2022.</p>
<p>21</p>	<p>Welsh Housing Anecdotally, we had heard that the planned in force date for the new Welsh residential possession scheme was 15 July. It would be much appreciated if you could confirm the expected implementation date and the likely timing for publication of the implementing SI, and of the associated court forms.</p>	<p>His Honour Judge Jarman QC observed that it was some six years since the Renting Homes (Wales) Act received Royal Assent.</p> <p>The CPR drafting is essentially complete, and the forms are being finalised. The 15th July date, was previously aired, by the Welsh Government, but the ultimate implementation date is still being settled to ensure the related IT and other operational reforms are aligned.</p> <p>The CPR amendments and revised forms are due to be published in July 2022 as part of the autumn SI cycle.</p>
<p>22</p>	<p>Forms Are there plans to revise any other forms this year?</p>	<p>Master Cook provided an overview of how the Forms Sub-Committee operates and how form revisions are raised and considered, explaining that the Sub-Committee does not operate within a formal action plan, but because some work is driven by the reform programmes, such as HMCTS and the s.2(7) simplification project; these strands are therefore planned. Other work is reactive and can not be predicted.</p> <p>The Sub-Committee considers CPR prescribed forms as well as other forms. It is an important Sub-Committee because forms are, in the large part, the way in which users practically interact with the civil justice system.</p>

		<p>Input is welcomed from the public and practitioners alike where difficulties are perceived with existing forms.</p> <p>PD4 is (following consultation) due to be dispensed with (as part of the October 2022 CPR Update). In doing so, an alternative to the definitive list of prescribed forms provided for in Annex A of PD4 needs to be provided. The plan is to have an accessible online solution and work is underway to achieve that.</p> <p>Master Cook provided an update on his recent and helpful meeting with web officials concerning this and other form related matters, at which it was agreed to hold quarterly meetings as a means to monitor progress and to raise any practical issues.</p>
<p>23</p>	<p>Online Rule Committee What is the current position regarding the Online Rules Committee? In his recent Sir Brian Neill Lecture for the Society of Computers and Law, Sir Geoffrey Vos MR, noted:</p> <p>"The integrated whole will need coordination and governance to link these layers and the pre-action portals and ombuds processes. This will be overseen by the new Online Procedure Rules Committee, whose existence, I hope, is shortly to be confirmed by the Judicial Review and Courts Bill, now in its final stages in Parliament."</p> <p>When is it currently expected that the new committee might start work, and how will it sit alongside the CPRC?</p>	<p>The MR was pleased to note that the Judicial Review and Courts Bill received Royal Assent on 28 April 2022, bringing into force the provisions to create the Online Procedure Rule Committee (OPRC).</p> <p>The Ministry of Justice will now work with the Public Appointments Team recruit to the three Lord Chancellor appointments through the public appointments process (precise timescale yet to be confirmed) and will work with Judicial Office to agree arrangements to ensure that the OPRC and all three rule committees covering the Civil, Family and Tribunals jurisdictions respectively, work together as efficiently as possible.</p> <p>The MR considered the purpose of the OPRC to, in effect, regulate the online elements of the justice system and the pre-action protocols which precede the court process; this is a novel reform and different from the CPRC's functions.</p> <p>The difficulties of making rules in the traditional way, for a modern digital space, were acknowledged and the OPRC will likely operate with a structure of Sub-Committees.</p> <p>The concept is that there will be direct links with the CPRC, FPRC (Family) and TPC (Tribunals) to provide for further collaboration and so that OPRC reforms are integrated and intuitive to users.</p>

Item 8 Any Other Business from Committee members & Close

88. The Chair observed how useful it is to interact directly with users and the value he placed in the public question forum; reiterating his thanks for all the questions.

89. With no other business to be transacted, the Rule Committee's Annual Open Meeting 2022 was duly closed with thanks.

C B POOLE
May 2022

Attendees:

Carl Poole, Rule Committee Secretary
Pete Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Katie Fowkes, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Flora Freeman, HM Courts & Tribunals Service (Items 1-3)
Faye Whates, HM Courts & Tribunals Service (Items 4-8)
Mr Justice Foxton (Item 4)
Sam Goodman (Item 4)
Mr Justice Johnson (Item 5)
Enemo Amaechi, Department for Environment, Food and Rural Affairs (Item 6)
Ruth Davis Department for Environment, Food and Rural Affairs, Legal (Item 6)
29 Public Observers