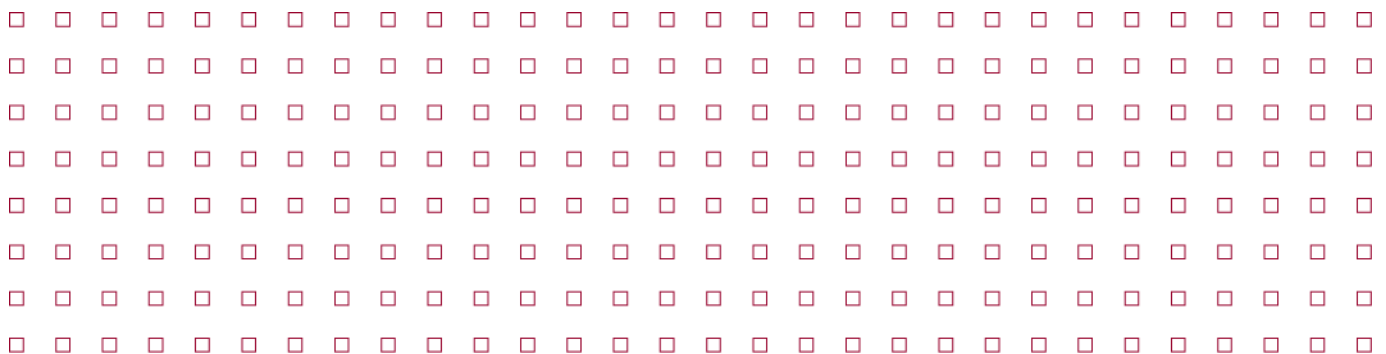




Civil Procedure Rule Committee

Annual Report 2011

October 2011





Ministry of
JUSTICE

Civil Procedure Rule Committee

Annual Report 2011

The annual report of the Civil Procedure Rule Committee for 2011 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

This information is also available on the Justice website: www.justice.gov.uk

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Terms of Reference

The Civil Procedure Rule Committee (“the Committee”) is an advisory non-departmental public body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in

- The civil division of the Court of Appeal,
- The High Court, and
- The county courts.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Proceedings Act 1997 (as amended by the Courts Act 2003 and the Constitutional Reform Act 2005).

Background

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The Committee’s aim is to provide rules of court in line with the aims stated in Lord Woolf’s 1996 report, “Access to Justice”.

Before making any rules the Committee is obliged to consult such persons as they consider appropriate and to meet (unless it is inexpedient to do so).

Rules are made into legislation by being contained in a Statutory Instrument. The Committee sign the Statutory Instruments in July and December each year. The Civil Procedure Rules are supported by Practice Directions, and whilst they are not the responsibility of the Committee, the Committee are consulted on them to maintain consistency of substance.

Membership

During the period covered by this report, the Committee comprised the following members:

Lord Neuberger of Abbotsbury, Master of the Rolls and Head of Civil Justice (ex officio)

Lord Justice Moore-Bick, Deputy Head of Civil Justice (ex officio)

Mr Justice Henderson (High Court Judge Member)

Mr Justice Coulson (High Court Judge Member)

Master Fontaine (High Court Judge Member)

Judge Stephen Stewart QC (Circuit Judge Member)

District Judge Burn (District Judge Member)

District Judge Hill (District Judge Member)

Mr William Featherby QC (Barrister Member)

Mr Edward Pepperall (Barrister Member)

Mr Nicholas Bacon QC (Barrister Member)

Mr Qasim Nawaz (Solicitor Member)

Ms Katy Peters (Solicitor Member)

Mrs Amanda Stevens (Solicitor Member)

Professor David Grant (Consumer Affairs Member/Lay Advice Member)

Mr Tim Lett (Consumer Affairs Member/Lay Advice Member)

A register of members' interests is maintained, a copy of which can be obtained from the secretariat on request.

Remuneration

The Chair and members are not remunerated for their services to the Committee, but are paid travel expenses for attendance at meetings and sub-committee meetings.

Meetings

The Committee met on 8 October 2010, 12 November 2010, 3 December 2010, 4 March 2011, 13 May 2011, 10 June 2011 and 8 July 2011.

In line with its commitment to openness in its working practices, the Committee held its sixth open meeting in May 2011. Those that attended observed the business of the Committee and had the opportunity to put questions to the Committee.

New Rules, Statutory Instruments and Practice Direction Amendment

The Committee made a number of amendments to the Civil Procedure Rules, published as the 54th- 57th updates.

The rule content of these amendments were made by the following Statutory Instruments:

Civil Procedure (Amendment No.3) Rules 2010 (2010 No. 2577 (L.14))

Civil Procedure (Amendment No.4) Rules 2010 (2010 No. 3038 (L.20))

Civil Procedure (Amendment) Rules 2011 (2011 No. 88 (L.1))

Civil Procedure (Amendment No.2) Rules 2011 (2011 No. 1979 (L.11))

A brief note of the amendments to the Rules and Practice Directions made in each update follows:

The 54th update (came into force October 2010)

Jurisdiction of the High Court in relation to judicial review hearings

Amendments were made to Part 54 and consequential amendments to PD52 which came into force on 20 October 2010. The Senior Courts Act 1981 provides that any jurisdiction of the High Court shall be exercised only by a single judge of that court except where by virtue of rules of court; the jurisdiction is required to be exercised by a Divisional Court. Directions in appropriate cases requiring listing before a Divisional Court have since 2000 been made in the exercise of broad general powers replacing the explicit provision for such directions made by the former Rules of the Supreme Court. These amendments, in accordance with section 19(3) of the Senior Courts Act 1981, make clear that the jurisdiction of the High Court in relation to judicial review proceedings may be exercised by a Divisional Court where the court so directs.

The 55th update (came into force April 2011)

Service of documents (Part 6)

Amendments were made to allow the address of a European Lawyer in a European Economic Area (EEA) state or, for a litigant in person, the litigant's normal residence or place of business in the UK or failing that any EEA state, as an address for service. Amendments are also made to update references to Civil Procedure Conventions or Treaties which make provision for service of documents.

Recovery of fixed costs (Part 45)

A new section was inserted to allow the award of fixed costs to HM Revenue and Customs (HMRC) in claims for the recovery of money through a county court where the matter is conducted by an HMRC officer.

Value Added Tax (VAT) in relation to payments to a third party (Costs Practice Direction)

Amendments were made to clarify how VAT should be treated in relation to payments to a third party that are shown as disbursements by legal representatives in bills of costs. The amendments ensure consistency with the Criminal Costs Practice Direction.

Defamation Proceedings Cost Management Scheme (PD51D)

The Defamation Proceedings Cost Management Scheme was extended for a six month period to 30 September 2011 to allow collection of further data.

Defamation Claims (PD53)

The existing provisions were extended to provide for statements in open court made in cases of slander and libel only, to include statements to be made in open court following settlement of claims for malicious falsehood and misuse of private or confidential information.

Gang Injunctions (PD65)

Amendments were made under which the police or a local authority may apply to a court for an injunction against an individual for the purposes of preventing gang-related violence. The amendments provide that a person aged 14 to 17 when served with a without notice injunction, is made aware of its terms and the consequences of breaching it. In each case the court is required to consider whether to issue directions in respect of a litigation friend and about the presence of a responsible adult if a 'without notice' gang injunction is served. When breaches of such injunctions are found to be proved, the court may make a supervision order or a detention order. The amendments will come into force on commencement of section 39 of the Crime and Security Act 2010.

Enforcement of written mediation agreements (Part 78 and PD78)

Amendments were introduced to implement an EU Directive 2008/52/EC (on certain aspects of mediation in civil and commercial matters) to allow enforcement of the content of a written mediation agreement made following a cross-border dispute, whilst maintaining the confidentiality of the agreement.

Appeals against Financial restrictions orders (Part 79)

A new section was inserted concerning appeals against designations under the Terrorist Asset-Freezing etc. Act 2010 which modifies the application of Part 52 to such appeals. Challenges to the imposition by the Treasury of financial restrictions on and in relation to certain persons believed or suspected to be, or have been involved in terrorist activities, will be heard by way of appeal to the High Court. Other decisions taken by the Treasury may be reviewed by the High Court judge applying the principles applicable to judicial review.

Pre-Action Protocol (PAP) for the Resolution of Clinical Disputes

A minor amendment to the PAP was made to increase the time for providing a response to a letter of claim. The amendment is to ensure consistency with other time periods in the protocol.

Pre-Action Protocol for Disease and Illness claims

The PAP has been revised to ensure that full information is obtained at the beginning of the claim to improve the speed of the pre-action process and the payment of compensation claims for mesothelioma and other asbestos related diseases by providing a greater flow of information and documentation between parties to enable earlier decisions to be made on liability.

Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property

Amendments were made to reflect changes introduced to the Mortgage Conduct of Business rules, particularly on dealing fairly with customers in arrears. The protocol has also been strengthened to ensure that courts have the power to insist that repossession is always the last resort.

The 56th update (came into force April 2011)

Automatic Orders Pilot (PD51B)

The 56th Update to the Civil Procedure Rules contained only one amendment which was an extension of the Automatic Orders Pilot (Practice Direction 51B) to 30 September 2011.

The 57th update (came into force October 2011)

Service of Documents (Part 6)

Amendments were made to rectify an omission in the current rules which did not make explicit provision for circumstances where a solicitor, whose business address is in Scotland or Northern Ireland, is instructed to accept service of the claim form on behalf of the defendant.

Issue of claims using electronic claims processes (PD7C, PD7E, PD55B)

Amendments were made to restore the ability of claimants in Scotland and Northern Ireland to use the bulk centre and other electronic claims processes. Where claims are issued through the online systems: Court Production Centre, Money Claim Online and Possession Claims Online, the claimant must give an address for service in the United Kingdom and the defendant must give an address for service in England and Wales. These changes came into force on 1 September 2011.

Payment for loss of earnings (PD 27)

Amendments were made to increase the amount that may be recovered for loss of earnings or leave due to attendance at court for small claim hearings. The current amount of £50 per day was set in 1996. The amount has been increased to £90 per day.

Offers to settle and payments into court (Part 36)

Amendment were made to clarify the meaning of “more advantageous” and “at least as advantageous” in relation to any money claim or money element of a claim where the court is required to determine whether a judgment equals or betters an offer to settle.

Litigation about estates (The Costs PD)

Minor amendments were made to streamline the process and minimise work and costs incurred in litigation about estates.

Rates recoverable for financial loss (Litigants in persons) (The Costs PD)

Further amendments were made to increase the rates that litigants in person can recover for financial loss through spending time on legal work. The current rate of £9.25 per hour was set in 1995. The rate has been increased to £18.00 per hour.

Automatic Orders Pilot Scheme (PD51B)

The pilot scheme was extended until 31 March 2012.

Defamation Proceedings Costs Management Scheme (PD51D)

The pilot scheme was extended for a further year until 30 September 2012. Amendments were also made to clarify that only future costs are being approved, the approved budget is not a detailed assessment made in advance and an approved budget only impacts upon assessment on the standard basis. Form Precedent HA was amended.

County Court Provisional Assessment Pilot Scheme (PD51E)

The pilot scheme was extended until 30 September 2012 to allow collection of further data and refinement of procedures.

Non-disclosure injunctions – collection of information (PD51F)

A new pilot scheme was introduced to provide for the recording of statistical data in relation to certain non-disclosure injunctions and the transmission of data to the Ministry of Justice. The Practice Direction came into force on 1 August 2011.

Costs Management in Mercantile Courts and the Technology and Construction Courts (PD51G)

A costs management pilot similar to that currently running in relation to defamation claims was introduced. The pilot allows for the monitoring and assessment of the effectiveness of costs budgeting.

Health care professionals – appeals process (PD52)

Amendments were made to allow High Court appeals against decisions on fitness to practise for health care professionals to be by way of full hearing rather than a review.

Beddoe applications (PD64B)

The amendments provide that all applications by trustees or executors for directions as to whether or not to bring or defend proceedings (Beddoe

applications) will be disposed of without an oral hearing in the first instance; any request for an oral hearing must be stated in evidence giving the reasons why.

Proceedings under the Counter-Terrorism Act 2008 and Part 1 of the Terrorist Asset-Freezing etc. Act 2010 (Part 79)

Amendments were made to omit the obligation to file and serve material which the disclosing party does not rely upon but which adversely affects the other party's case (i.e. it is inculpatory material which the disclosing party does not wish to rely upon in the proceedings). A drafting error was corrected.

Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents

Amendments were made to the pre-action protocol to make it clear what information should be contained in documents sent to the court for an assessment of the value of damages.

Practice Direction - County Court Closures

A new practice direction was introduced to regulate the transfer of work from courts prior to their closure and to facilitate the listing of hearings that will take place after the closure date of the court. The Practice Direction came into force on 6 August 2011.

Patents County Court

Statutory Instrument 2011 No. 1402 The Patents County Court (Financial Limits) Order 2011 came into force on 14 June 2011. The Order sets out the financial limits in relation to proceedings in England and Wales within the special jurisdiction of a patents county court.

Departmental Contact

Any queries about the work of the Civil Procedure Rule Committee may be addressed to:

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