



Ministry of  
**JUSTICE**

## **Family Procedure Rule Committee**

### **ANNUAL REPORT 2009**

This annual report of the Family Procedure Rule Committee for 2009 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

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## **1. Terms of Reference**

The Family 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 family proceedings in the High Court, County Courts and the Family Proceedings Courts. Its power to make rules is to be exercised with a view to securing that the family justice system is accessible, fair and efficient and the rules are both simple and simply expressed. Before making rules the Committee must meet and discuss proposed rules (unless it is inexpedient to do so) and consult such persons as it considers appropriate.

## **2. Background**

The Committee was established in 2004 in accordance with the provisions of the Courts Act 2003. To date, the power of the Committee to make rules has been brought into force only in regard to matters relating to adoption, placement and related proceedings.

## **3. Membership**

During the period of the report the Committee comprised the following members:

The Right Honourable Sir Mark Potter, President of the Family Division (Chair)

The Right Honourable Lord Justice Wall (Deputy Chair)

The Honourable Mr Justice Singer – High Court Judge

Her Honour Judge Angela Finnerty – Circuit Judge

Senior District Judge Philip Waller – District Judge (Principal Registry of the Family Division)

District Judge Duncan Adam – District Judge (County Court)

District Judge Paul Carr – District Judge (Magistrates’ Courts)

Martyn Cook JP – Magistrate

John Baker – Justices’ Clerk

Jane Probyn – Barrister

Charles Hyde QC – Barrister

Susan Jones – Barrister (*Until September 2009*)

David Salter – Solicitor

Bruce Edgington – Solicitor

Clive Redley – Solicitor

Mike Hinchliffe – CAFCASS

Ruth Lindley-Glover – Lay Advice Member

*David Salter & Ruth Lindley-Glover were re-appointed to the Committee in the course of 2009, their previous terms of office having expired earlier in the year.*

*The barrister vacancy on the Committee will be filled in 2010.*

#### **4. Remuneration**

The Chair and members are not remunerated for their service on the Committee.

#### **5. Meetings**

The Committee met on 2 February 2009, 16 February 2009, 9 March 2009, 27 and 28 April 2009\*, 18 May 2009, 15 June 2009, 13 July 2009, 12 October 2009, 2 November 2009 and 7 December 2009.

*\*The extra-ordinary two-day meeting held on 27-28 April 2009 was convened to consider responses to the consultation paper “Family Procedure Rules - an invitation to comment on the Draft Rules, Practice Directions and Forms” issued by the Committee in November 2008.*

#### **6. Working Parties**

The Committee has established a range of working parties to develop draft Family Procedure Rules relating to different aspects of family proceedings. The working parties include individual co-opted members with particular expertise in the relevant areas of family procedure, as well as members of the Committee.

The working parties and their terms of reference are:

##### **(i) The Child Abduction Working Party**

“To examine and make recommendations about the manner in which the current provisions for the conduct of proceedings relating to international parental child abduction and connected matters may best be adapted to and incorporated into the Family Procedure Rules and in particular to consider:

- (a) Whether provisions contained in existing practice directions or protocols and recent leading judgements are to be incorporated in rules or practice directions or set out in some other form.”

**(ii) The Children’s Proceedings Working Party**

“To examine and make recommendations about the manner in which the current provisions for the conduct of proceedings relating to children may best be adapted to and incorporated in the Family Procedure Rules and in particular to consider:

- (a) the extent to which the provisions of the Civil Procedure Rules (CPR) may be applied or adapted to children’s proceedings;
- (b) whether provisions contained in existing guidance or protocols are to be incorporated in rules or practice directions or set out in some other form;
- (c) whether the provisions of the rules should be extended to include procedural matters beyond the scope of the current rules (e.g. mediation); and
- (d) rationalising the procedures for children’s proceedings across all levels of court.”

**(iii) The Experts Working Party**

“To examine current guidance on the role and instruction of experts in family proceedings with a view to considering whether a composite protocol can and should be formulated for inclusion in the Family Procedure Rules.”

**(iv) The Financial Proceedings Workings Party**

“To examine the extent and the manner in which the provisions of the CPR may be applied or adapted to financial and property proceedings and to make recommendations for:

- (a) incorporating and harmonising the relevant provisions of the CPR in formulating rules relating to financial and property proceedings and
- (b) rationalising the procedures prescribed for financial and property proceedings across all levels of court.”

**(v) The Rule Harmonisation Working Party**

“to examine the extent to which and the manner in which the provisions of the CPR may be applied or adapted to family proceedings and to make recommendations for incorporating and harmonising the relevant provisions of the CPR in formulating Family Procedure Rules.”

## **7. Family Procedure Rules**

On 28 November 2008 the Committee issued a public consultation paper, *“Family Procedure Rules – An invitation to comment on the draft rules, practice directions and forms”* with responses invited by 27 February 2009.

The consultation was carried out by the Committee in accordance with its statutory obligation under section 79(2) Courts Act 2003.

Annexed to the consultation paper were new rules which had been drafted in accordance with the requirements of the Courts Act 2003; that the power to make rules be exercised with a view to securing that the family justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The draft rules are contained in 34 Parts covering different areas of procedure and different types of proceedings. Under the provisions of the Courts Act 2003 rules may, instead of providing for any matter, refer to provisions made about that matter in directions. Accordingly, much of the detail of the procedure is contained in draft Practice Directions supplementing the parts of the rules.

The Committee adopted the following principles in development of the rules:

- i. Modernisation of language,
- ii. Harmonisation with the Civil Procedure Rules to the extent that it is appropriate,
- iii. Creation of a single unified code of practice in addition to rules and
- iv. Alignment of procedures in all levels of Court except where there are strong reasons not to do so.

The publication of the consultation paper followed a great deal of work undertaken by the Committee and its working parties over the previous years. It is intended that the new rules will improve the current procedural system significantly with procedures that will be easier to use and understand for courts, practitioners and those individuals who find themselves involved in family proceedings. Additionally, there shall for the first time be a single unified code for family proceedings in the family proceedings courts, county courts and the High Court.

The Committee was pleased to receive over 40 responses to its consultation and was very grateful for the many thoughtful and constructive suggestions received.

The Committee intends to complete the making of the Family Procedure Rules during 2010.

## **8. Family Proceedings Rules**

Pending the bringing into force of its full rule-making powers under the Courts Act 2003, rules in relation to family proceedings in the High Court and county courts continue to be made under the provisions of s.40 Matrimonial and Family Proceedings Act 1984. Those appointed to make such rules are drawn from the Committee.

During the year the Committee considered, and those members appointed to the Family Proceedings Rule Committee made, the following amendments to the Family Proceedings Rules 1991.

#### Family Proceedings (Amendment) Rules 2009 [SI 2009 No.636 (L.5)]

The rules rationalise and modernise the existing rules relating to appeals following recommendations made by the Committee in its 2005 report "*Routes of Appeal in Family Proceedings*".

The rules provide for appeals to be made by a common form of appeal notice. They also accommodate the Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) Order 2009 which re-routes certain appeals from decisions of magistrates' courts to a county court.

Minor or consequential rule amendments were also made arising out of the Human Fertilisation and Embryology Act 2008, the Childcare Act 2006 and the Children and Young Persons Act 2008.

#### Family Proceedings (Amendment) (No.2) Rules 2009 [SI 2009 No.857 (L.8)].

The rules contain provisions relating to the attendance of representatives of the media during family proceedings heard in private and the communication of information regarding proceedings relating to children.

#### Family Proceedings (Amendment) (No.3) Rules 2009, [SI 2009 No.2027 (L.22)].

The rules support the Human Fertilisation and Embryology Act 2008 and include provision to ensure that the procedures in relation to acquisition of parental responsibility by a second female parent mirror those in relation to the acquisition of parental responsibility by a father.

These rules also make provision for appeals to a county court from decisions in relation to deduction orders made by the Child Maintenance and Enforcement Commission under the Child Support Act 1991, as amended by the Child Maintenance and Other Payments Act 2008.

## **9. Contact**

Updates on the Committee's work may be viewed on the Family Procedure Rule Committee web pages which can be found at:

<http://www.justice.gov.uk/about/family-proc-rule-committee.htm>

Any enquiries about the work of the Committee may be addressed to:  
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