Ministry of JUSTICE

FAMILY PROCEDURE RULE COMMITTEE

Minutes of the meeting held on Monday 7 March 2016

Present:

The Honourable Mrs Justice Pauffley – Acting Chair

Marie Brock JP - Magistrate

Richard Burton – Justices' Clerk

Melanie Carew - Cafcass

District Judge Carr – District Judge (Magistrates' Court)

District Judge Darbyshire – District Judge County Court

Jane Harris – Lay member

Michael Horton – Barrister

Dylan Jones – Solicitor

Her Honour Judge Alison Raeside – Circuit Judge

The Honourable Mrs Justice Theis – High Court Judge

Officials

Legal Secretary to the President of the Family Division

Legal Group, MoJ

Family Justice, MoJ

HMCTS

Secretary

ANNOUNCEMENTS AND APOLOGIES

1.1 The Acting Chair informed members that the President of the Family Division and the Lord Chancellor have appointed Lord Justice McFarlane to the Committee.

1.2 Apologies have been received from Lord Justice McFarlane, His Honour Judge Waller, Hannah Perry and Will Tyler QC.

MINUTES OF THE LAST MEETING: 1 February 2016

2.1 There is one amendment required to the minutes of 1 February 2016. The amendment is under the heading "draft rules" on page 3 in paragraph 4. The second sentence in that paragraph will now read: "He suggested that its contents could be included within a new Chapter 2 to be inserted into Part 4 of the Rules."

2.2 Subject to this amendment, the minutes were approved as a correct and accurate record of the last meeting.

MATTERS ARISING

3.1 Practice Direction 5A (paragraphs 3.3 and 6)

The investigation is still on going into the error in respect of Form E and there is no further update to the Committee in respect of that matter at this time.

Subsequently, an error was discovered with Form E1. HMCTS has examined 459 files and discovered 3 case files were affected by a wrong calculation using the Form E1 online calculator. Consequently, a Written Ministerial Statement was prepared and made on 22 February 2016 in respect of this. An amended Practice Direction 5A was signed by the President which came into effect on 23 February 2016. This reflected the new form D651 which is to be used in applications to set aside or vary orders made in these affected cases.

3.2 CAP Templates (paragraph 3.2)

Melanie Carew raised the need for amendment to the CAP templates in respect of contact activity directions where the court has directed a party to attend a domestic violence prevention programme. The CAP order currently states that the court should order the party to attend and will make the necessary referral. The procedure as currently specified is incorrect as it is Cafcass who are required to make the referral and the provider will then confirm whether the individual is suitable to partake in the programme.

Further to discussions between District Judge Darbyshire and Melanie Carew, it is anticipated that there will be a revised version of the CAP template to take into account this.

DJ Darbyshire reported to the Committee that the amendments will take place with other expected revisions in due course which will also take into account teething problems that may occur as the template is implemented.

3.3 Amendment to Witness Summons – Form FP25 (paragraph 12.3)

Steps have been taken to amend the witness summons forms. Copies of the new form are to be shared with HMCTS.

MoJ Policy reported to the Committee that an updated form has been provided to him and he would be circulating this form to HMCTS, which once agreed would be distributed to all courts for use where a witness summons had been issued.

FAMILY PROCEDURE (AMENDMENT) RULES 2016

4. The Family Procedure (Amendment) Rules 2016 have been sent to all Committee members for signatures on 26 February. Email confirmation of signatures have been received from 10 members so far. Members will be requested to provide a wet ink signature to the Secretary following the meeting if they have not already done so.

The Practice Direction amendment document has been signed by the President of the Family Division.

The Statutory Instrument and Practice Direction amendment document will be submitted to the Minister at the same time for consideration and approval and will come into effect on 6th April 2016.

DRAFT FPR PART 3A (CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE)

5. Members noted that since the last meeting there have been further changes to the draft Rules on Children and Vulnerable witnesses. These changes have been considered by the Working Group who have not proposed any further changes.

Although the revised draft Rules and draft Practice Directions had been circulated with the intention of discussion at this meeting, members agreed that detailed discussion was premature at this stage as Ms Justice Russell had not had an opportunity to consider the very helpful comments made on the draft Practice Directions by the Family Justice Council and the Working Group. Members agreed that this should be further considered at the April meeting once Ms Justice Russell has had the opportunity to fully consider the papers.

MoJ Policy agreed with this proposal and invited members who had any additional comments to either speak to the policy official involved in this project or to email her with any additional comments on either the draft Rules or the draft Practice Directions to enable these comments to be incorporated in the responses to be considered by Ms Justice Russell.

Judge Raeside questioned whether Ms Justice Russell should be invited to the April 2016 meeting. The Acting Chair agreed this would be helpful for future discussions and the meeting could convene at 10:00 am and / or take this agenda item first in April if that would be convenient to her.

Jane Harris noted that the draft Practice Direction on children had an emphasis on children “who could speak”. She expressed concern that this would exclude those who were unable to speak but could nevertheless still express their feelings. She felt removing this phrase in its entirety was simpler than trying to amend it. She also questioned whether the “trained professional” and “responsible adult” referred to in the draft Practice Direction

on children have been identified or whether this remains unresolved. Judge Raeside noted that there was a question over whether a child's views would be sought in financial remedy cases as this would require a major policy decision to be made. DJ Darbyshire noted that these issues would require a ministerial decision to be taken after which the Committee could proceed further.

District Judge Carr asked that future amendments to the Practice Directions be presented in a commentary box in the main text rather than as marginal comments to assist in identifying changes.

Marie Brock questioned whether the draft Practice Directions would be released for wider consultation. The Magistrates' Association have expressed an interest in having an opportunity to comment on the draft Practice Directions, having already expressed their views on the draft Rules. Mrs Justice Theis noted that it was not desirable to open a wider consultation on these documents until the Ministry of Justice position on funding was clear. District Judge Carr felt it would be premature for the Committee to open a wider consultation without knowing the Ministerial position especially given the resources implications.

Judge Raeside questioned whether it would be possible to get a view from the Minister before the April meeting to inform discussion at that meeting. MoJ Policy noted that the Ministerial response can be quick, but in order for policy officials to provide a submission to the Minister there needs to be clarity on the intentions behind the Practice Directions. Officials would then be able to provide comprehensive advice on the resource implications and seek a decision. Given the need for Ms Justice Russell to consider the comments of the Family Justice Council and the Working Group before making any required revisions to the Practice Directions, the Acting Chair acknowledged that a Ministerial decision would not be possible in time for the April meeting.

District Judge Carr raised the possibility of having a bullet point 'statement of intentions' or principles. He noted the problem of intermediaries in the criminal courts where there remains a funding lacuna for defendants who rely on the Ministry of Justice to provide this assistance. He further recognised that there will inevitably be resource implications in trying to introduce intermediaries in the family sphere when it remains unresolved in the criminal sphere. Marie Brock noted that when the Working Group discussed the draft Practice Direction they considered the resource implications. The draft Practice Directions appear to have come from a different starting point.

The Acting Chair endorsed the suggestion by Judge Raeside that the Working Group liaise with Ms Justice Russell prior to the April meeting with a view to them all gaining a better understanding of the cost issues involved in the draft Practice Directions. Judge Raeside and Mrs Justice Theis suggested a short bullet point list of the main concerns with the draft Practice Directions in their current form be agreed by the Working Group and emailed to MoJ policy officials. MoJ Policy could then liaise with the President's Office and Ms Justice Russell which could help to inform Ms Justice Russell's response to the draft Practice Direction.

Conclusions: The Committee unanimously agreed an invitation should be extended to Ms Justice Russell to attend the April 2016 meeting to assist in discussions about the draft Practice Directions.

Next Steps

The Working Group will send a list of concerns on the draft Practice Directions to MoJ policy officials by 11 March 2016 which will be sent to Ms Justice Russell to assist her in formulating her response.

FREEDOM OF INFORMATION SCHEME

6. The Committee was updated that a revised publication scheme had not yet been finalised for the Committee's approval. This was due in part to the departure of the two officials who had been working on the revised scheme, and in part to consideration of certain issues that had arisen. Officials would prepare a paper discussing these issues, together with a revised publication scheme, for the Committee's consideration at the April 2016 meeting.

Conclusion: The Committee agreed that a revised publication scheme would be considered at the next meeting.

ATTACHMENT OF EARNINGS ORDERS IN FAMILY COURTS

7. Paper 7 (MoJ Policy) was considered.

HMCTS updated members on the current position of HMCTS and MoJ on the issues of the centralisation of attachment of earnings orders in family cases and the delegation of the making these orders to court officers and / or Justices' Clerks or Assistant Justices' Clerks. This is in response to questions raised at the last meeting.

Centralisation of Attachment of Earnings Orders

HMCTS explained to members that the process of centralisation of applications for attachment of earnings orders and charging orders in civil cases has been completed. This process links in with the amendments to the Civil Procedure Rules which will come into effect on 6 April 2016. Attempts at centralisation of reciprocal enforcement of maintenance order cases in family proceedings commenced in 2015. This process has been completed in Wales but in England it has been more difficult. Work will continue in the future to centralise enforcement of maintenance orders in family cases but this will form part of the wider HMCTS Reform project.

District Judge Darbyshire noted that centralisation of enforcement orders should be supported within the family courts as it develops.

Conclusion: The Committee agreed to support centralisation of enforcement of maintenance orders in family cases but recognised this would not be in the immediate future as it would form part of the wider HMCTS Reform project.

Delegation of the power to make Attachment of Earnings Orders

HMCTS confirmed to members that in civil cases, an attachment of earnings order can be made by a court officer administratively without a hearing. The appropriate rate of payment is calculated by using a determination of means calculator. In family cases, a hearing is currently required to make an attachment of earnings order. The policy rationale behind this decision was that an element of judicial discretion is needed when considering whether to make an order as the welfare of the child is paramount. Theoretically, therefore, the judge may vary the amount of the payment ordered, or may not make an order at all.

Having reviewed the policy rationale since the last meeting, HMCTS confirmed that there is no policy objection to delegating the making of attachment of earnings orders to court officers or Justices' Clerks / Assistant Justices' Clerks. This change would be welcomed by centralised sites as it would reduce delay and minimise movement in files between hearing centres. The Committee were asked to consider whether the making of an attachment of earnings order in family cases requires an exercise of judicial discretion which would prevent delegation to a court officer or Justices' Clerks / Assistant Justices' Clerks.

Judge Raeside did not consider that judicial discretion was required in the making of these orders. She recognised that there could be a problem if the payer did not fill in the form and the order was made without this information. She suggested that HMCTS should treat any application to set aside an order made in these circumstances as a priority and give these applications an urgent listing before a judge. She further noted that there would need to be good guidelines and a table to assist in the determination of maintenance to be paid and legal advisers would be able to access members of the judiciary for additional guidance if they needed it. With these safeguards, she was satisfied that an exercise of judicial discretion was not required in the first instance. This was endorsed by District Judge Darbyshire who noted that the delegated process was working in the civil jurisdiction, and therefore, there was no reason for it not to work in the family jurisdiction. He further noted that it was always in a child's welfare to have their maintenance paid and therefore an exercise of judicial discretion was not required to enforce a maintenance order. Additionally, there was no complexity in these applications that required them to be dealt with by a judge. This was also endorsed by Mrs Justice Theis who noted that with all these applications being dealt with in one place there will be greater consistency.

Mike Horton questioned whether there would be any right to challenge attachment of earnings orders made by a court officer or Justices' Clerks / Assistant Justices' Clerks. He considered it important that there should be transparency about how decisions are made and clear information on where recourse can be sought if someone disagrees with the decision that has been

made. District Judge Carr noted that decisions made by a legal adviser can always be re-heard before a Circuit Judge or ultimately appealed by way of judicial review. MoJ Legal reported that the Family Procedure Rules would mirror the Civil Procedure Rules stating who makes the decision and where any appeal would lie, although it may not necessarily state how decisions are made or provide information about the table used to calculate the amount to be paid. Judge Raeside noted that to aid transparency there could be a document in the Rules that sets out the calculation and how the amount payable would be calculated. However; she conceded there remained a problem of transparency in the situation where there were two sets of debts in the civil and family jurisdictions and it was at the discretion of the court officer as to which debt was given priority in enforcement.

District Judge Carr noted that there has always been a clear structure of delegation to legal advisers but questioned the chain of delegation to a court officer. In theory, he had no objection of delegation to a court officer but wanted to ensure there was a clear statutory authority to enable this to be delegation to be occur intra vires. MoJ Legal believed the Attachment of Earnings Act 1978 provided for delegation to a court officer to make these orders but agreed to check the legislation to ensure there was provision for this.

Conclusion: The Committee unanimously agreed that there was no need to exercise judicial discretion in making attachment of earnings orders in family cases and therefore this power could be delegated to court officers and Justices' Clerks / Assistant Justices' Clerks.

Next Steps

MoJ Legal to look into the power to delegate the making of attachment of earnings orders to court officers.

SETTING ASIDE RULES

8. Papers 8 (MoJ policy) and 8a (MoJ legal) and the consultation responses were considered.

Paper 8

Paragraphs 5 and 16

Michael Horton questioned whether the High Court has the power to set aside its own order. He was of the view that it did not, noting that although in the Supreme Court judgement of Gohil v Gohil [2015] UKSC 61, Lady Hale was of the opinion that it did, Lord Wilson thought that there was a need for definitive confirmation (paragraph 18(c)).

MoJ Legal expressed a contrary view. MoJ Legal drew the Committee's attention to paragraph 18 (d) of the judgment where the Supreme Court endorsed the

Committee's Working Group's view that the High Court did have the power to set aside its own order. This view was affirmed and endorsed by the Acting Chair.

Conclusion: It was agreed that no definitive view need be reached for present purposes, since the draft Rules were being proposed in any event to put the matter beyond doubt at least as regards to the setting aside of financial remedy orders, by conferring jurisdiction pursuant to section 17(2) of the Senior Courts Act 1981.

Paragraph 8

Michael Horton disagreed with a point made by the Family Law Bar Association (FLBA) in its consultation response. The FLBA had said that the draft Rules seemed to carry an assumption that in every set aside application there would be a deemed application for a re-hearing, yet this wasn't the case because an order could be substituted without a re-hearing. . Michael Horton said that in such cases, this still amounted to a re-hearing and re-determination even if not a complete re-hearing from scratch. He felt that a preferable change to the draft would be to make clear only that where the court sets aside a financial remedy, it would either give directions for a re-hearing or otherwise dispose of the application.

Conclusion: It was agreed that the draft Rule would be revised accordingly.

Paragraphs 11 and 12

The Committee noted the consultation responses about listing applications before the judge who made the original order and discussed briefly whether it would be advisable that any provision to this effect be contained within an accompanying Practice Direction rather than in the Rules.

Conclusion: The Committee agreed that provision for setting aside applications to be listed before the original judge where possible would be made in an accompanying Practice Direction.

Paragraph 15

It was briefly discussed whether the Rules should make express provision conferring jurisdiction on the High Court to set aside applications pursuant to section 17(2) of the Senior Courts Act 1981 or whether a reference to section 17(2) vires was sufficient.

Conclusion: The Committee agreed that the Rules would include provision expressly conferring jurisdiction on the High Court under Section 17 (2) of the 1981 Act.

Paragraph 16

It was briefly discussed whether the Rules should confer jurisdiction under section 17(2) of the 1981 Act to set aside financial remedy orders only, or to set aside a wider set of orders. Michael Horton noted that the Committee had decided some time

ago to limit this exercise to financial remedy orders. The Acting Chair noted that there are occasions in other types of cases where the High Court has had to consider setting aside its own decisions; for example in fact finding orders. This was endorsed by Mrs Justice Theis who referred to the guidance given by the President of the Family Division of factors to consider when considering whether to set aside such decisions. District Judge Carr noted that the rationale for confining these rules to applications to set aside financial remedy orders was due to concerns about litigants in person returning to court with additional information which, although important to the party, was not relevant to the proceedings.

Conclusion: The Committee agreed that the Rules should confer jurisdiction only in respect of financial remedy orders.

Paragraph 17

The meeting considered Rule 3 of the revised draft Rules which assigned the High Court business of such applications to the Family Division.

Michael Horton expressed the view that this should not be necessary, since an application to set aside an order was already an application made within existing proceedings. MoJ Legal agreed that on balance and considering the categories of business assigned to the Family Division by Schedule 1 of the 1981 Act, such provision was not necessary.

District Judge Carr questioned whether the Rules could be used to assign certain setting aside applications to the Family Division of the High Court. MoJ Legal referred to section 61(2) of the Senior Courts Act 1981. It was noted that although in recent instances the Order-making power under section 61(3) had been used, section 61(2) permitted Rules of court to distribute business in this way.

District Judge Darbyshire questioned whether proceedings under the Trusts of Land and Appointments of Trustees Act 1996 would be included, noting that these could be problematic as they were civil in nature. Michael Horton noted that these were separate proceedings in distinct jurisdictions and there was no need to provide for them here.

Conclusion: It was agreed that provision assigning the setting aside business to the Family Division would not be included in the Rules.

Michael Horton questioned whether the proposed draft Rule conferring jurisdiction on the High Court under section 17(2) of the 1981 Act might be inconsistent with the single family court transitional provisions. He had practical experience of High Court cases that had transferred to the family court on 22nd April 2014. This was endorsed by Mrs Justice Theis who indicated that the President of the Family Division had published guidance that post 22nd April 2014 all existing proceedings in the Family Division of the High Court would transfer to the family court unless they fell within the exclusive jurisdiction of the High Court.

MoJ Legal questioned whether this was the intention of the transitional provisions and said that it would look into the matter further.

Paragraph 18

The use and definition of the word 'judgment' was briefly discussed. Michael Horton considered that there was some confusion about it but agreed that it should be included given its use in section 17(1) of the 1981 Act. The Committee agreed with the recommendations in the paper that some of the definition of judgment should be omitted but that it seemed useful to retain the part that clarified that orders that could be set aside included "consent order".

Conclusion: The Committee agreed that definitions of "judgment" and "order" would be revised accordingly.

Next steps

MoJ would produce revised draft Rules for consideration and possible approval by the Committee at the April meeting.

MoJ would also produce a draft accompanying Practice Direction for initial consideration by the Committee at the April meeting.

DESTINATION OF FAMILY APPEALS

9. Papers 9 (MoJ policy) and 9a (MoJ legal) were considered.

The Acting Chair reported that the President of the Family Division had considered the views of the Committee with policy officials. In light of the Committee's discussions at the last meeting, the draft Access to Justice Act 1999 (Destination of Appeals) (Family Proceedings) (Amendment) Order 2016 had been amended. This amendment means that appeals against decisions or orders of a Circuit Judge or Recorder in the family court in proceedings under Part 4 or 5 of, or paragraph 19 (2) of Schedule 2 to the Children Act 1989 or under the Adoption or Children Act 2002 will lie to the Court of Appeal even if the order is a "private law" one in nature for example a Special Guardianship Order or Child Arrangements Order.

MoJ Policy updated the Committee that amendments to Rule 30.3 of the Family Procedure Rules will be included as a consequential amendment in the 2016 Order. The reason for doing this is because the 2016 Order follows an affirmative procedure and requires debate in both Houses of Parliament. If the amendments to Rule 30.3 FPR were to be included in a separate set of FPR amending Rules, (which follow the negative procedure), and that set of Rules were laid before the Order is approved, it may be perceived as pre-empting the will of Parliament. The draft Order is currently undergoing a 2nd pair of eye checks within MoJ Legal and it is the intention of the department to submit the Order to the Joint Committee on Statutory Instruments for informal clearance by the end of the week. Subject to receiving this clearance it will be submitted to Parliament. The Committee will not have a future role in the

Order but it will need to consider the revised Practice Direction which will be brought to the next meeting.

MoJ Legal thanked Judge Waller and Judge Raeside for their comments in simplifying Rule 30.3. Michael Horton questioned whether it was deliberate in drafting the Rule that Paragraph 2 (d) from the Order was omitted from the Rule. MoJ Legal confirmed this was intentional as it was felt unnecessary as it was clear to the judiciary in which judicial capacity the case was being heard before.

MoJ Policy informed the Committee that there will be a simplified appeal form as part of the streamlined appeal process for the Committee to consider with the Practice Direction amendments at the April meeting. Judge Raeside questioned whether there would be a need to further consult on the Practice Direction and the new form. MoJ Legal noted that this was a matter for the Committee to decide, but that members might conclude that there was no need to consult on Practice Direction amendments, given that consultation has already taken place.

Judge Raeside questioned whether it would be possible to look at the wording used in relation to wording of enforcement of orders when devising a new form to ensure plain English is used. This was because in her experience many people do not understand what is being asked and are later surprised when the order is enforced. Judge Raeside agreed to email MoJ Policy about this, so consideration can be given to this issue when the new streamlined form is created.

Conclusion: The Committee agreed there was no need for a further consultation on the new appeal form as part of the streamlined appeal process or the revised Practice Direction.

Next Steps

Judge Raeside to email MoJ Policy about possible wording regarding enforcement on the new appeal form

Revised Practice Direction to be considered by the Committee at next meeting

CAFCASS CYMRU

10. Cafcass Cymru have raised concerns that the Committee make Procedure Rules which impact on the Welsh jurisdiction but they to not have the opportunity to make any representation on those Rules. They maintain they are a separate organisation to Cafcass and there may be issues on which they take a different view to Cafcass and whilst they enjoy a close working relationship with Cafcass it is not sustainable long-term for Cafcass to represent their views at the Committee. They request that the Committee consider granting them observer status.

Dylan Jones noted that Cafcass Cymru was created by the Children Act 2004 and came into being in 2005. He supported an amendment to the Courts Act 2003, to add Cafcass Cymru as a member of the Committee, as there was no logical reason not to do so. In the interim he supported there being a temporary solution. This is because there is an increasing divergence between the positions in England and Wales in relation to family proceedings; for example Part 3 of the Children Act 1989 is being amended in its entirety in Wales which relates to services to children. In his view this is an appropriate time for the Committee to consider the role of Cafcass Cymru in the Committee's future.

Melanie Carew supported CAFASS Cymru joining the Committee but noted that this would require an amendment to primary legislation. She emphasised to the Committee that although Cafcass have a good working relationship with Cafcass Cymru they have never tried to represent their views on the Committee nor have they intended to.

MoJ Legal confirmed that if the Committee agreed that in the long term consideration should be given to joining Cafcass Cymru as a member of the Committee, this could be done by secondary legislation as Section 78 of the Courts Act 2003 provides for the constitution of the Committee to be amended by secondary legislation. A policy decision would need to be taken on this, and consideration would need to be given as to whether it was intentional or an oversight not to include Cafcass Cymru to the Committee when the Children Act 2004 was introduced.

On the question of possibly giving observer status to Cafcass Cymru, possibly as an interim solution, District Judge Darbyshire noted that the Committee meetings are not open meetings. He further noted that in the long term the differences between England and Wales would need to be resolved.

Michael Horton expressed concern about a standing invitation to Cafcass Cymru to see / comment on papers and/or attend meetings as observers whilst consideration to amending legislation is made by policy officials. This is because Committee meetings are not open. It may raise questions of how is it possible to differentiate between different professional organisations as to who is permitted to attend Committee meetings and who is not.

Judge Raeside noted that the decision of whether to add Cafcass Cymru to the Committee is a policy decision but a decision not to join Cafcass Cymru to the Committee is a big division of the two jurisdictions. District Judge Carr noted that the family court is the Family Court of England and Wales and supported including CAFCASS Cymru on the Committee.

Conclusion: The Committee would support a representative of Cafcass Cymru being added to the Committee in the long term but recognised this was subject to policy decisions.

As an interim solution, the Committee agreed to Cafcass Cymru being added to the distribution list for agreed minutes and for the agenda to be distributed to Cafcass Cymru. In addition, Cafcass Cymru would be

permitted to see any associated papers of agenda items they wished to make written representations to the Committee on.

Next Steps

Policy officials to consider whether the Courts Act 2003 should be amended to include Cafcass Cymru as a member of the Committee

ANY OTHER BUSINESS

Future Work

11.1 A potential gap has been identified in the Family Procedure Rules and the Court of Protection Rules in relation to the disclosure of case information. The gap relates to a legal representative or professional legal adviser being permitted to disclose case information to a professional indemnity insurer or professional legal adviser for the purposes of notifying the insurer of a potential claim or complaint and obtaining advice in respect of the same. This issue has been identified by the Court of Protection Rule Committee and it may be possible to amend Practice Direction 12G to include an enabling provision in these circumstances.

The Acting Chair noted that this was an oversight in the Rules. Michael Horton suggested an amendment to the Rules could occur by inserting an extra row into the table in the Practice Direction. Mrs Justice Theis noted that practitioners had not found it too burdensome in practice although it was best to amend the Rules to formally permit this. District Judge Carr suggested that although there was no urgency to this, the amendment should occur as soon as practicable.

MoJ Legal noted that if (which has yet to be established) the drafting of any Practice Direction amendments is straight forward, then it may be possible to include this provision in the next set of Practice Direction amendments. MoJ Legal also noted that the Court of Protection Committee looking at the Rules would be considering this point this same week and that officials would revert to the Committee to report back views.

Conclusion: The Committee agreed Practice Direction 12G should be amended to enable the disclosure of case information to a professional indemnity insurer.

Next Steps

Amendment to Practice Direction 12G will be submitted to the Committee for consideration in due course, once the Court of Protection Committee has considered the issue in detail.

Forms Working Group

11.2 Due to the lack of clarity as to who was involved in the Forms Working Group, members were asked to identify who wished to be involved in this group in the future and how they wished to deal with work.

The meeting agreed that Judge Waller would be invited to continue on this group. District Judge Darbyshire, Marie Brock, Richard Burton and Dylan Jones all volunteered to be part of the group. It was agreed that where there were forms to consider, these would be emailed to the working group who would return them by email with their comments.

District Judge Carr noted that there were many working groups set up by the Committee some of which have now become redundant. He further noted it would be helpful to have a list of working groups to determine which groups members were actually involved with. MoJ Policy stated that it would be necessary to look through the previous Secretary's records to determine what working groups existed but attempts would be made to do this.

Conclusion: The Forms Working Group will consist of Judge Waller (if content), DJ Darbyshire, Marie Brock, Richard Burton and Dylan Jones. They will receive forms to consider and return their comments by email.

Next Steps

Secretariat to try and determine which working groups exist and who is involved in each one.

Form D8

11.3 Previously the Committee had agreed to amend the form D8 to insert a statement of truth. HMCTS updated the Committee that divorce is one of the first areas of reform within HMCTS, and therefore proposed only changing the form once within the reform process. Members' views were sought on whether amendments to the D8 form to insert a statement of truth should be made now in the knowledge that further changes were forthcoming, or whether it could be delayed and incorporated with the release of the new form. It is expected that the new form would be released digitally in a further two months.

The Committee agreed to wait and incorporate the changes within the wider reform project.

MoJ Legal noted that Judge Waller had assisted by suggesting draft Rule amendments that were likely to be needed in consequence of the insertion of a statement of truth in the D8 form. Time would be needed to allow those Rule amendments to be finalised, then made and laid before Parliament. Judge Waller had also identified other forms (in addition to the D8) that would need amending.

Conclusion: Amendments to the D8 form would be incorporated within the wider HMCTS digital reforms to divorce.

DATE OF NEXT MEETING

12. Monday 11th April 2016 at 10.30 a.m. in the Royal Courts of Justice.

Secretary
March 2016

FPRCSecretariat@justice.gsi.gov.uk