FAMILY PROCEDURE RULE COMMITTEE
Minutes of the meeting held on Monday 1 February 2016

Present:
The Honourable Mrs Justice Pauffley – Acting Chair
Richard Burton – Justices' clerk
Melanie Carew - Cafcass
District Judge Carr – District Judge (Magistrates' Court)
District Judge Darbyshire – District Judge County Court
Dylan Jones – Solicitor
Hannah Perry – Solicitor
Her Honour Judge Alison Raeside – Circuit Judge
The Honourable Mrs Justice Theis – High Court Judge
Will Tyler QC - Barrister
His Honour Judge Philip Waller – Circuit Judge

Observer
Legal Adviser, HMCTS

Officials
Private Secretary to the President of the Family Division
Legal Group, MoJ
Head of Committee Secretariat, Family Justice, MoJ
Family Justice, MoJ
HMCTS

ANNOUNCEMENTS AND APOLOGIES

1.1 The Acting Chair welcomed all members to the first meeting of 2016.

1.2 Apologies had been received from Marie Brock, Jane Harris and Michael Horton.

MINUTES OF THE LAST MEETING: 7 December 2015

2. The minutes were approved as a correct and accurate record of the last meeting.

MATTERS ARISING

3.1 Review of the Committee's Freedom of Information Publication Scheme (paragraph 3.2)

The Acting Chair reported that all enquiries in relation to the publication of approved minutes online had been completed and it had been confirmed that this would be possible. MoJ lawyers have looked at the framework within which this would occur and a revised scheme has been prepared. As the Committee had previously agreed to approved minutes being published online, this will be one of the first tasks for the new secretary of the Family Procedure Rule Committee to undertake when she commences her role from 8th February 2016.

Conclusion: The Committee's Freedom of Information Publication Scheme is to be amended as agreed.

3.2 Practice Direction 12B (paragraph 7)

The Acting Chair reported that Practice Direction 12B came into force on 11th January 2016. The President sent a message to all members of the Judiciary and family practitioners on 21st January 2016 which was cascaded through the Designated Family Judges; however, this has not been seen by everyone.

District Judge Darbyshire reported that the CAP templates are available on the portal. Justices Clerks and Legal Advisers also have access to these templates. It will be for the legal publishers to consider whether they wish to make alternative versions available to family practitioners. Concerns were raised about the maintenance of these templates as they will soon be out of date when the amendment to insert the new Part 3A FPR comes into effect. It is unclear if MoJ would be willing to take on this responsibility but attempts are being made to find a District Judge with sufficient IT expertise to take on this responsibility.

Judge Raeside questioned whether it would be possible to sell the copyright of the template to a legal publisher and give them the responsibility of maintaining the templates for the future which would have the additional benefit of making the template available to family practitioners as well as the Judiciary.

Melanie Carew requested that if there were to be amendments to the template then consideration be given to the drafting of the template particularly in relation to parenting plans without a CAFCASS referral which CAFCASS would want amended.

Next Steps

Melanie Carew to email MoJ Policy about amendments sought in relation to the template

MoJ Policy to see whether it is possible to find an IT specialist within MoJ with sufficient enthusiasm to take over maintenance of the templates

3.3 Practice Direction 5A

See Paragraph 6.

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

4. Paper 4 (Policy), and the revised draft rules were considered.

MoJ Policy informed that Committee that the draft rules had been revised taking into account members' views from the last meeting. These revisions have been considered by the Working Group (Mrs Justice Theis, HHJ Raeside, Marie Brock JP, Will Tyler, and Jane Harris) before being submitted to the Committee for further consideration. She drew the members' attention to the questions raised in Paper 4 (Policy).

Draft rules

The Working Group had considered the amended rules. The Acting Chair reported that the President would like to consult the Family Justice Council and the Committee on two draft Practice Directions. These had not yet been shared with the Committee. It was agreed that the Working Group would review the Practice Directions once they were available and report back at the March meeting.

Richard Burton and Hannah Perry requested to rejoin the Working group to provide a more representative view which was approved by the Committee.

Michael Horton sent an email with his comments on the draft rules. He has suggested re-drafting the rules and including the term "participation direction". The Working Group would consider this suggestion and report back to the Committee.

Michael Horton also noted that Rule 3A is messy in its numbering which may cause confusion. He suggested that its contents could be included within a new Chapter 2 to be inserted into Part 4 of the Rules.

Will Tyler responded that the President's view was that there should be a new Rule and this informed the Committee's decision to create Rule 3A.

Rule 3A.9

Will Tyler suggested that Rule 3A.9 needed its own heading as it is not something that can be encompassed within Rule 3A.8. Judge Waller suggested that it should be moved to follow rule 3A.6.

District Judge Carr suggested a further amendment by including a cross-reference to the Practice Direction for the meaning of "directly affected" to assist practitioners and the Judiciary in court. The Committee agreed this cross reference would be helpful as with "vulnerability".

Conclusion: Rule 3A.9 to be amended to include its own heading and a cross reference to the practice direction should be inserted for the definition of "directly affected".

Rule 3A.11

Will Tyler noted an amendment was required to Rule 3A.11 (1) (l) which should read "and" instead of "or" and the end of the line. This amendment was endorsed by the Committee.

Conclusion: Subject to this minor amendment, the Committee agreed that they were content with the approach taken to the rules reflecting comments made by Will Tyler in relation to vulnerability and were content with the Rule as drafted.

Rule 3A.13

Members agreed that it is not necessary to combine the specific proceedings in which the duty to give reasons applies with the duty to give reasons. This is because the heading to the rule makes it clear when the Court is obliged to give reasons.

District Judge Carr raised concerns that the Rule 3A.13 as currently drafted implies that the court must set out reasons in every case. He gave the example that in some cases this could potentially require six sets of reasons. Whilst he endorsed the need to give reasons, careful thought would need to be given to the drafting of a template for this section.

District Judge Darbyshire noted that the contents of this rule stemmed from Lord Justice Ryder who was keen on courts giving reasons for their decisions. He further noted that it was unlikely that the template would be amended to take this rule into account.

The Acting Chair commented that the reason could be just one line for the decision so in practice it may not be as burdensome as it initially appears.

The Committee also agreed with Will Tyler's suggestion to clarify Rule 3A.13 (2) (b). Members agreed with Will Tyler's view that otherwise there would be an implied duty to record reasons even if there was no child or vulnerable person in the case. The re-drafted rule clarifies this position.

Members endorsed the deletion of Rule 3A.16 and incorporating this within rule 3A.12 as suggested at the December 2015 meeting.

Conclusions: Members did not consider is necessary to combine types of proceedings when the Court needs to give reasons with the need to give reasons under this Part. Secondly, Members agreed to the revised version of Rule 3A.13 (2) (b). Finally, members approved the revised version of Rule 3A.12.

Having considered all the questions raised in Paper 4, the Committee where content with the current draft of the rules.

Conclusions: The Committee were content with the current draft of the rules subject to consideration by the Working Group of the changes proposed at the meeting with final consideration of the proposed rules in conjunction with the Practice Directions once available.

The Committee thanked MoJ Policy for her hard work and effort in revising the draft rules. Judge Raeside commented on how the proposed Rule 3A now reads with clarity and ease. District Judge Carr also commended on the short timescales within which Rule 3A has been drafted especially when compared with the length of time taken to achieve the same results in the Criminal sphere.

Judge Waller indicated that the Court of Protection is interested in the work of the Committee in this area as they intend to mirror the Committee's work in this field. MoJ Policy is liaising officials who deal with the Court of Protection and keeping them updated about the progress of the Committee in this respect.

Judge Raeside said that the Judicial College were keen to know the timing for implementation so that they could prepare training materials. The Acting Chair said she thought there might be a settled version of the rules and Practice Directions around May or June and that October was now looking more likely for implementation. MoJ Policy reminded the Committee that this was subject to a decision from Ministers.

Next Steps

It is hoped that the Practice Direction in relation to Rule 3A will be considered at the next meeting. The Committee will need to consider whether there needs to be a short public consultation on the Practice Direction.

FPR PART 7 (PROCEDURE FOR APPLICATIONS IN MATRIMONIAL AND CIVIL PARTNERSHIP PROCEEDINGS)

5. Paper 5 was considered.

MoJ Policy noted that some changes to Form D8 and D8N have been proposed from HMCTS and further changes have also been proposed from the Financial Remedies Working Group.

HMCTS commented that they have gathered the required information and feedback from Policy. Work can now progress on the re-design of the Divorce Forms. The Design Team have a two week turnaround time frame in which the new form will be built. The Committee noted that progress on this can be made swiftly.

Judge Waller requested that this item be further considered at the April meeting and the working group will meet further in the interim to progress the work. This was agreed by the Committee.

Next Steps

The Working Group will meet to consider the development of the new forms

SETTING ASIDE WORKING PARTY / FORM E CALCULATOR ERROR

6. Paper 6 (with its Annexes therein attached) and the Notice of application to vary or set aside a financial order for use where there has been a Form E Calculator Error were considered.

MoJ Policy informed the Committee that the consultation is still open on the draft rules and practice direction amendments. Once the consultation responses have been received, any revisions will be considered and then submitted to the Committee for their final consideration and approval.

A Written Ministerial Statement has been prepared setting out the results of the initial investigation into the Form E Calculator error. The investigation is on-going at this time and the final outcome cannot be speculated on at this stage. Paragraphs 7 to 9 of paper 5 set out the pertinent information for the Committee at this time of the information that is currently available. The live issues for the Committee are the Consultation of the new forms which are on-going. MoJ Policy noted at the next meeting the Committee may wish to consider the setting aside rules and the future of Form E.

Judge Waller noted that the issues with the Form E calculator are separate to the considerations about the setting aside rules and associated practice direction. Judge Waller is happy to work with officials on the amendments to Form E taking into account any ministerial views.

The Committee had no questions for MoJ Policy in addition to what was set out in Paper 5.

Next Steps

Judge Waller to work with officials on amendment of Form E.

DESTINATION OF FAMILY APPEALS

7. Paper 7 and the associated draft rules and practice directions were considered (Papers 7a – 7f Legal). The Committee also considered the memorandum by the President on the proposed procedures for handling appeals to the Family Division.

The Acting Chair reminded members that the President is keen to progress decisions on this subject expeditiously with a draft statutory instrument being put before Parliament as soon as possible.

MoJ Policy updated the Committee that the consultation on amending the appeal routes closed at the end of November 2015. The consultation was wider than the key heads of division required to be consulted. As a result of the consultation, amendments were made to the proposed changes to the appeal paths for certain cases.

It is now proposed that all appeals from decisions of Circuit Judges or Recorders in the Family Court should be routed to the High Court except:

a) Appeals against orders in proceedings under Part 4 or 5 of, or paragraph 19 (1) of Schedule 2 to, the Children Act 1989, except Special Guardianship Orders (meaning appeals against SGOs would lie to the High Court even if made in public law proceedings)
b) Second appeals to the Family Court

It is also now proposed that appeals against a decision or order in exercise of the court's discretion to punish for contempt of court should follow the same appeal route as the substantive proceedings in which, or in connection with which, the contempt decision was made.

Finally, it is proposed that appeals against orders under Section 91(14) Children Act 1989 should also follow the same appeal route as the substantive proceedings in which the Section 91 (14) order was made.

MoJ Legal confirmed that the amendments reflect the policy intention to relieve the growing pressure on the Court of Appeal. The aim of the proposed amendments is to enable the Court of Appeal to continue with its public law care cases and conclude them expeditiously.

MoJ Legal explained the changes in Paper 7A since the Committee had last seen the amended Rules. The only rule to be amended is Rule 30.3. The rule is drafted to state that all types of decisions of a Circuit Judge or Record which are being appealed lie to the High Court unless they fall within the exceptions, to which there are then further exceptions in relation to Special Guardianship Orders.

The Acting Chair noted that the proposed changes regarding contempt cases and section 91(14) Children Act 1989 orders seemed logical.

The Committee were concerned about the proposal that all appeals against Special Guardianship Orders should lie to the High Court and discussed why there was a distinction between the type of order appealed against and the type of proceedings in which the order was made.

District Judge Darbyshire noted that if a Special Guardianship order is made at the end of a care case then appeals against all orders should go to one appeal destination. The proposed change is confusing for parties especially litigants in person if different appeals go to different courts. Judge Raeside endorsed the difficulties in explaining the different appeal routes to a litigant in person especially when the drafting is unclear and confusing when phrased by way of exceptions to exceptions.

Judge Waller considered what the appeal route would be in the circumstances where a Special Guardianship Order was made in conjunction with a Supervision Order. He noted that such a scenario could pose real logistical difficulties especially as in public law proceedings such orders are often made against the will of the Local Authority and may result in an appeal. He proposed that it may be possible to distinguish Special Guardianship Orders on the basis of whether they were made in Public Law Proceedings or Private Law Proceedings. This was endorsed by Judge Raeside who noted that cases where there was more than one child with mixed orders as a result of different outcomes for each child, may require different appeal routes for each child in public law cases.

Will Tyler commented that it was unclear why this distinction was being drawn as a Special Guardianship Order was still permanency away from the parent either in private law proceedings or through the sanctioning of a Local Authority's care plan. Melanie Carew noted that there are only a small number of private law applications for a Special Guardianship Order and therefore it is imperative to separate the outcome from the proceedings. This was endorsed by Dylan Jones and Richard Burton. District Judge Carr proposed that such appeals should logically be to the Court of Appeal instead of conflating the appeal outcome with the appeal against proceedings.

The Acting Chair noted that there are some worrying outcomes where Special Guardianship Orders are made in Part 4 proceedings which result in Special Guardianship breakdown.

MoJ Legal noted, in relation to the Committee's concerns about the drafting of the rules by way of exceptions to exceptions was because the amendments needed to fit within the existing structure of the Destination of Appeals Order and the FPR. She would look at the rules again to try and make them less "chunky".

Judge Waller questioned whether the rules needed to clearly state when permission to appeal was required, where appeal lies to the Court of Appeal. As currently drafted, the provision might be read to be suggesting permission is not needed. Judge Raeside questioned whether a table could be inserted into the rules to assist with clarity.

MoJ Legal responded to the queries by stating a table is included within the Practice Direction but the Rules can be amended with a signpost at the end stating when permission will still be required where appeal lies to the Court of Appeal.

Conclusion: The Committee endorsed the change to the appeal paths in respect of contempt decisions and appeals against section 91(14) Children Act 1989 orders. Further consideration and discussion is needed in respect of appeals against Special Guardianship Orders, with the Committee being of the view that all appeals against any orders made by a Circuit Judge or Recorder in the family court in public law proceedings should lie to the Court of Appeal.

The Committee considered the President's memorandum on the proposed procedures for handling appeals to the Family Division.

District Judge Raeside noted that transcripts are a real problem and can sometimes take up to three months before they are obtained for use in an appeal. She suggested that when an appeal is lodged requests for transcripts need to be appropriately prioritised for HMCTS. Dylan Jones noted that there are also problems with transcripts in North Wales.

HMCTS stated that there is specific guidance and training in place available for HMCTS staff regarding requesting transcripts. She will send a reminder to staff for this to be cascaded. Training needs were highlighted in the South East and Wales. The Committee noted that if persistent problems remain, Judges can contact their designated family judge to contact HMCTS regarding this issue.

The Committee also noted that transcripts also raise an issue of cost and who bears the expense of obtaining the transcript and / or whether a relevant exemption applies. This is particularly where there is tension between ensuring the public have access to justice balanced with filtering out cases that are completely unmeritorious.

The Acting Chair noted that the President would not want the consideration of amending the appeal path destinations delays by considering all types of appeals.

MoJ Legal noted that the President's memorandum envisages a new form and the need for Practice Direction amendments. Officials need to consider what Practice Direction amendments may be required. Additionally there will need to be discussions as to who will draft the new appeal form.

Next Steps

MoJ Policy to consider the Committee's comments in consultation with the President, Master of the Rolls and Ministers and consider whether any additional amendments are required to the draft amendments to the Destination of Appeals Order and the associated consequential amendments to the FPR and PD30A.

MoJ Legal to consider whether the proposed amendments to the FPR and PD30A can be re-drafted to be made clearer. Consideration will need to be

given to the timing of laying the FPR amendments, which will link to the timing for laying and debating the amendments to the Destination of Appeals Order.

MoJ and President's Office to liaise as to who will design the new appeal form.

ATTACHMENT OF EARNINGS AND CHARGING ORDERS

8. Paper 8 (Policy) and the proposed draft rules to amend attachment of earning orders (Part 39) and Charging orders (Part 40) in addition to the Practice Direction to Supplement Part 40 were considered (Papers 8A – 8C Legal).

MoJ Legal updated the Committee that the Civil Procedure Rules Committee are amending the Civil Procedure Rules which will come into force on 6th April 2016. The consideration to the proposed amendments of the Family Procedure Rules in relation to attachment of earnings and charging orders is therefore an urgent consideration for the Committee. She drew the Committee's attention to the questions raised in Papers 8a (Legal).

Attachment of Earning Orders

Rule 39.5

MoJ Legal noted that the Civil Procedure Rules required a certified copy of the Order to be filed with the Court in an application for an attachment of earnings.

The Committee discussed what was meant by "certified". Hannah Perry's understanding is that certification is usually undertaken by a solicitor and this would be simply to certify that the document was a true copy but could not guarantee that it was the original order. This was the view of the majority of the Committee.

District Judge Darbyshire stated if this interpretation was correct, then applicants should be required to file a document with the original court seal or a certified document which contained the original court seal. This is to ensure the final order is produced from the court and prevent any fraudulent orders being lodged with the Court.

District Judge Carr and Judge Raeside felt this approach would be too cumbersome and onerous for the applicant. It would build delay into the application process and create box work for the District Judge if sealed copies from the Court were to be produced every time.

Judge Waller suggested a photocopy can be produced with the application as long as the photocopy was of a document bearing a Court Seal. This approach was agreed by the Committee.

Richard Burton commented that Rule 39.5 needs to be clearer in its relation to Rule 39.1 to make it clear that an attachment of earnings can be applied for whether there are arrears or not, and could be applied for at any point in time (for example if the debtor gets a new job).

Judge Raeside questioned the policy rationale necessitating a mandatory hearing for a family debt. Judge Waller noted the need to have a hearing

could be dependent upon a reply from the respondent. Judge Raeside noted the experience of Court staff in the civil courts in dealing with these types of orders without involving the judiciary in uncomplicated cases.

District Judge Carr questioned why legal advisers could not deal with these types of applications without a court hearing. The Acting Chair noted the Marie Brock had made the same point. This was further endorsed by District Judge Darbyshire who noted that in the civil courts Court staff make these orders so why can't legal advisers.

MoJ Legal noted that a lay bench can make the order at a court hearing. However, before revising the proposed rules, she would need to have further discussions with MoJ and look into the history of the policy rationale for requiring a hearing in family cases, where none is required in civil cases.

Conclusion: Applicants for an attachment of earnings order are required to file a copy (including photocopy) of the original order which contains the Court seal.

Next Steps

Consideration to be given to possible future amendments to allow attachment of earnings orders to be made without a hearing and/or to be made by court officers. But the proposed amendments as currently drafted should be progressed in the meantime, to ensure these new provisions are in place for 6 April 2016.

Rule 39.9

District Judge Carr raised concerns about the drafting of Rule 39.9 (2). This was endorsed by Judge Raeside. The concerns centred on the onus being on the applicant to show why they should not be imprisoned and how the phrasing is construed to constitute "bad law". Both noted the existing case law in this area and that consideration needs to be given about what the Court Office needs to send out and actually sends out.

District Judge Darbyshire noted that this is indicative of the development of the robust enforcement of Court orders mandating debtors to attend and show why they have not breached the order.

A sub group will be convened to look at the wording of the rules in this aspect (MoJ Legal, Judge Raeside, and District Judge Darbyshire).

Conclusion: Committee agree the principles of Rule 39.9 but the wording of Rule 39.2 (2) may need to be re-drafted subject to further discussions from the sub group.

Rule 39.20

MoJ Legal noted that Michael Horton had questioned the need for the draft rule, but she suggested it would be useful to include a rule stating that applicants seeking permission to enforce old arrears by way of an attachment of earnings order should apply for permission at the same time as making the substantive attachment of earnings order application. She questioned what the appropriate notice period would be for such applications.

The Committee endorsed the inclusion of this rule. Judge Raeside proposed 14 days' notice period. This was approved by the Committee.

Conclusion: Rule to be recast slightly to say that, if permission to enforce old arrears is required, this should be applied for at the same time as making the attachment of earnings order application. The notice period for any such permission application is 14 days.

Next Steps

MoJ Legal to make required revision to the proposed rules

MoJ Legal to look into the policy rationale mandating a court hearing for applications for attachment of earnings orders and whether this is a function which could be delegated to court officers or Legal Advisers, but this is to proceed at a slower pace, with the draft new rules being made in the interim, to come into force on 6 April.

Charging Orders

MoJ Legal drew the Committee's attention to the questions raised in Papers 8a (Legal).

Rule 40.2

The definition of "creditor" has been adapted from the wording used in the Charging Orders Act 1979. This is at the suggestion of Michael Horton. Officials have suggested additional wording to ensure a court officer enforcing a debt in the name of a creditor will fall within the scope of the definition.

The Committee unanimously endorsed the revised rule.

Conclusion: The revised rule will be adopted to include the wording suggested by MoJ officials.

Rule 40.8

The Committee discussed who should bear the responsibility for serving the charging order application, the interim charging order and the final charging order.

District Judge Darbyshire commented that in civil proceedings the applicant bears the responsibility to serve the charging order application and the interim charging order. Within the interim charging order the date of hearing for the final hearing is included. Therefore the Court Officer is not obliged to send a further notice of hearing to parties other than the applicant. It is the applicant seeking to enforce the debt and therefore the applicant should bear the burden of making the enforcement mechanism work. Judge Raeside endorsed this noting the existing pressures on the court administration and court staff.

Judge Waller questioned whether the applicant should also serve the order in REMO cases. However, MoJ Legal responded that in these cases, the applicant will be the court officer acting in the shoes of the creditor, therefore

HMCTS will bear the burden of serving the application and interim charging order on the respondent.

Hannah Perry questioned whether the notice period for charging orders should be reduced to 14 days to be the same as applications for attachment of earnings orders. However, Judge Waller noted that it should remain at 21 days to give other creditors sufficient time to attend the final hearing and make any representations should they so wish.

The Committee also unanimously agreed that a person seeking to discharge or vary a charging order would be the person with responsibility for serving the application and interim order.

Conclusion: The Committee agreed that the applicant (whether on an initial application or to vary or discharge an order) should bear the responsibility of serving the application and order on other parties.

Rule 40.19

The Committee considered whether the rule should include a signpost indicating that HMCTS publishes information to assist parties with knowing which Court venue applications should be sent to.

Judge Raeside felt the more assistance that can be given, especially to litigants in person, the better it would be for Court Staff and the Judiciary.

This was endorsed by the Committee.

Conclusion: The Committee agreed that the Rule should include a signpost indicating that HMCTS will publish information as to which Court Venue applications should be sent to.

Practice Direction to Part 40

The Committee were content with Practice Direction 40A as currently drafted.

District Judge Carr questioned whether the Practice Direction included provision for charging orders to be made against individuals in a partnership as opposed to the partnership itself. MoJ Legal noted that the Practice Direction as currently drafted mirrors the Civil Procedure Rules which includes a charging order against a partnership. It was agreed that the draft should be amended slightly to be clear that the order could also be against an individual member of a partnership.

Conclusion: Practice Direction 40A as currently drafted was agreed, subject to the slight change regarding making orders against members of partnerships.

The Committee agreed to the proposed amendments to the Family Procedure Rules with appropriate transitional provisions.

The Committee agreed that no consultation of the proposed amendments was required.

The Committee endorsed that Justices' Clerks, Assistants and single lay justices should not be able to exercise the functions of the court in the new Parts 39 and 40 and PD40A. This means no amendments will be needed to the Justices' Clerks and Assistants Rules 2014 (as these list functions that can be performed), but PD2A will need to be amended to specify that a single lay justices may not exercise any Part 39, 40 or PD40A functions (as that Practice Direction lists functions that cannot be performed).

The Committee agreed that these draft rules can be shared with the Law Commission with suitable caveats inserted.

PROPOSED AMENDMENT TO PD27A

9. The meeting considered the Memorandum from the President on the Proposed Amendments to the Bundles Practice Direction (PD27A).

Michael Horton in his email response suggested that the Committee consider not responding to the Consultation to present a united front as the views of individual practitioners and judges may vary in their responses. The Committee agreed not to send in a response to the Consultation on amendments to the Bundles Practice Direction.

The Committee discussed the proposed amendments.

The Acting Chair noted the limitations on certain categories of documents. Dylan Jones suggested that if a list was to be specified this should include the threshold document which is often too lengthy. Hannah Perry noted that the Social Work statement often contains the chronology and care plan and therefore restricting the number of page numbers for this document may cause problems. Judge Raeside considered that the changes amount to micro-managing how professionals conduct themselves in proceedings. She believed instead of imposing more changes, efforts should instead be made to encourage practitioners to follow the existing Practice Direction rather than amending it further.

The consequences of non-compliance with the Practice Direction were also considered by the Committee. Mrs Justice Theis noted that where there is continued non-compliance with the Practice Direction, the case can be listed before the relevant Designated Family Judge. Hannah Perry noted that Judges could refuse to hear the case which could result in costs implications for the party that has failed to comply.

Dylan Jones questioned whether the Practice Direction could include a specific reference to sanctions in the event of non-compliance with the Practice Direction. Will Tyler noted that it is often the case that bundles, and the documents contained therein, are wholly non-compliant with the Practice Direction as Local Authorities are under a massive burden to comply with something they find extremely difficult to do. To amend the practice direction further will cause significant ill-feeling amongst professionals.

District Judge Carr noted that Local Authorities can be assisted with complying with the Practice Direction by helping them think of certain documents as litigation documents as opposed to documents in the application e.g. threshold document, chronology etc. District Judge Darbyshire considered that a chronology can serve different functions

depending on what the court required. Judge Waller agreed that there are two different types of chronologies – a litigation chronology and a social work chronology – the former being what is required in proceedings which is also considerably shorter.

Judge Waller noted there are also problems with the length of expert reports; some of which are badly drafted and too lengthy. He felt a message should be conveyed to experts that they key components of the report should be clearly accessible in an identifiable area. District Judge Carr endorsed the need for shorter reports. The Acting Chair noted that if a page number restriction were to be imposed, experts might take this to be an aim as opposed to being a maximum which defeats the objective of achieving shorter reports.

The Committee agreed there is no sanction to deal with bad practice. Judge Raeside suggested that the proposed amendments could be treated as a guideline instead of a rule. Will Tyler endorsed this suggestion and proposed that practitioners should be prepared to justify why they have failed to comply with the guidelines if necessary. These approaches were approved by all Committee members.

Conclusions: The Committee agreed not to respond to the consultation on amendments to Practice Direction 27A.

UPDATE ON DRAFT FAMILY PROCEDURE (AMENDMENT) RULES 2016

10. The final statutory instrument will be available for final approval and signing by the Committee shortly. This will contain the provisions on attachment of earnings orders and charging orders. The Committee agreed that the amendments linked to the case of Wyatt v Vince (which have already been agreed) should be included in the same statutory instrument. This may be circulated for signature out of Committee, or for signature at the next Committee meeting. It will then be submitted to the Minister and laid in time for the amendments to come into force on 6 April 2016.

The Practice Direction amendments on single lay justices not performing new Part 39/40 functions, on charging orders and on Wyatt v Vince will be put into one Practice Direction amending document. The President will be invited to sign this document and then it will go to the Minister. It too will come into force on 6 April 2016.

JUSTICES' CLERKS AND ASSISTANTS' RULES 2014

11. The timing of proposals for amendments to the Justices Clerks and Assistants Rules have not yet been considered in detail by officials. In view of other priority work, it will not be possible to make any amendments in time to come into force on 6 April. This will be carried forward on the agenda for future meetings.

ANY OTHER BUSINESS

12.1 MoJ Policy has received a request from CAFCASS CYMRU to insert a hyperlink into Practice Direction 12B which would provide a link to the parenting plan in Wales.

Dylan Jones noted that there is a link existing on the Welsh website to parenting plans in England and Wales. This would merely be reciprocating the arrangement. The Committee sought clarification as to whether the parenting plan was in Welsh or in English with a Welsh translation.

In principle, regardless of how it would work in practice, the Committee had no objection to this amendment. It could be included in the next planned Practice Direction amending document.

12.2 Melanie Carew informed the Committee that colleagues for CAFCASS CYMRU have been in contact requesting to be kept updated about the work of the Committee. Members noted that it was in the interests of family justice to share information with CAFS CYRMU even though they could not officially be part of the Committee.

MoJ Policy also noted that he had received a request from CAFCASS CYMRU to be added to the distribution list for the minutes of the meeting. This has been done so they will in future receive the minutes which would assist in keeping them updated with the work of the Committee.

12.3 MoJ Policy updated the Committee that it had been brought to his attention that there is an error in the form for a witness summons which does not state on it the sanction for failure to comply with a witness summons. Efforts are being made to amend the form as soon as possible. This is a priority for HMCTS. He sought the Committee's views on whether members agreed to the amendment of the form, and if so, whether any particular form of wording should be used.

The Committee unanimously agreed to the amendment of the form.

Judge Waller suggested using the wording in Section 31C of the Matrimonial and Family Proceedings Act 1984. The Committee did not have any strong views as to the wording to be used but were unanimous in agreeing that it would not be possible to set out the different terms of imprisonment which could be imposed by different courts / different levels of judge in the family court.

DATE OF NEXT MEETING

13. Monday 7th March 2016 at 10.30 a.m. in the Royal Courts of Justice.

Secretary

February 2016

FPRCSecretariat@justice.gsi.gov.uk