



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In the Conference Suite, 2nd Floor Mezzanine,
Queen's Building, Royal Courts of Justice
At 10.30 a.m. on Monday 05 February 2018

Present:

Sir James Munby	President of the Family Division
Richard Burton	Justices' Clerk
District Judge Carr	District Judge (Magistrates' Court)
District Judge Hickman	District Judge (County Court)
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Lord Justice McFarlane	Judge of the Court of Appeal
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
Mrs Justice Theis	High Court Judge
His Honour Judge Waller	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Chair welcomed the new Head of Public Law Policy in the Family Justice Policy Team. The Chair also welcomed the new Secretary to the Family Procedure Rule Committee who will be taking over the secretariat role.
- 1.2** Apologies were received from Mr Justice Baker, District Judge Godwin, Will Tyler QC, Melanie Carew, Dylan Jones, Hannah Perry and Jane Harris.

MINUTES OF THE LAST MEETING: 4 DECEMBER 2017

- 2.1** Two amendments were proposed by District Judge Carr.
- 2.2** Paragraph 4.21, the second sentence has been amended to read: *"He noted that there is a significant operational impact if the assumption is that only Cafcass and Cafcass Cymru will undertake this work under the proposed provisions."*
- 2.3** Paragraph 5.10 fifth sentence has been amended to read: *"The President of the Family Division questioned whether the future court's record system in 2037 would be able to "talk to" the system from 2017 to establish whether the claim was originally made in the petition."*

- 2.4** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING

Online Divorce and Practice Direction 36E

- 3.1** HMCTS reported that pilot Practice Direction 36E went online from 18 January 2018. Since then, approximately 400 divorce petitions have been received. Errors in completion of the petition have been greatly reduced and those errors now made have related more to human error rather than a difficulty with the subject matter.
- 3.2** Officials also reported that the online system now has the facility for users to submit fees for divorce petitions and upload marriage certificates electronically. Members welcomed this development and recognised the importance in providing a more efficient system for financial transactions that assists the court user.

Practice Direction 36F – dispute resolution pilot of C100 applications

- 3.3** MoJ Policy reported that the pilot went live on the 22nd January 2018. It is too early for officials to provide a substantive update; however, the early indications are that the pilot is going well.

FPRC WAYS OF WORKING AND FORWARD PLAN OF WORK STREAMS

- 4.1** Members considered Paper 4.
- 4.2** District Judge Carr questioned how many Statutory Instruments are anticipated in relation to Brexit. MoJ policy reported that the Department estimates that Brexit could lead to around 30 additional Statutory Instruments (for MoJ). A full paper is due to be put forward by the International Policy Team next month and it may be possible for further information about this to be provided at the next meeting. Officials were unable to confirm the number of Statutory Instruments needed to support Brexit across other Government Departments. Members were advised that resource available to support the work of the Committee is likely to become more limited as high priority is being given to work relating to Brexit and the existing work streams of the Committee as set out in Paragraph 12 of Paper 4. Richard Burton questioned whether the change in process applied to all Rule Committees. Officials confirmed that this was the case.
- 4.3** Mrs Justice Theis was concerned about the implications of freezing the items listed at paragraphs 15 and 16 of the paper which relate to outstanding work and additional matters for Committee's consideration. This was endorsed by Lord Justice McFarlane and Judge Raeside. Members rejected the proposal that the April and July meetings could either be postponed or be undertaken as either a telecon or through correspondence.

- 4.4** Members discussed the outstanding work set out in Paragraphs 15 and 16 of Paper 4.
- 4.5** The President of the Family Division questioned whether Practice Direction 6C at paragraph 16.d should be included within the list and instead suggested that revising this PD could be managed by means of a direct conversation. He proposed that officials should liaise with DWP and HMRC to obtain the correct contact information as this item has been on the forward look for a long time. District Judge Carr acknowledged that the Practice Direction, especially the contact details for other Government Departments set out within it, was out of date. MoJ Legal noted that it was not as simple as updating the contact details. They said that the whole Practice Direction was not updated as part of the implementation of the Family Procedure Rules 2010 and therefore is now out of date. This will require a great deal of policy and legal resource to ensure that the revised Practice Direction is fit for purpose. The President of the Family Division noted that the Legal Secretary to the President of the Family Division will contact the other Government Departments and obtain up to date contact details for inclusion in an updated Practice Direction.
- 4.6** District Judge Carr suggested that the separate work items in relation to the bundles Practice Direction (PD27A) could be linked together. These were proposals to amend the provisions to address non-compliance with the Practice Direction by practitioners and amendments to include reference to e-bundles (including pagination within e-bundles).
- 4.7** The President of the Family Division reported that the work on e-bundles currently being used in Surrey, Sussex and Kent could now be rolled out. The method whereby pagination is now handled electronically has been reported as working. Judge Raeside questioned what the problem with e-bundles was as in her experience it worked well. The President of the Family Division responded that previous versions of the technology to support e-bundles did not allow for re-pagination for additional documents and some practitioners were exceeding the limits prescribed in the Practice Direction on the basis that it was an e-bundle rather than a paper bundle. Judge Raeside and District Judge Suh volunteered to form a sub-group to look at these amendments out of Committee.
- 4.8** Mrs Justice Theis questioned whether the work streams outlined in Paragraph 12 would be continuing. MoJ officials confirmed that internal work is on-going to progress these items.
- 4.9** Mrs Justice Theis suggested that the proposed work to include legal bloggers on amended list of persons permitted to attend family hearings can ultimately be dealt with using judicial discretion. This was endorsed by District Judge Carr.
- 4.10** MoJ Officials noted that further consideration would need to be given to the policy behind whether such persons should be included in the list of approved persons to attend hearings. Further, there were additional considerations around how a non-

statutory scheme to “approve” bloggers, set up through the Lord Chancellor’s office, would be administered. Ministerial views would need to be sought on this. Judge Raeside questioned whether such a scheme could instead be administered through the President of the Family Division’s office. The President of the Family Division agreed that an approved list of bloggers could be drawn up by his Office. He reminded Members that the minutes of the Committee are public documents for interested persons to access and see what the Committee is working on. He considered that it would be useful to seek an approved definition of legal bloggers and if possible incorporate this in the Rules as, in his opinion, it appeared irrational that legal bloggers were excluded from court despite their interest in family law.

- 4.11** In relation to paragraph 15.e in Paper 4, MoJ Officials explained that there is wider thinking needed about access restrictions for family appeals heard in the High Court and suggested that this item could be tied into that work. This was endorsed by MoJ Legal who pointed out that this issue is different although related to the point on bloggers and explained that if an exception was made to some High Court appeals so these were held in public, then there were wider policy decisions to be made about other High Court appeals and then more widely all family appeals. Members disagreed that this was a policy decision for Ministers and considered it was more a matter for the judiciary. The initial focus is to re-instate the status quo prior to the implementation of the changes to appeal routes in 2016, so that those appeals that were moved to High Court level (from Court of Appeal level) could be heard in public.
- 4.12** The President of the Family Division discussed the need to avoid reputational damage when appeals decisions made in the High Court, previously heard in open court in the Court of Appeal, were now subject to access restrictions. He noted that work on this issue was being currently undertaken by Mr Justice Baker.
- 4.13** Members agreed that items relating to transparency (access restrictions of appeals now heard in the High Court that were previously heard in open court in the Court of Appeal and proposed amendments from Lucy Reed about legal bloggers) should be considered out of Committee. Lord Justice McFarlane and Mrs Justice Theis volunteered to be on this working group. Mrs Justice Theis noted that Mr Justice Baker had been involved in work relating to appeals in the High Court and suggested that he should also be part of this working group. This was endorsed by those present.
- 4.14** In respect of the workstream relating to enforcement of financial orders made in family proceedings, Judge Waller and District Judge Carr noted a clear need to update the FPR and supporting practice directions. The President of the Family Division questioned the progress of the Government’s response to the Law Commissions’ Report on Enforcement of Family Financial Orders. MoJ Policy responded that the Government is due to consider the contents of the report and advice will be submitted to Ministers prior to the Government response being announced. Judge Waller suggested that any work undertaken in this area should go hand in hand with that undertaken on financial remedies. MoJ Policy underlined the

need for joined up working between policy and HMCTS although it was explained that the technicalities will require the same legal support. The President of the Family Division noted that some amendments can proceed without the Government's response being known. Judge Waller agreed to look at this issue out of Committee with District Judge Carr and will report back in April 2017.

- 4.15** The President of the Family Division acknowledged that there were practical difficulties in progressing work relating to litigation friends and expanding the test for appeals in family as both were dependent on considerations by the Court of Protection and Civil Procedure Rule Committees respectively. Members agreed these items should remain on the list but be deferred pending this work being taken forward by those Committees.

Actions:

President of the Family Division's Office to speak to Officials at HMRC and DWP on requirements for modernising the Practice Direction at 6C and to feed back to the Committee at the April 2017 meeting. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.

Working Group consisting of Lord Justice McFarlane, Mrs Justice Theis and Mr Justice Baker (nominated in absence) to look at issues of admittance of legal bloggers and publicity of family appeals in the High Court and report back for the April meeting – Item 15.5 in Paper 4. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.

Working Group consisting of Judge Raeside and District Judge Suh to look at the issue of e-bundles and report back to the April meeting. Draft amendments to be shared with MoJ by 3 April 2018 to enable officials to consider the proposals.

Requests for Information by foreign jurisdictions – FPRC Secretariat to ensure that this is included as an agenda item for the meeting in March.

CHILDREN PRACTICE DIRECTION

- 5.1** MoJ Officials provided an oral feedback following the full discussion of this item at the December meeting of the Committee.
- 5.2** Members were reminded of the proposed revisions to the scope of the Children Rules and Practice Direction to address concerns about the operational impact.
- 5.3** Following concerns raised by the Committee about the revised modelling proposals in which it was recommended that scenarios for both modelling options be presented to the Minister, MoJ Policy reported that analysts working on the reduced scope modelling had now submitted it for quality assurance scrutiny and it was now nearly ready to go to the Minister.

- 5.4 The full scope model is currently undergoing the same rigorous scrutiny but is not ready yet. Advice will be sent to Ministers when both models have been finalised to enable a decision to be made.
- 5.5 Members requested this continue to remain a standing agenda item for the Family Procedure Rule Committee.

FINANCIAL PROCEEDINGS: MAKING A FINANCIAL APPLICATION IN AN ACKNOWLEDGEMENT OF SERVICE AND PROPOSED FAST TRACK CHANGES

- 6.1 Members considered Paper 6 and its annexes.
- 6.2 Judge Waller raised questions on Para 9.4 in Paper 6.b and suggested that the amendments on making a financial order application on the court generated Acknowledgement of Service form still needed more work. However, while that work proceeds, he saw no reason why progress on other areas should be delayed.
- 6.3 HMCTS reported that it should be possible to amend the Acknowledgement of Service form by the end of this calendar year. There remain issues around IT and the associated costs of IT amendments to the family system which are to be resolved. It may be possible to implement these changes towards the end of 2018, however, a further update will be provided to the Committee when timescales for implementing these changes are known.
- 6.4 Judge Waller responded to the points raised in 9.9b on the definition of “order for periodical payments”, where he had queried whether two further types of order should be included. It was agreed that they need not be at this stage. Judge Waller said that the wider plans to unify the process takes care of some of the issues raised and gives an idea as to what should be included. He reminded the Committee that the types of applications referred to at paragraphs 19b and 19e will make up the majority of the applications.
- 6.5 MoJ Legal referred the Committee again to Paper 6b as there had not been the opportunity to ask whether they are content with work all of the proposed amendments to Part 9 FPR. On the issue of transitional provision, Michael Horton proposed that all of the amendments, save those to rule 9.20 should only apply to cases starting on/after the date the rule amendments come into force. This was agreed.
- 6.6 Michael Horton noted that on Paper 6b, draft rule 9.20(7) (on whether the Court may fix future direction hearings) a small drafting change would need to be applied. He suggested that drafters move the word “and” to be replaced with “but otherwise”. MoJ Legal took this on board and will draft accordingly.
- 6.7 MoJ Legal agreed to revise the draft taking Michael Horton’s points into account.

- 6.8** Judge Waller agreed in principle with the points made at paragraphs 11-15 of Paper 6 which look at the functions of Justices Clerks under 2014 rules and whether any amendments should be made in light of the court functions imposed/ amended by the proposed Part 9 FPR changes. He also agreed with officials' recommendations in relation to functions which can be performed by a single lay justice. Practice Direction 2A can be amended to reflect these conclusions and will be submitted to the President and then the Minister when the Family Procedure (Amendment) Rules 2018 are sent for formal signature.
- 6.9** The Committee considered the draft Family Procedure (Amendment) Rules 2018 which include the "fast-track" amendments already discussed and include amendments in relation to proceedings in the High Court being heard by a Divisional Court. The latter were agreed at the October 2017 Committee meeting. It was agreed that the amending Rules should be finalised with a view to laying the Rules on 28th March 2018 to come into force in May 2018.
- 6.10** The draft response to FBLA from FPWP at Paper 6 was widely agreed as a proactive approach and the Committee were content that MoJ Policy sends this out in due course.

Actions:

MoJ Policy to arrange for the response to FBLA to be sent out.

MoJ Legal to send out draft amendments to Part 9 FPR 2010.

FINANCIAL REMEDIES: REGIONAL COURTS AND "DE-LINKING"

- 7.1** Members considered Paper 7 and its annexes.
- 7.2** MoJ Policy informed the Committee that they supported the principle of Financial Remedies Courts but proposed that in its initial stages it be implemented using existing processes and forms. This is because of internal quality assurance processes to ensure court forms are fit for purpose from the start and to embark on a unified Form A would impact on work being undertaken in relation to court forms to support the fast track amendments due to be implemented in May 2018. MoJ Policy further noted that if a unified Form A was to be implemented it will be necessary to amend Forms E and E1 which naturally follow on from a unified form A. As this is a rigorous process, Members were asked to consider whether it would be preferable to introduce the unified Form A and Combined Forms E and E1 at a later time with a clear timetable for taking this work forward.
- 7.3** The President of the Family Division suggested that a unified Form A could go forward on a pilot basis in the new Financial Remedies Courts, especially as the general purpose of the pilot is to test the effectiveness of the form before formally introducing it. MoJ Policy noted that the general rule is that only one operational form should be available to the public at any time and that piloting a new form in

- certain locations only could pose difficulties as it may lead to different operational forms being available to the public based on whether they were within the pilot or not without a clear basis on whether Form E or E1 should be used for the next stage.
- 7.4** HMCTS referred to the online divorce project started in October 2017 which includes digital reform to financial remedies and should be concluded by April 2019. The President of the Family Division questioned whether there was any judicial involvement in the financial remedies process and HMCTS confirmed that Judge Hess is involved in this. HMCTS noted that there was a need to consider what procedures and rules were required for the reform process.
- 7.5** Judge Raeside said that the development from paper application forms to forms capable of being submitted digitally was positive. She questioned how much involvement from practitioners is involved in devising the pilot model. The President of the Family Division noted that whilst guidance notes were driven by the requirements of legislation, the final model needs to strike a balance between what customers want and what is legally required, the latter of which required input from practitioners.
- 7.6** Judge Waller said that he is meeting the digital reform team following the meeting and will discuss the process and plans for the next stages of online divorce. He will take back the concerns raised from this meeting including ensuring that timetabling takes things such as the back-office functions on divorce petitions into account when putting guidance together.
- 7.7** The President of the Family Division said that a full overview and reform of the Part 9 procedures and accompanying forms now needs to be considered. He requested HMCTS put together a two-page scoping paper setting out the scope of the financial remedies online reform project, the stages for implementation and associated timescales including legal and IT dependencies. He said that this information was needed to decide if and how this impacts on the implementation of financial remedies courts and the timescales for such a pilot.

Actions:

MoJ Policy to provide a workplan by the next meeting detailing how soon it would be possible to arrive at a combined A/A1-E/E1 form.

HMCTS to provide a paper by the next meeting scoping the issues to be looked at as part of introducing a pilot for a new combined form

FORM C1A

- 8.1** Members considered Paper 8.
- 8.2** Melanie Carew responded by email to the Pink Tape blog from Lucy Reed:
“The C1A form has been in existence since 2005 and to a large extent it is has been supplanted, in practice, by the Safeguarding Letter introduced in the Child Arrangements Programme in 2014, which is the process by which the court is

provided with safeguarding information prior to the FHDRA. Cafcass' role is to ensure all risks are identified by way of a detailed discussion with both parents, where possible, and standard checks with police and local authorities. This is part of the Work to First Hearing risk assessment process. Where it has not been possible to incorporate the views and concerns of both parties, the court is advised of this and a final order should not be made at the FHDRA.

There are cases in which the Respondent does not complete a C1A or the C1A has not been forwarded to Cafcass before the safeguarding letter is completed. The CAP does not, in its current form, require the court to provide Cafcass with a copy of the Respondent's C1A form but we are confident that the risk assessment process is as robust as possible undertaken by experienced and skilled staff at Cafcass".

- 8.3** Judge Raeside referred to the Pink Tape blog and underlined that allegations of domestic abuse needs to be taken seriously despite the existing process for risk assessment by Cafcass. This was endorsed by Mrs Justice Theis and Judge Waller. Judge Raeside questioned how Cafcass can be confident that their risk assessment is robust when there was uncertainty about the number of respondents submitting a C1A which Cafcass may not have seen and which the party completing it may assume has been taken into account. Judge Raeside also highlighted the concerns that the failure to utilise the C1A in accordance with the rules (prior to the first hearing) to particularise any allegation of harm often leads to an adjournment of the First Hearing Dispute Resolution Appointment because the issue of whether to order a fact finding could not be decided. This could lead to unacceptable delay for parents seeking to spend time with their children.
- 8.4** MoJ Policy confirmed that the process of sending the C1A to Cafcass is the trigger for ensuring that relevant safety and risk assessments are implemented. However, PD12B and PD12A could both provide solutions for ensuring that the victim is adequately protected. Judge Raeside proposed that PD 12J could be considered as an additional safety feature especially as it is looked at on a regular basis.
- 8.5** Judge Waller noted that it may be possible to incorporate the amendments stressing the need to consider any C1A filed, without amending Practice Direction 12J, by amending PD12B. He offered to undertake an initial draft of proposed amendments to address the concerns raised in the blog. This was endorsed by the President of the Family Division who considered it preferable to avoid further amendments to Practice Direction 12J given its recent introduction. Judge Raeside volunteered to work with Judge Waller and District Judge Suh in taking this forward.
- 8.6** HMCTS reported that there is guidance for staff which is in the process of being updated to ensure C1As received from a respondent are forwarded to Cafcass promptly which will provide Cafcass with sufficient time to consider the contents as part of their risk assessment. The President of the Family Division requested to see this updated guidance prior to it being sent out to court staff.

8.7 Mrs Justice Theis suggested a response be drafted to Lucy Reed to show that the issue is being considered by the Rule Committee. This was endorsed by the Committee.

Actions:

His Honour Judge Waller and Her Honour Judge Raeside to look at PD12B and amend to reflect how this could be used more effectively to ensure victim protection.

HMCTS to arrange for Rebecca Cobbin to send the President of the Family Division existing guidance which is currently being sent out to staff.

ANY OTHER BUSINESS

No other business was raised at the meeting.

DATE OF NEXT MEETING

9.1 The next meeting will be held on Monday 5 March 2018 at 10.30 a.m. at the Royal Courts of Justice.

Secretary to the Family Procedure Rule Committee

February 2018

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