



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 March 2018

Present:

Mr Justice Baker	Acting Chair
Richard Burton	Justices' Clerk
District Judge Godwin	District Judge
Jane Harris	Lay Member
District Judge Hickman	District Judge (County Court)
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Dylan Jones	Solicitor
Lord Justice McFarlane	Judge of the Court of Appeal
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
Mrs Justice Theis	High Court Judge
William Tyler QC	Barrister
His Honour Judge Waller	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Acting Chair acknowledged that this was Richard Burton's final meeting and thanked him for his invaluable contribution to the work of the Committee.
- 1.2** Apologies were received from the President of the Family Division, District Judge Carr and Rob Edwards.

MINUTES OF THE LAST MEETING: 4 DECEMBER 2017

- 2.1** Judge Raeside raised one amendment to the minutes. Paragraph 8.3 has been amended to read: *"Judge Raeside referred to the Pink Tape blog and underlined that allegations of domestic abuse need 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.”

- 2.2** Judge Suh proposed one amendment to the minutes. The last sentence of paragraph 8.5 now reads: *“Judge Raeside volunteered to work with Judge Waller and District Judge Suh in taking this forward.”*
- 2.3** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING

FPRC Ways of working and forward plan of work streams

- 3.1** The Deputy Director of MoJ Policy apologised for being unable to attend the meeting on 5 February 2018 when members discussed the paper about prioritising outstanding work streams. This paper set out the constraints the Department are currently operating under, especially in relation to taking non-Brexit related statutory instruments through Parliament.
- 3.2** She explained that legal and policy resource within the Department is being prioritised to ensure a smooth transition for the UK’s exit from the European Union. In this context, officials have managed to secure agreement for two statutory instruments per year to support the work of the FPRC.
- 3.3** She recognised and appreciated that the Committee were keen to progress additional workstreams, particularly in relation to transparency, enforcement and practice direction amendments in relation to bundles. She also acknowledged that the Committee is responsible for the content of family procedure amendments rules and the President is responsible for the content of the Practice Directions. However, as these documents require significant departmental legal and policy resource to ensure they meet the required departmental and Parliamentary standards before Ministers could sign them, she asked for the Committee to provide a clear list of its priorities to enable MoJ to similarly prioritise its resource to ensure that the Committees key priorities are successfully progressed in light of the existing constraints.
- 3.4** The Acting Chair questioned whether the Department could identify what it considered to be the Committee’s priorities and whether the constraints and pressures identified applied across other Government departments. The Deputy Director for MoJ Policy responded that from what the committee had said in the past, she would assume that the Committee’s priorities to include the following workstreams: Rules and Practice Direction relating to the voice of child; supporting

court reform and the changes for Financial Remedies, but the Committee would need to confirm this. She noted that this was an opportunity for the Committee to identify its priorities so that work can be progressed to a conclusion as speedily as possible. She confirmed that the pressures faced by the Department are likely to be faced by other Government departments given the priority that is being attributed by Government to ensuring a smooth transition following the UK's exit from the European Union.

- 3.5** Judge Waller noted that Paper 4 considered at the February 2018 meeting identified the outstanding work streams of the Committee. He considered that the sub-groups set up by the Committee were intended to scope the work required for some of the outstanding work streams. He agreed that it was important to identify the immediate priorities of the Committee and would prepare a paper for further discussion at the next meeting in April 2018.
- 3.6** Judge Raeside noted that the views of the President of the Family Division at the last meeting was that the Committee should proceed with its workstreams and not be perceived as being the cause of delay in implementation of future changes. She further noted that this view was endorsed by other Committee members at the last meeting. It was for this reason that members agree to consider the amendments required to the bundles Practice Direction, Practice Direction 12B in respect of the C1A, transparency and enforcement so that officials could then consider these further when time allows. This was endorsed by Lord Justice McFarlane who considered it important that the Committee progresses outstanding work as far as it is able. MoJ Policy acknowledged this view but considered prioritisation was essential to avoid delays in progressing work.
- 3.7** MoJ Policy noted that the proposal in the paper for reduced meetings was to enable officials to further progress the Committee's priorities in between meetings to enable effective discussion of the progress within meetings. The Deputy Director of MoJ Policy endorsed this and acknowledged the effort and resources needed to support Committee meetings as evidenced by the number of officials present at this meeting. Judge Waller questioned whether it was possible to streamline official attendance to assist the Department in managing its priorities. The Deputy Director of MoJ Policy noted that this is already being done by the Department with only those officials directly involved in the work of the Committee being present at meetings. MoJ Policy noted that even if the Committee were reluctant to hold fewer meetings, staggering agenda items between meetings will enable more effective progress given the short timeframes in between monthly meetings. Members agreed that staggered agenda items between meetings should be the approach for future meetings to enable officials to progress work between meetings.
- 3.8** District Judge Godwin asked if consideration could be given to progressing proposed amendments to the Family Procedure Rules 2010 concerning recognition of the requirements of the Welsh Language Act 1993 in family proceedings. He referred to draft amendments put forward in 2017. MoJ Policy noted that this was considered previously by the Committee. A preliminary consideration by lawyers at that time

indicated further consideration was needed of the proposals. Members had previously agreed that this work would be referred to the Civil Procedure Rule Committee for consideration. The intention was that the Family Procedure Rule Committee would mirror amendments considered by the Civil Procedure Rule Committee. MoJ Policy confirmed that this has been raised with both the Chair and the Secretary to the Civil Procedure Rule Committee by email. The Secretary to the Civil Procedure Rule Committee had not received proposed amendments to the Civil Procedure Rules.

- 3.9** District Judge Godwin raised concerns that this approach would cause considerable delay due to the amount of work required on the civil side to incorporate future amendments needed in respect of housing legislation changes. He did not think this work should be delayed whilst the Civil Procedure Rule Committee considered their position. MoJ Policy agreed to liaise with the Civil Procedure Rule Committee to establish their timetable for this work and provide an update at the next meeting, whether this could cause delays if the Civil Committee had not made any progress at all.

Action: MoJ Policy to gauge what progress had been made by the Civil Committee.

Family Procedure (Amendment) Rules 2018

- 3.10** MoJ Policy reported that the statutory instrument is progressing through internal clearance procedures. The instrument will be laid on 28 March 2018 and will come into force on 14 May 2018. The reason for the delay in implementation is to ensure supporting form changes are made to support the Rule amendments. Judge Waller noted that there was a small amendment required to the statutory instrument to include pension compensation orders in Rule 9.9b (3). MoJ Policy confirmed this will be amended in the instrument that will shortly be sent out to members for signature.

Form C1A

- 3.11** MoJ Policy confirmed that HMCTS had shared the amended guidance for HMCTS staff with the President of the Family Division which he had approved. This guidance has since been distributed to staff. HMCTS agreed to share this guidance with Judge Waller, Judge Raeside and Judge Suh to assist their discussions about amendments required to Practice Direction 12B.

Action: HMCTS to share HMCTS guidance with Judge Waller, Judge Raeside and Judge Suh

CHILDREN RULES AND PRACTICE DIRECTION

- 4.1** MoJ Policy reported that modelling work was progressing to support advice to be provided to Ministers on its completion. The Acting Chair questioned whether it was the same analysts who were working on modelling as well as analysing managing priorities in relation to Brexit. MoJ Policy confirmed this was the case.

- 4.2 Jane Harris questioned whether there was to be further delay on the Children Rules and Practice Direction. MoJ Policy responded there is no additional delay as the work continues to be in progress as analysts are preparing the model for two scenarios to ensure the Minister can make a fully informed decision.

FINANCIAL REMEDIES REFORM AND COMBINING FINANCIAL FORMS

- 5.1 Members considered Paper 5.
- 5.2 Officials explained that the paper sets out the timescales for HMCTS's digital reform of financial remedies. This programme sets out a digital process which would be based on existing court forms. The timetable has been predicted based on lessons learnt from the online divorce reform programme.
- 5.3 The paper also proposes an indicative timetable for introducing consolidated forms to support financial remedy applications. However, the Financial Remedies Court pilot will be undertaken using existing court forms. Although the draft consolidated form could be piloted, this requires further consideration to assess whether the benefits being sought could be achieved through a consolidated form taking into account the wide variety of financial remedy applications. The timetable reflects that these are high volume forms which require careful consideration prior to changes being introduced.
- 5.4 Michael Horton reported that the Financial Proceedings Working Party considered that there is no need for distinct Forms A and A1 and that this should be for the Court to decide on. He considered that the Working Party could address the content of a consolidated form which would address some of the more obscure types of applications which are rarely made today.
- 5.5 Judge Raeside questioned whether any consultation would be extended wider than practitioners to include organisations such as Citizen's Advice. This was endorsed by District Judge Suh who considered any consultation should be extended to include lay people as well as expert legal practitioners. MoJ Policy acknowledged that a targeted consultation to include organisations like Citizen's Advice, Personal Support Unit and Advice Now would be beneficial in ensuring the form achieves the desired purpose. Judge Waller welcomed this action but noted that some of the rarer types of applications may not be considered in any consultation responses received.
- 5.6 MoJ Policy considered that the timetable for implementation of a consolidated form could not be finalised until existing work had concluded on form amendments in relation to the fast track amendments. Officials will prepare a more definitive timetable to include a longer consultation period for the May 2018 meeting.

PREPARING FOR THE UK EXITING THE EUROPEAN UNION

- 6.1 Members considered Paper 6.

- 6.2** MoJ International Policy team noted that a large degree of uncertainty still exists around what amendments to the Family Procedure Rules are required to support the UK exiting the European Union as negotiations continue. The purpose of the paper was to invite the Committee's views on how they can be consulted on proposed changes to the Rules within, what is anticipated to be, short timescales for the implementation of statutory instruments.
- 6.3** MoJ International Policy Team recognise the expertise of the Committee and are committed to consulting members on draft proposed Rule amendments once known. However, as negotiations continue, it is important to ensure Committee time is not wasted undertaking nugatory work when the final outcome is unknown. Although Officials were unable to give exact timescales, assistance was offered on work planning and how this can be best built into the work of the Committee. She confirmed that they are analysing various different scenarios and that this work is very much dependent on the outcome of negotiations.
- 6.4** The Acting Chair welcomed the update and questioned whether Departmental views could be shared with the Committee so that Members understand what the proposed amendments may look like. MoJ International Policy Team noted that much of this work is done in conjunction with the Department for Exiting the European Union and that there are understandable sensitivities about sharing information whilst negotiations are on-going. Officials were asked to consider whether it may be possible in some circumstances to share more information pertaining to potential rule changes with the Committee.
- 6.5** Officials pointed Members towards the proposed powers for the Lord Chancellor to effect the changes to the Family Procedure Rules. Lord Justice McFarlane noted that the Committee were keen to assist the Department but it was important to understand the timescales in order to ensure the Committee can effectively contribute on the proposed changes. District Judge Suh questioned why the powers to amend the Family Procedure Rules were not being used as that ensured there are appropriate checks and balances to proposed reforms as opposed to rules being made in exercise of the Lord Chancellor's powers. MoJ International Policy noted that this approach is being adopted in respect of all Rule Committees. Whilst noting the different powers available to make amendments to the Family Procedure Rules it is also necessary to balance this against the timescales within which amendments may be required.

Actions:

MoJ Policy to consider how it might work with Whitehall colleagues to provide enough information to the FPRC on planning for various scenarios in such a way as to enable them to provide their expertise in a timely fashion on any consequential changes to the Rules.

PILOT TO INTRODUCE DIGITISED C100

- 7.1** Members considered Paper 7 and its annexes.
- 7.2** MoJ Policy reminded the Committee that this pilot was discussed and agreed at the December 2017 meeting. The pilot is due to commence on 26 March 2018. Officials have been working with HMCTS and Cafcass to support the pilot. The main objectives of the digitised form are to inform court users of out of court resolution options through the use of “nudges”; to identify cases where there are safeguarding issues; enabling the applicant to complete the C1A court form at the same time within one application to ensure the court has all the relevant information; and to invite user feedback, particularly on any difficulties encountered.
- 7.3** Officials have met with the President of the Family Division and demonstrated the prototype which he supports. The Acting Chair requested clarification on how the pilot areas were chosen. Officials confirmed that the court locations (Reading, Milton Keynes, Watford and Guildford) were chosen based on the volume of applications they receive, their proximity to London and in consideration of other pilots that the court might be involved in. Mrs Justice Theis questioned what information and/or training was given to local judges. MoJ Policy noted that the President of the Family Division will be writing to judges at these courts to inform them of the pilot. Training on the product has been delivered on site but would not have been attended by everyone as participation was on a voluntary basis. Members considered that it would be useful if training could be offered to everyone at the courts involved in the pilot, including judges, magistrates and legal advisors.
- 7.4** MoJ Policy noted that at this stage of the pilot, applicants would print and post the form to the court. However, the system had been built to enable an electronic signature to be provided which was based on lessons learnt from the online divorce reform programme. This has the benefit of not requiring a “wet ink signature” from applicants. The form would be produced in a PDF format to enable printing if necessary. Officials also noted that at this stage, there was no option for additional documents to be uploaded and it would be at the discretion of the court as to whether these documents were requested at a later stage. District Judge Suh noted that gatekeeping judges and legal advisors would be the first to see the new digital C100 format and therefore it is essential that they are involved in the preparation for the pilot. Members considered that it would be useful if training could be offered to everyone at the courts involved in the pilot, including judges, magistrates and legal advisors
- 7.5** Judge Raeside questioned whether the form would ask for more information than on the paper C100 form. MoJ Policy responded that the same questions were being asked as in relation to the C100 form, however, where the applicant raised safeguarding concerns they would also be asked to answer questions currently contained with the C1A. It was this information that would be used to identify which cases were suitable for “nudges” to direct people to out of court resolution options.

- 7.6** Judge Raeside also noted that she was not made aware of this pilot and its impact on court users. She questioned whether when users were directed to the digitised system whether there was any assistance available if they required it. MoJ Digital confirmed that they were working closely with the Call Assistance Centres to ensure any questions raised by court users within the pilot were answered as speedily as possible.
- 7.7** District Judge Godwin questioned whether work had begun to commence translating the product into Welsh to comply with the Welsh Language requirements. Officials noted that this work had not commenced as the pilot currently did not extend to Wales and would be further considered in the future in conjunction with future plans to extend the pilot.

REQUESTS FOR INFORMATION FROM FOREIGN JURISDICTIONS

- 8.1** Members considered Paper 8.
- 8.2** Judge Waller questioned whether this caused much difficulty in practice. The Legal Secretary to the President of the Family Division noted that this was being addressed in practice but added an extra stage which this paper sought to avoid in the future. Judge Waller noted that requests from the International Child Abduction and Contact Unit could be addressed by these proposals but there might be difficulties in requests from judges or courts from abroad unless there was clarity as to the identity of the International Hague Network Judges and the process by which such information would be provided.
- 8.3** MoJ Policy confirmed that these issues needed to be considered in more detail. After further discussion, it was agreed that a paper would be presented by MoJ Policy to the Committee for consideration. This included addressing questions such as who would be considered a Network Judge. MoJ agreed to prepare a paper for consideration at the May 2018 FPRC meeting.
- 8.4** The Legal Secretary to the President of the Family Division confirmed that this issue would be discussed with the authors of the paper, the President's office and MoJ Policy in advance of that meeting.

AMENDMENTS TO PRACTICE DIRECTIONS 12G AND 14E

- 9.1** Members considered Paper 9.
- 9.2** Department for Education officials reported that the policy rationale was to secure better outcomes for children where adoption was the plan for the child. The introduction of Regional Adoption Agencies enables adoption agencies to identify shared best practice with accountability to Local Authorities. The Adoption and Care Planning (Miscellaneous Amendments) Regulations came into force on 5 March 2018. The Department for Education consider that the regulations include safeguards to ensure that the child's best interests were identified and addressed

the sharing of information between adoption agencies to ensure the proposed outcome was the best outcome in the interests of the child.

- 9.3** Lord Justice McFarlane considered that the proposed amendments appeared sensible. He sought confirmation that only Regional Group Local Authorities could share information with other adoption agencies. The Department for Education confirmed that information would only be shared between adoption agencies.
- 9.4** Michael Horton questioned why the amendments to Practice Direction 14E did not include an adoption agency as a person who may share information. Department for Education Legal noted that an adoption agency would be a party to the proceedings therefore it was not necessary to specify this. Members considered it appropriate to mirror proposed amendments to Practice Direction 12G in Practice Direction 14E to enable onward sharing between adoption agencies.
- 9.5** Members agreed the proposed changes to Practice Directions 12G and 14E. MoJ Policy noted that if possible, the agreed amendments would be included in the Practice Direction amendment document due to come into force in May 2018.

ANY OTHER BUSINESS

- 10.1** MoJ Policy noted that the Committee had requested the Children Rules and Practice Direction and Brexit to be standing agenda items. She questioned whether it would be agreeable for these items to be dealt with under matters arising in the absence of there being any substantive update for the Committee. Members endorsed this approach for future meetings.
- 10.2** MoJ Policy asked for volunteers for the Committee's Forms Working Group as two of its members had recently left the Committee. Current members are Judge Waller, District Judge Carr, and Dylan Jones. District Judge Suh and Hannah Perry volunteered to join the Group.

DATE OF NEXT MEETING

- 11.1** The next meeting will be held on Monday 16 April 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
March 2018
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