



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 16 April 2018

Present:

Sir James Munby	President of the Family Division
Mr Justice Baker	Acting Chair
District Judge Carr	District Judge (Magistrates' Court)
Rob Edwards	Cafcass Cymru
His Honour Judge Godwin	Circuit Judge
Jane Harris	Lay Member
District Judge Hickman	District Judge (County Court)
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Lord Justice McFarlane	Judge of the Court of Appeal
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
William Tyler QC	Barrister
His Honour Judge Waller	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Acting Chair announced that District Judge Godwin had been appointed as a Circuit Judge and took up his post in Leicestershire in early March.
- 1.2** Apologies were received from Mrs Justice Theis, Melanie Carew and Dylan Jones.

MINUTES OF THE LAST MEETING: 5 MARCH 2018

- 2.1** There were two amendments to the minutes of the meeting on 6 March 2018.
- 2.2** Will Tyler QC was added to the list of attendees.
- 2.3** Judge Suh raised an amendment to paragraph 7.3 of the minutes. The last two sentences of that paragraph now read: *"District Judge Suh noted that gatekeeping judges and legal advisers 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.”

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

MATTERS ARISING

Family Procedure (Amendment) Rules 2018

- 3.1 MoJ Policy reported that the Family Procedure (Amendment) Rules 2018 were laid on 28 March 2018. These rule amendments will come into force on 4 June 2018. It was necessary to change the coming into force date to allow sufficient time to make amendments to court forms to support the new fast-track procedure.

Children Rules and Practice Direction

- 3.2 Members considered Paper 3.
- 3.3 MoJ Policy reported that work on the modelling assumptions has now been completed and quality assured. Advice to Ministers is currently undergoing internal clearance processes. Officials confirmed that the advice will be marked as urgent but were unable to give any timescales for when the Minister would provide a response.
- 3.4 The President of the Family Division raised concern about the length of time this work has been on-going. He questioned whether the Minister intended to attend the annual Children and Young Peoples Conference. MoJ Policy confirmed the Minister is aware of the event and her attendance would be subject to diary commitments.

Pilot to introduce digitised C100 form

- 3.5 MoJ Policy reported that the Practice Direction came into force on 26 March 2018 and had commenced in the pilot areas. In response to concerns raised by Judge Raeside at the last meeting (about whether staff and judiciary in the pilot courts had been notified about the pilot and received local training), the Chair noted that enquiries made by Mrs Justice Theis found that judges and staff were aware of the pilot and its scope. Judge Raeside noted that each area has a lead judge to support the pilot but was unable to comment on its progress to date. The Chair commented that the pilot had been well-prepared by officials and the Committee will hear more about it in future meetings.

Preparing for the UK exiting the European Union

- 3.6 MoJ Policy reported that the UK and EU negotiation teams have reached agreement on the terms of an implementation period that will start on 30 March 2019 and last until 31 December 2020. The UK welcomes the endorsement of the agreement by

the March European Council. During the implementation period, the UK will no longer be a Member State of the European Union, but market access will continue on current terms. To give businesses and citizens certainty, common rules will remain in place until the end of the implementation period. Officials are examining the impact of the implementation period on changes to court rules and will revert to the Committee in due course. Despite the fact that there is now an agreement on the implementation period, there remain on-going negotiations. As such, due to the sensitive nature of the on-going negotiations, it is not possible to share general papers with the Committee at this stage.

- 3.7** Judge Waller raised concern that there appeared to be insufficient planning about how family law would work after March 2019 when a large number of EU regulations may cease to apply. Judge Raeside endorsed this, noting that this will have an impact on all judges involved in family work. MoJ Policy responded that officials were planning for a number of scenarios but until negotiations had concluded it is not possible to say with certainty which option will be implemented.
- 3.8** The President of the Family Division sought assurances on what communication and guidance he could give his Judges. This is particularly in relation to the Brussels IIA Regulation, the loss of which, he considered, would have a severe impact on family courts. The Chair noted that in some cases it may be possible to use Hague Conventions. The President of the Family Division acknowledged this but noted that the greatest concern related to the jurisdiction rules in Brussels IIA, the continued operation of which he considered to be fundamental.
- 3.9** MoJ Policy acknowledged the Committee's anxiety to know and understand the impact of decisions made. The Chair considered it would be helpful if MoJ Policy could provide a substantive update which the President of the Family Division could share with the senior judges at the President's conference on 21 and 22 May 2018. MoJ Policy make enquiries with the relevant policy team to establish if there is any further update which can be shared with judges attending the President's Conference. This matter is to be brought back as an item before the end of July.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1** Members considered Paper 4. Members also considered Paper 4a, tabled on the day of the meeting.
- 4.2** MoJ Policy acknowledged that the paper prepared by Judge Waller was a helpful starting point in identifying the Committee's priorities. However, it was considered helpful if members could rank the items in a manner which takes into account the importance of the work balanced with its complexity. The President of the Family Division questioned how many of the work items were "simple to conclude". It was agreed that the Committee would go through the table during the meeting to identify such 'quick fixes'.

- 4.3** MoJ Policy reminded the Committee that all items listed in section 1 are on-going work and will continue to their conclusion. Members were invited to prioritise the remaining work items so officials could work through this list of priorities taking into account the strict timetables for making future statutory instruments.
- 4.4** Proposed amendments to make provision for the Welsh Language Act in the FPR were not considered simple to conclude. MoJ Policy noted that a preliminary consideration of the proposed changes raised questions about the purpose behind the drafting which required more analysis. MoJ Legal noted that the Civil Procedure Rule Committee was not actively considering this although this may change with the recent appointment of a Welsh representative to that Committee.
- 4.5** An amendment to allow “legal bloggers” to attend family courts on a basis similar to accredited media representatives was an agenda item for this meeting. The Committee acknowledged officials are already working on this workstream which they considered to be high priority.
- 4.6** Members agreed that proposals to introduce financial remedy courts are not simple to conclude. MoJ Policy noted that the pilot has commenced without requiring any rule or form amendments. A scoping paper prepared for the December 2017 meeting set out some of the issues to be considered to implement this operationally. Judge Waller noted that form amendments may also be required in due course to support these changes.
- 4.7** Members noted that the proposed amendment relating to requests for information from foreign jurisdictions was not simple to conclude. MoJ Policy are preparing a paper for members’ consideration at the May 2018 meeting. The Chair questioned whether this should be progressed now when the implications of Brexit are still to be decided.
- 4.8** Proposed amendments to allow appeals in the High Court to be heard in public was an agenda item for members’ views. As this is currently under active consideration, members considered it would be simple to conclude.
- 4.9** Members noted that proposals to amend Practice Direction 27A were an agenda item for consideration at this meeting and agreed with Judge Raeside that these amendments should be simple to conclude.
- 4.10** Members considered the note and draft amendment from Michael Horton to address an issue on pension sharing appeals. Members concluded that this work was simple to conclude. MoJ Policy noted that the draft would need to be considered by MoJ Legal as they had not had time to do so before this meeting.
- 4.11** Members considered what resource from MoJ was required to progress proposals to amend the procedure for permission to appeal in the High Court. MoJ Legal noted that the Civil Procedure Rule Committee discussed this and issued a consultation. Since the consultation ended no further progress has been made by that Committee.

Lord Justice McFarlane considered there was no reason for the Family Procedure Rule Committee not to consider these amendments even though they have not been implemented by the Civil Procedure Rule Committee. This was endorsed by the President of the Family Division who considered that these amendments would greatly assist the Family Division of the High Court in managing its appeals workload. He noted the appeal process to be of great importance as it has significant impact on families and children. He did not accept that this work cannot be done in time for the second FPR SI in autumn.

- 4.12** Judge Raeside questioned how much support from MoJ would be required to take this work forward. MoJ Legal responded that as this builds on work already considered by the Civil Procedure Rule Committee resource could be allocated. However, he considered the impact on MoJ Policy would be considerably greater as the consultation and analysis of responses would require significant policy input. Judge Raeside asked whether it would be possible to obtain the minutes from the Civil Procedure Rule Committee. This was endorsed by Lord Justice McFarlane who questioned whether it would be possible to adapt the consultation document prepared on behalf of the Civil Procedure Rule Committee. The Chair proposed a sub-group, (consisting of The Chair, Lord Justice McFarlane, Judge Raeside and three High Court judges who, together with the Chair, have been dealing with these appeals) to consider the proposed amendments. Members' agreed this approach. Lord Justice McFarlane questioned whether it would be possible to circulate the minutes of the Civil Procedure Rule Committee at which these changes were discussed and the consultation document out of Committee. The Chair will produce a paper for members' consideration for the May meeting.
- 4.13** Proposed amendments by Cafcass to amend Practice Direction 12G, and potentially also 14E to permit disclosure of information by Cafcass to non-party children, were previously discussed by the Committee. At that meeting Cafcass noted Members' comments and would consider their position further. The President of the Family Division is giving a judgment which relates to this issue next week. He considered it premature to remove this from the list of work at this time given it does raise issues of considerable importance. Members agreed that this work would not be simple to conclude.
- 4.14** The Legal Secretary to the President of the Family Division updated members on updating Practice Direction 6C. She noted that the Practice Direction is very out of date, not simply in terms of contact details noted in it. Having contacted officials at other Government Departments, they reported very little knowledge of the Practice Direction and it appears not to be used in practice. Rather than updating the current Practice Direction, the best approach may be to replace it in its entirety with something new. To that end, she has approached Mr Justice MacDonald with a view to his preparing a scoping paper setting how to best approach this, before any drafting is undertaken. It is hoped that this scoping paper will be ready for the May 2018 meeting, but she will provide an update at that meeting.

- 4.15** Judge Waller considered it to be a high priority to undertake work on a single procedure for all financial remedy applications which is to be supported by a single form to assist users. He recognised that this would be an extensive piece of work and would require considerable policy and legal input. The President of the Family Division acknowledged this, noting that whilst it was essential to make the process as clear and simple for court users, this would take time as it was necessary to re-write Part 9 of the FPR. It is a big project but one which he would rather be done properly. It was for this reason that the pilot of Financial Remedy Courts was introduced which did not require any rule amendments. MoJ Policy noted that a scoping paper had been prepared for discussion at the December 2017 meeting. It was necessary to identify clearly what would be within the scope of any Part 9 reforms and what changes may be necessary to support the introduction of Financial Remedy Courts, as these are both separate, albeit related projects which would need to be resourced. The President of the Family Division questioned whether the work on digitising the financial remedy process would involve a system similar to online divorce reform. He noted that courts would soon have much better IT so forms can be phased out in favour of, e.g. a spreadsheet rather than Form E. We have opportunities here and should move as quickly as possible into this 'brave new world'. HMCTS advised they would make further enquiries and report on this to a future meeting. MoJ Policy noted their understanding is that the reform to introduce a digital financial remedy application is planned on the basis that it will operate within existing processes as set out in the Rules and with existing forms which can be completed and uploaded by the applicant electronically in PDF format.
- 4.16** Amendments to the Part 30 to support a policy to enable child maintenance to be enforced through deductions from joint accounts are being led by the Department for Work and Pensions. They have not liaised with MoJ about when this policy will be introduced. Members agreed that this should be removed from the list and would only consider this in the future if requested to do so from the Department of Work and Pensions.
- 4.17** Judge Waller acknowledged that reforms to the costs rules to stand-alone without reference to the Civil Procedure Rules are an extensive piece of work with significant resource impact for officials. The President of the Family Division also acknowledged that this project would involve consideration on cost capping and price fixing. It is highly likely that any reforms in this area will require consultation. Judge Waller also noted that this work links into the recommendations from the Law Commission to have clear rules about costs in relation to enforcement applications. Members agreed that this work is likely to require a new section of the rules and as such was low priority and not simple to conclude. The Chair considered that expertise was required to further this work. Members also agreed that a scoping exercise be undertaken by the judiciary to consider what changes would be required. The Legal Secretary to the President of the Family Division will liaise with President of the Family Division and the Chair to identify judges who could undertake this work on behalf of the Committee.

- 4.18** Michael Horton noted that the proposal to consider inclusion of Rules 31.12 and 31.22 of the Civil Procedure Rules into the Family Procedure Rules was raised by David Burrows. Members agreed that the provisions of Rule 31.12 and 31.22 (which related to disclosure) were not explicitly incorporated in the Family Procedure Rules. However, members noted that the court retains discretion over the disclosure of evidence and the timeframes within which such disclosure should occur. Michael Horton acknowledged that this is a gap in the Family Procedure Rules, however, noting that it is not causing any difficulties in practice. Members agreed to remove this item from the list.
- 4.19** Work on proposed amendments to consider the party status and use of litigation for protected parties in family proceedings has long been outstanding. MoJ Policy noted that they are not aware of any plans by the Court of Protection Committee to undertake work in relation to litigation friends. Members agreed that this work is inextricably linked to the work of that Committee and that this item should be removed from the list.
- 4.20** Proposals to make provision for arbitration in family proceedings remains on-going. Judge Waller acknowledged that there are differing views on how this could be implemented. This would require engagement with MoJ Policy and Legal to consider how this could be progressed. Members agreed that this was low priority and should be removed from the list, at this time, particularly taking into account that this work is not simple to conclude.
- 4.21** Judge Waller agreed to revise the table to take on board the discussion from this meeting identifying a priority list of the outstanding work and identifying those work streams that the Committee considers simple to conclude. MoJ Policy asked that the work list of simple to conclude items should also be ranked by priority, given the limit on MoJ resources.
- 4.22** The Chair thanked Judge Waller for his ongoing work in helping to identify the priorities for the Committee in the next year.

ACTION:

Acting Chair to produce a paper for the May 2018 on proposed amendments to the appeal process in the Family Division of the High Court.

Mr Justice MacDonald to produce a paper scoping out amendments / revisions required to Practice Direction 6C.

Legal Secretary of the President of the Family Division to liaise with Judges (yet to be identified) to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings.

MoJ to consider the proposed draft from Michael Horton in respect of amendments to Practice Direction 30A in relation to pension sharing appeals

Judge Waller to update the Priorities Table to identify a ranking order of work which will reflect those work streams that are simple to conclude.

Secretary to the Family Procedure Rule Committee to obtain minutes from the Civil Procedure Rule Committee (where changes to the procedure to the appeal process was discussed), and the consultation document issued by them, and to share them with the Committee.

FPRC WORKSTREAMS

Transparency and Legal bloggers

- 5.1** Members considered Paper 5 and the supporting annexes.
- 5.2** MoJ Policy noted that the paper covers two separate issues. The first relates to a Rule amendment to allow appeals heard in the High Court to be heard in open court. This change would restore the status quo prior to the amendments to the routes of appeal in 2016. Michael Horton questioned whether the draft provisions should apply to appeals heard by a judge of High Court level in the Family Court as well as family appeals in the Family Division of the High Court. Members agreed that these provisions should also apply to appeals in the Family Court heard by judges of High Court level. Judge Waller considered it necessary to amend the rule to make it clear that the new rule will not apply in relation to hearings that are already heard in public e.g. contempt. He proposed inserting a phrase such as “but where any other rule applies the family appeal will be heard in private”. Drafting lawyers undertook to produce amendments to cater for the points made.
- 5.3** Subject to these amendments members agreed this rule change. MoJ Policy will arrange for this to be incorporated in the next statutory instrument. MoJ Legal will prepare a draft template order in consultation with the Transparency sub-group for approval at a future meeting.
- 5.4** The paper also considered proposed amendments to enable “legal bloggers” to attend family hearings automatically on a similar basis to accredited media representatives. MoJ Policy noted that, as explained in the covering paper, the drafting (following the approach of the Transparency Project’s Proposal) deliberately avoids seeking to define a “legal blogger” which would be difficult to accurately define within the rules. MoJ Policy noted that having discussed the Transparency Project’s proposal with the sub-group it was agreed that there should be some amendments to incorporate those bloggers who are legal executives with a relevant practising certificate or lawyers working in a Higher Educational Institution. No provision has been made for educational charities as it is easy for any person to register a charity and the risks of inappropriate publishing from this unregulated sector are too great when balanced against the sensitive nature of family proceedings. The proposal is to introduce a pilot undertaken by all courts in England and Wales for a minimum of six months. HMCTS will prepare a spreadsheet which

can easily be completed by “legal bloggers” on the day so we can identify where and who are attending such proceedings in evaluating the pilot.

- 5.5** Judge Raeside welcomed the proposed changes but questioned whether the existing term “officer of the court” already in Rule 27.11(2) includes solicitors and barristers already. The President observed that solicitors are officers of the court but barristers are not, and there was discussion about whether “officers of the court” was intended to cover officers in the sense of court staff. Will Tyler raised concern about the potential for prosecuting Counsel in another case to then sit in court on family cases being heard in private for the purpose of hearing the evidence for use in other proceedings. This concern was endorsed by Hannah Perry and District Judge Suh who noted that there needed to be clarity around the purpose for which these persons were permitted into court. Hannah Perry had not been at the last meeting and did query whether such an amendment was needed given the catchall provision in the rules. District Judge Suh suggested that there should be parity between legal bloggers and the press and that the court should have a discretion to prevent them from attending in the circumstances currently set out in FPR 27.11(3). Hannah Perry noted the need for sufficient lead in time prior to the commencement of the pilot to enable solicitors to adapt their written notifications to clients to introduce this change. The President of the Family Division noted that, without clarity, interested parties could attend court in different guises.
- 5.6** Hannah Perry raised that the current definition would exclude legal executives and possibly those who trained/undertook qualifications in other jurisdictions. Members agreed that the draft rule should be amended to include lawyers qualified other than as solicitors or barristers within the definition of “duly authorised lawyer”. District Judge Suh supported a signature being included within the documentation for a lawyer employed by a Higher Education Institute but noted the need for clarity over who should sign this document within the rule itself. She also considered the impact on the Judge hearing the case in needing to check the relevant documentation in advance. She questioned whether it was necessary to seek further input from the Transparency Project for proposals on how to define “legal blogger” by reference to the purpose of “legal blogging” rather than just status as a qualified lawyer. MoJ Policy noted that in practice it will operate on a similar basis to accredited media representatives. “Legal bloggers” will need to register with the court usher in advance of the hearing, which will be recorded in the log. It will be a matter for the judge as to whether they wish to examine the evidence which should be on their person. MoJ Policy and Legal will revise the draft to incorporate members suggestions and present a revised version at a future meeting for consideration. The President of the Family Division endorsed this amendment noting that there should be no discrimination between reporting of proceedings in the media or through a legal blog.

Enforcement

- 5.7** Members considered paper 5B. MoJ Policy noted that they were unable to comment on its content or provide a preliminary analysis due to when the papers were received.
- 5.8** Judge Waller's summarised the recommendations contained within the Law Commission's report on Enforcement of Family Financial Orders. He noted work is underway by Michael Horton to draft a separate Part 33 without the need to cross-reference to the Civil Procedure Rules. Michael Horton also noted that he is working on compiling best practice for civil enforcement applications. Members endorsed this work continuing.
- 5.9** Judge Raeside welcomed progress in this area and highlighted the importance in concluding this work. She said that failure to comply with these orders usually affect women with orders in their favour who do not have legal representation. She considered amending the existing guidance to be a priority which needed to be addressed urgently as the current process is complex and confusing to the court users. MoJ Policy acknowledged the existing problems with the current system, including the lack of adequate guidance for court users. However, they questioned whether immediately progressing this work could lead to duplication of work once a Ministerial decision had been received about the Government's response to the Law Commission. Any progress in this work would require substantial policy and legal resource and timetabling the steps to tie in with a Ministerial decision may be a more efficient way of working. District Judge Carr disagreed with MoJ Policy (whilst accepting the point in principle) noting that the problems with the existing system were so fundamental that action was required now. He considered that it may be possible for more extensive work to be timetabled but was of the view that it was imperative to amend the existing guidance immediately. He volunteered to prepare a route map of the enforcement process to assist court users, particularly litigants in person and to build on the existing guidance so it was clear and understandable. The President of the Family Division endorsed this and said that there should be no delay in ensuring court users, particularly litigants in person who may be vulnerable and should not have to grapple with a complex system with little or no guidance
- 5.10** Lord Justice McFarlane suggested liaising with District Judge Hickman (now retired, who is the author of the enforcement section in Family Court Practice) to ensure the guidance reflects the current court process. Judge Waller proposed that the Enforcement working group consisting of himself, District Judge Carr, Michael Horton and MoJ Policy with a view to co-ordinating work to progress the recommendations within the Law Commission's report. Members suggested that David Hammond and Malcolm Dodds be contacted to establish whether they would be willing to partake in this process. MoJ Legal suggested that the Working Group should also look at Form D50K and the revisions in Chapter 7.

ACTION:

Judge Carr to prepare updated guidance notes and road-map of the enforcement process for consideration at a future meeting.

Bundles Practice Direction

- 5.11** Members considered Paper 5Ca.
- 5.12** Judge Raeside and District Judge Suh noted that there are different types of systems to accommodate electronic bundles nationally. They considered that the way that these different systems operate required further analysis and consideration but that it was possible to amend the PD to make provision for ebundles in a general way without undermining local practice and arrangements which had been agreed, formally or informally, between designated family judges and local authorities. HMCTS Policy informed the Committee that this issue was being piloted in Portsmouth this month.
- 5.13** The President of the Family Division noted that it may cause practical difficulties to attempt to differentiate between the different systems in a Practice Direction. He considered it necessary to set out the underlying principles for parties to assist the court in using their time effectively in reading only the relevant documents with relevant information for the case. He also added that a technical Practice Direction with clear reference to the reading list would need to be put before the Master of the Rolls if introduced.
- 5.14** Judge Raeside and District Judge Suh will revise their proposed amendments to Practice Direction 27A taking into account the proposed amendments in Paper 5C. The President of the Family Division requested this work to be undertaken in advance of the May meeting so members could discuss this then with a view to this then being shared at the President's Conference on 21 May 2018.

ACTION:

Judge Raeside and District Judge Suh to provide an updated draft incorporating the President's amendments for consideration at the May 2018 meeting

Form C1A

- 5.15** Judge Waller updated Members that work is progressing on this and will be sharing a draft amendment with Judge Raeside and District Judge Suh shortly. This can then be discussed at the Committee meeting in May 2018.

ACTION:

Judge Waller to provide a draft of proposed amendments to Practice Direction 12B for consideration at the May 2018 meeting

Proposed amendments to FPR to reference the Welsh Language Act

- 5.16** Members noted the contents of Paper 5E.
- 5.17** Judge Godwin welcomed the proposal to move forward on this issue by the Committee. He did not envisage the changes being complex to implement. He noted that there is now a Welsh representative on the Civil Procedure Rule Committee. MoJ Legal will ensure this is raised as an agenda item at the next meeting of the Civil Procedure Rule Committee.

Additional items received for consideration by the Committee

- 5.18** Members considered Paper 5F1.
- 5.19** The Committee considered the proposal from Recorder Hill that the rules be amended to permit a 16 or 17-year-old young person to apply for orders under Part 4 of the Family Law Act 1996 without a litigation friend. Young people in this age group can apply without a litigation friend for FMPOs and FGMOs under Part 4A of the Act. The Committee agreed that this is a reform which should be assessed. MoJ Policy agreed to consider the proposed amendment and revert to the Committee in due course. She noted that it was unlikely that this amendment would require consultation so subject to no policy issues being raised by this issue, this work item would be simple to conclude.
- 5.20** Members considered Paper 5F2 prepared by Lewis Marks QC on the omission from the current rules of any provision for determining whether proceedings are continuing in a foreign jurisdiction for the purposes of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973.
- 5.21** Members also considered the note prepared by Michael Horton (tabled at the meeting) which endorsed Lewis Marks' opinion that the omission was unintentional and proposed the insertion of a new para (6) to rule 7.27. MoJ Policy and Legal agreed to consider the proposed amendment with a view to incorporating this in the next statutory instrument later this year.

Action:

MoJ to consider the proposed draft from Michael Horton in respect of amendments to FPR Rule 7.27

GENERAL DATA PROTECTION REGULATION

- 6.1** Members considered Paper 6.
- 6.2** MoJ Policy explained the rationale behind the creation of the privacy notice for family court forms was in order to ensure MoJ and HMCTS' compliance with the General Data Protection Regulation. It is necessary to ensure that this notice is prepared and available for use from 25 May 2018. Members were invited to comment on the draft privacy notice which has been shared with them for

information purposes. Since preparing the paper, there has been one amendment to the notice to reflect that personal information may be shared with agencies such as interpreters and intermediaries to facilitate court proceedings.

- 6.3** The President of the Family Division questioned whether the draft had been shared with the Lord Chief Justice. He considered that it was necessary to separate MoJ and HMCTS as separate organisations for the purposes of the administration of justice. MoJ Legal responded that whilst it was correct that both MoJ and HMCTS had different purposes constitutionally, they were nonetheless one legal entity for the purposes of data protection laws. They could be individual data controllers in their own right, or often act as joint data controllers. The judiciary are separate and there are separate rules to be clarified in the Data Protection Bill, not the GDPR. MoJ Policy confirmed that the draft notice could be shared with the Lord Chief Justices' office prior to printing.
- 6.4** The President of the Family Division requested clarity about who information could be shared with. He noted that the draft does not take into account that information will only be shared with organisations such as Her Majesty's Revenue and Customs or the police pursuant to a court order. This was endorsed by Judge Raeside and Jane Harris who noted that many people would be concerned at the prospect of their information being shared with the Inland Revenue, particularly in relation to matrimonial proceedings and financial relief applications. MoJ Policy noted these comments and agreed to look at clarifying the wording prior to finalising the document.
- 6.5** Members questioned why there was a lack of distinction between judicial processing within the context of court proceedings and processing by HMCTS. MoJ Legal noted that the Data Protection Bill sets out wide exemptions in relation to processing by the judiciary, but these are not within scope of the GDPR or this notice. The final wording of the Bill will not be known until it comes into force and there is still potential for change. However, the GDPR must be complied with from 25 May 2018 and this notice is intended to comply with MoJ and HMCTS' obligations under that Regulation. The Bill considered the processing of agencies not within the scope of the General Data Protection Regulation, for example processing for law enforcement purposes which are provided for by the Law Enforcement Directive and which is being implemented by the Bill. It is a large piece of legislation that supplements the GDPR. MoJ officials conceded that it may be necessary to amend the proposed privacy notice as more information emerges, but at this time, based on the settled GDPR provisions taking effect in May, the draft notice meets the legal requirements in relation to processing of data by MoJ and HMCTS in family court forms.

DATE OF NEXT MEETING

- 7.1** The next meeting will be held on Monday 14 May 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
April 2018
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