



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 14 May 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
Mrs Justice Theis	Circuit Judge
Jane Harris	Lay Member
District Judge Hickman	District Judge (County Court)
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Melanie Carew	Solicitor
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
William Tyler QC	Barrister
His Honour Judge Waller	Circuit Judge
Dylan Jones	Solicitor

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Acting Chair offered congratulations to Lord Justice McFarlane on his recent appointment as President of the Family Division to commence when the present President of the Family Division steps down in July.
- 1.2** Apologies were received from Lord Justice McFarlane, His Honour Judge Godwin and Hannah Perry.

MINUTES OF THE LAST MEETING: 16 APRIL 2018

- 2.1** Judge Godwin and Hannah Perry provided two amendments each before the meeting. These have now been reflected.
- 2.2** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING

Children Rules and Practice Direction

- 3.1** Ministry of Justice Policy said that the Minister was now considering the recent advice that went forward and envisaged being able to update Members further at the next meeting.
- 3.2** The President of the Family Division intended to raise this issue at the annual Children and Young Peoples Conference on 4 July 2018 and hoped that sufficient progress would be made by then. He also asked if the Minister could be reminded that her attendance at that event would be welcomed.

Transparency

- 3.2** Ministry of Justice Policy reported that Members' comments have been taken on board and that a draft is being prepared.
- 3.3** Ministry of Justice Policy also confirmed that contact has been made with Lucy Reed to gather further information on the issue she raised previously on legal bloggers and would report back to the Committee in due course.
- 3.4** The President of the Family Division proposed that ongoing work should look into the possibility of a Professor of Journalism, who was no longer a journalist and not a lawyer and would not qualify as a card-carrying journalist, attending court. The Working Group would look at this issue although their next meeting planned for 24 May 2018 would have to be postponed and a new date found.

Proposed amendments pursuant to Welsh Language Act 1993 amendment D6C

- 3.5** Ministry of Justice Policy reported this issue was on the agenda for the May meeting of the Civil Procedure Rules Committee as they had recently appointed a Welsh representative and His Honour Judge Jarman would now contact His Honour Judge Godwin to take this forward.

PD6C

- 3.6** The Legal Secretary to the President of the Family Division reported that, as Mr Justice Macdonald is sitting in on a long-running trial in Birmingham, it was unlikely that further progress would be made on this issue until July.

Rule 7.27 amendment – proceedings continuing in another jurisdiction

- 3.7** Ministry of Justice Legal informed Members that Michael Horton's proposed drafting of a new paragraph 6 for rule 7.27 had been accepted and the intention was that this drafting would now be incorporated in the next round of amendments to the rules.

PD30A amendments – appeals against pension sharing orders

- 3.8** Ministry of Justice Legal confirmed that Michael Horton’s proposed drafting of paragraph 11 of PD30A had been broadly accepted and the intention was that these are also included in the next Practice Direction.

Part 30A appeals to the High Court

- 3.9** The Acting Chair informed the committee that, having consulted with other judges of the Family Division, he recommended that there should be no change to the rules governing applications for permission to appeal at this stage. Under the rules, a prospective appellant whose application for permission to appeal has been refused on paper may renew the application at an oral hearing unless the judge who refused the application on paper has declared that it is “totally without merit”. Under the changes to the rules governing appeals to the Court of Appeal in 2016, the right to an oral renewal was removed but that amendment was not extended to appeals to other courts, including appeals to the Family Division. Although it has been suggested that the reform should now be extended to appeals to the Family Division, an analysis of cases dealt with by judges of the Division under the new procedure introduced in 2016 had shown that there had been very few (about 10) applications for oral renewal. The judges administering the appeals procedure are of the view that the current procedure is working well and there is no need for change. In addition, it would be undesirable to change the rules for appeals to the High Court in family cases without considering the merits of a similar change for appeals to the High Court in other cases.
- 3.10** The Acting Chair therefore proposed that this proposed reform be deferred. The committee accepted this recommendation and agreed that the item be deleted from the schedule of outstanding work.

Amendments to the costs rules in family proceedings

- 3.11** The Legal Secretary to the President of the Family Division said that two Judges, Mrs Justice Roberts and Mr Justice Francis, have been approached to see if either of them would be able to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings. Mrs Justice Theis, HH Judge Waller and District Judge Suh agreed to be the point of contact when a financial Judge has been agreed.

ACTION:

Ministry of Justice Policy to update the Committee at the July meeting on progress of the submission on the Children Rules and Practice Direction.

The Transparency working group to take forward all issues including consideration of the further view from Lucy Reed and report back at the June meeting.

Legal Secretary of the President of the Family Division to confirm which Family Division Judge has been selected to undertake a scoping exercise of amendments to the cost rules in relation to family proceedings

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1** His Honour Judge Waller asked Members to consider Papers 4A (summaries table) and 4B (amended priorities table).
- 4.2** Ministry of Justice Policy thanked Judge Waller for the amended tables and asked for further detail to be provided to facilitate a thorough scoping exercise within the Department, especially as multiple tasks happening in parallel could create considerable resource issues. Judge Waller said that the summary table had been designed to reflect timescales and that the ordering was put together to reflect how some tasks had shorter delivery dates while others such as the Cost Rules at Point 8 might not reach fruition until next year. The Acting Chair envisaged that work would not begin on costs this side of the Summer with a view to consultation in the first three months of 2019 and a view to complete by Spring 2019.
- 4.3** Judge Waller said that the Working Group looking at Enforcement at Point 3 in Paper 4A are due to meet by June/July but wanted members to be aware that any changes made would be significant. However, in the longer term the work Michael Horton has carried out should facilitate matters. The Acting Chair suggested that reform of enforcement processes was a longer-term programme and that as a result there was a greater degree of flexibility as to when it should be undertaken.
- 4.4** Ministry of Justice Legal asked that the associated work needed on amending or re-designing forms should also be factored in. The Acting Chair welcomed this suggestion and his initial thoughts were that Points 4, relating to the provision for Welsh Language Act requirements to be incorporated into the Family Procedure Rules 2010; Point 7 which relates to the disclosure of information by Cafcass to non-party children; and Point 9 on updating tracing through Government Departments and Agencies in Paper 4A would require discrete changes to forms but the Cost Rules exercise at Point 8 would be quite considerable. Ministry of Justice Policy said that they will work with HMCTS on a delivery plan and report back at the next meeting.
- 4.5** The President of the Family Division referred to the positive aspect relating to online divorce as part of the forms work and said that he was considering the draft letter from HMCTS on next steps and asked for members' comments on his envisaged view that a single revised form would cover all forms of financial remedy.
- 4.6** The President of the Family Division asked members to consider two options: either to change rules and then digitise or to digitise first. He stressed that this work needs

to be carried out as a matter of priority, whichever option was decided on. The President of the Family Division added that work on the move away from applications to a questionnaire based approach had been done and this would inform the process as to whether a re-vamped digitisation would be required.

- 4.7** HMCTS reported that applications for consent orders in financial remedy cases would be available on line in October/November. Ministry of Justice Legal said that working on forms, leaflets and other guidance in relation to Part 5 and a rewrite of Point 9, including work with the designers of the online forms, needed to be factored into the timetable. The Acting Chair was concerned that, if this did not happen, this would not follow the same format as for divorce and we could therefore lose some of the benefits of online digitisation.
- 4.8** Judge Raeside said that the Committee were in favour of modifying, simplifying and codifying the process of a single online procedure. Michael Horton put forward the view that this would not be straightforward if it was intended to apply to Trusts of Land and Appointment of Trustees Act 1996 and Inheritance Act claims as these were civil claims, and it would follow that there would need to be coordination with the Civil Procedure Rule Committee.
- 4.9** The Acting Chair said that the view of the judicial members of the committee was to proceed on the basis of a single form of application. Michael Horton said that further work was required as the different types of application had different procedures (eg not all required the completion of forms E or financial statements). In order to take this forward HMCTS agreed to set up a meeting to look at financial forms: the meeting would include Judge Waller, Michael Horton and the rest of the financial remedy working group with Ministry of Justice Policy and to report back at the July meeting with an update on points 8 and 9 of Paper 4A.

ACTION:

Judge Waller to update the Committee on the work of the financial priorities working group and discussions with Ministry of Justice Policy.

BUNDLES PRACTICE DIRECTION

- 5.1** Members considered Paper 5.
- 5.2** The President of the Family Division talked through the draft Practice Direction which incorporates the views of Judge Raeside and District Judge Suh. This has been constructed to provide a consistent approach in the preparation of court bundles.
- 5.3** The President of the Family Division then responded to points in the Practice Direction for clarification. The revised 2.1 and 2.6 as drafted now allowed local

arrangements. However, 2.2 still required a further amendment which the President of the Family Division agreed to update and share before the next meeting.

- 5.4** Michael Horton suggested there were other Practice Directions which might need to be amended to ensure compliance with the proposed restrictions as to length of certain documents. The President of the Family Division stressed that shorter documents had cost saving benefits to the author, the reader and the judiciary and asked Ministry of Justice Policy to consider moving things forward in an expeditious manner. Michael Horton agreed to contact the President of the Family Division outside the meeting identifying other Practice Directions which might need amending.
- 5.5** The President of the Family Division asked the Committee to consider authorising the Practice Direction after any amendments have been made. This Practice Direction would have to be approved by the Master of the Rolls.

ACTION:

Michael Horton to email the President of the Family Division identifying Practice Directions which might need amendment.

FORM C1A

- 6.1** Judge Waller asked Members to consider Paper 6A and its annexes.
- 6.2** Judge Waller said that a number of changes were required and he highlighted these in the explanatory note at Paper 6A. For ease, Judge Waller had not reproduced the whole Practice Direction at 6B and instead drew attention to the relevant paragraphs. Mrs Justice Theis picked up on some drafting amendments including repetition of 8.11 and 14.13. Judge Waller said that he was content to take out some of the wording but would need a sentence added elsewhere for clarity. District Judge Suh suggested that the explanatory note could be expanded to make this clear.
- 6.3** The President of the Family Division suggested that job cards should also be made clearer to spell out the exact process and to act as a check list to ensure that all materials are at court. However, there were concerns that an increased obligation on the court would still need to be made more explicit and the working group agreed to take these concerns back and report at the next meeting.
- 6.4** Ministry of Justice Policy agreed to look at this issue but would need to ensure that resource is in place before committing to complete within any proposed timetable.

ACTION:

Judge Waller and Judge Raeside to Carr to prepare updated explanatory notes on the amendments to Practice Direction 12B and to revise the Job Card for staff to reflect discussions in time for the FPRC meeting in June.

REQUESTS FOR INFORMATION FROM FOREIGN JURISDICTIONS

- 7.1** Members considered Paper 7
- 7.2** Ministry of Justice Officials referred to Paper 8 of the Family Procedure Rule Committee on 5 March 2018, which had raised the concern that there was currently some uncertainty as to whether, under the provisions of the FPR governing communication of information relating to private children proceedings could be transferred to foreign jurisdictions. Officials had agreed to give further consideration to this issue and to discuss their initial views with Lord Justice Moylan and Mr Justice MacDonald. The Committee had asked for a paper for the meeting on 14 May 2018 and this Paper 7 was put before this meeting.
- 7.3** Ministry of Justice Policy explained that Ministry of Justice Legal had prepared a note of their preliminary view for consideration by and discussion with Lord Justice Moylan and Mr Justice MacDonald. The preliminary view presented was that no FPR amendment was needed to deal with the issues raised and, having considered the note, Lord Justice Moylan and Mr Justice MacDonald said they were satisfied that a rule change was neither required nor advisable and that it would not be necessary to discuss with officials. Members were therefore advised that there was no further action to be taken.
- 7.4** Committee Members were content with this recommendation.

AOB

- 8.1** The Acting Chair informed the Committee that Officials from the Department of Work and Pensions had made contact to raise an item for future discussion in respect of amendments they are introducing to enable enforcement of child maintenance through the deduction of funds from jointly held bank accounts. To facilitate this exercise, they would be asking the Committee to consider a change to PD30A to ensure appeal rules apply. They intended to present a paper at the June meeting. The President of the Family Division raised the question as to the statutory basis for this proposal and asked that the DWP officials be asked to clarify this at the June meeting.
- 8.2** The Acting Chair asked if the Minutes could reflect that the telephone line lost connection as the meeting closed and that Rob Edwards was unable to be thanked for his participation.

DATE OF NEXT MEETING

- 9.1** The next meeting will be held on Monday 11 June 2018 at 10.30 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary

June 2018

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