



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In the Judges Conference Rooms, 1st Floor Mezzanine Level
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 12 December 2018

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Melanie Carew	Cafcass
Rob Edwards	Cafcass Cymru
His Honour Judge Godwin	Circuit Judge
District Judge Hickman	District Judge
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Dylan Jones	Solicitor
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
Michael Seath	Justices Clerk
District Judge Suh	District Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Lord Justice Baker, His Honour Judge Waller, District Judge Hickman, Dylan Jones and William Tyler QC.

MINUTES OF THE LAST MEETING: 9 NOVEMBER 2018

- 2.1 Hannah Perry asked that paragraph 7.4 of the November minutes be amended to read 'on prompts to Respondents when acknowledging/responding' rather than 'on prompt action'. The paragraph now reads:

Hannah Perry stated that the online process does offer a way forward for the respondent although this was entirely dependent on prompts to Respondents when acknowledging/responding. MoJ Legal said that the online divorce process is currently in development for the next phase and that there is still time to explore whether additional hint text or wording could be added in to improve users' awareness of their rights. MoJ Legal agreed to discuss with the online divorce team and provide an oral report back at the next meeting.

- 2.2 The minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING

Update on the offer from the Department of Work and Pensions Legal Services and Government Legal Department Litigation Team to provide bespoke training on child maintenance appeals

- 3.1** Ministry of Justice Policy confirmed that the Department of Work and Pensions legal services are content to provide whatever training would be helpful on a bespoke basis. The Department of Work and Pensions legal services said that they were aware that child maintenance is an area of law that judges, clerks and administrative court staff will come across on a relatively infrequent basis and therefore are particularly keen to establish a dialogue with the courts.
- 3.2** The Acting Chair suggested that this be taken forward with the Judicial College and Judge Raeside agreed to provide details to facilitate this link.

Action

Judge Raeside to provide details of Judicial College contacts in order to facilitate judicial training on child maintenance appeals.

Children and family proceedings – Progress from the Child Working Group

- 3.3** Judge Raeside stated that she invited members of the Children’s working group to submit comments based on “blue sky thinking” and reflecting not only the wants of the judiciary but also the thoughts, feelings and wishes of the child. She noted that initial thoughts received offered two different approaches: one where Cafcass are involved, and the remainder where this isn’t the case. The Acting Chair asked whether the working group could consider whether there was any way in which the second approach could “piggy-back” on the work of the first. Melanie Carew suggested that the Family Justice Young People’s Board could act as a conduit for this and that she would see whether this was a possibility.
- 3.4** The President of the Family Division stated that as this work is fundamental to the work of the Family Procedure Rule Committee, but added that he thought that caution should be applied to ensure that the issue of the child’s right to meet the judge was not reopened.
- 3.5** Hannah Perry stated that she was concerned with the lack of consistency associated with a two-tier approach and submitted a number of top tips as part of this exercise aimed at ensuring that the child is kept at the heart of each case. Judge Raeside noted that other ideas received suggested using photographs, pen portraits and videos to help assist in these cases.
- 3.6** Judge Raeside stated that she welcomed the comments put forward but suggested that a change in emphasis may also help make matters easier. She stated that Private law proceedings are more difficult than public cases, especially relating to non-molestation and financial remedy cases and suggested that technology could be

the key to helping un-lock the issues. Greater use of apps and an enhanced website which will feature enhanced signposting and feedback from children were amongst the suggestions the working group will be considering. Melanie Carew stated that she agreed that the technological approach appeared to be a good way forward but asked if the working group could consider that there are aspects of parents lives that they may not want divulged and that this could result in data protection issues. Hannah Perry asked whether a Ministry of Justice online access tool could be established to overcome the issues flagged up on technology. Judge Godwin suggested that as Skype is available to all Judges then this could be a suitable way in which to take this forward.

3.7 Rob Edwards noted that resources exist on the Cafcass Cymru website but wasn't sure how many cases are covered in respect of the Section 7 assessment. Hannah Perry noted that children are now contacted routinely but the President of the Family Division stated that caution needs to be applied to consider under what context the child is contacted. The Acting Chair stated that it was more likely that this involved safeguarding checks rather than direct interaction on the case itself.

3.8 Judge Raeside added that she was aware of the financial implications for considering any of the suggestions which the working group may come up with and that they would look into alternative ways in which financial support could be garnered to assist matters.

Pilot Practice Direction 36J – “Legal Bloggers”- update on additional information sent direct to the President of the Family Division’s office.

3.9 HM Courts and Tribunal Service stated that there had one further response, although she was aware of one more to be recorded in next month's feedback. The Acting Chair stated that as Judges won't necessarily have the Practice Direction at hand, that they may still not be taking an active consideration of this issue.

The use of expert forensic pathology witnesses in the family court – update on the proposal to form a judicial working group

3.10 The Legal Secretary to the President of the Family Division stated that Mr Justice Williams was leading on this work and that draft terms of reference will be available shortly. The President of the Family Division stated that this work will impinge on experts across the board and not just in family law. The Acting Chair stated that a sensitive approach will need to be applied to ensure that the small group of expert witnesses is not alienated, and that training should be shared with the Royal Colleges to ensure that this is the case. The President of the Family Division thought that this is already being undertaken with the Royal College of Paediatricians.

Pension sharing on divorce – follow on from the matter raised by Age UK – Oral feedback following meeting with the online divorce team about scope for additional ‘nudge’ wording in the digital system

- 3.11** HM Courts and Tribunal Service stated that following a conversation with the content designer, she is hoping to speak to lawyers on additional nudges and will report back to the Committee.
- 3.12** The President of the Family Division stated that he will follow up on the reply to Age UK drafted by Lord Justice Baker.

Discussion on clear language

- 3.13** The President of the Family Division responded directly to the points raised by Sir James Munby in a talk delivered to the Cheshire and North Wales Resolution Family Law Conference at Chester on 25 September 2018 and subsequently printed in full in the November issue of Family Law ([2018]Fam Law 1426). The President of the Family Division stated that a radical overhaul of the rules, as advocated by Sir James Munby would be an extremely complicated process, especially as they currently reflect the fine detail necessary in rules of this kind and that to do so would be out of step with other jurisdiction's rules. He also added that starting from scratch would be a major commitment with significant implications for the Committee's other priorities, as well as legal resource.
- 3.14** The President of the Family Division suggested that it would be possible to "de-jargon" the wording of the rules by applying a "skin" which would sit above the rules, written in simpler language. He noted the West Yorkshire Family Court guidance circulated ahead of this meeting, could be a positive way forward.
- 3.15** The President of the Family Division also stated that he was disappointed with Sir James Munby's comments and that Committee Members should not regard the harsh tone as a criticism of their work. Fiona James endorsed this view and proposed that a manual with pointers be put together to address the points raised.
- 3.16** District Judge Suh stated that even if consideration were to be given to a massive overhaul of the rules, there was a statutory limit to the exercise and that enabling powers would need to be applied to examine the Ministry of Justice drafting. She also noted that the rules had already faced scrutiny in order to pass the good practice criteria for statutory instruments. She stated that an overhaul posed too great a risk to comprehensive language, but that easy to use guides which would signpost the reader to the relevant area within the rules would be more effective.
- 3.17** The Acting Chair stated that she was due to meet with Eileen Pereira, Chief Executive of the Personal Support Unit on 15 December and will report back to the Committee in February.

- 3.18** Judge Raeside asked whether it would be possible to establish a Twitter feed to address some of the points raised. Hannah Perry stated that this could leave the Committee open to criticism if ‘replies’ were not responded to immediately.

Action

The Acting Chair to respond in February following her meeting with the Personal Support Unit

Ministry of Justice Policy to investigate the possibility of an FPRC Twitter account before February meeting

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1** Ministry of Justice Policy reported that dates on the Priorities Table had been adjusted since the last meeting to reflect the action points as proposed by the progress being made by a number of working parties. It was also reported that the Statutory Instrument including work on appeals to the High Court at Line 10 and the incorporation of the Welsh Language at Line 19 is due to come into force and will therefore be removed from the table to be circulated ahead of the February meeting.
- 4.2** Ministry of Justice Policy also raised the financial remedies work at Lines 8, 17 and 18 of the Financial Priorities table and informed Members that this had not been fully updated following discussions by the Financial Remedies Working Group with HM Courts and Tribunal Service on the digital financial reform divorce project which is estimated to finish by the end of summer 2019. Ministry of Justice Policy stated that it was previously agreed by the Financial Remedies Working Group that work on an amalgamated Form A/A1 should proceed first, with work on amalgamation of Form E/E1/E2 to follow and then work on enforcement once the forms work had been completed. The digital Form A is up and running for testing in non-contested cases (consent cases), but work on a digital Form A in contested cases will not begin until January with the first pilot draft currently scheduled for March. Therefore, the preference is for the working group, if they agree, to begin work on amalgamating Form E/E1/E2 which could begin at the end of January.
- 4.3** Michael Horton stated that Line 7 on the table will need to be updated to reflect the latest position.
- 4.4** Melanie Carew raised a point on Line 3 and stated that following concerns raised by the Committee, the whole issue had been put on the “back burner”. The Acting Chair asked whether the Committee could be fully updated for February by the presentation of a paper.
- 4.5** The Acting Chair pointed towards the issue at Line 12 on the pilot to improve notification to the Police on FGM protection orders will need to be updated to clarify the duration of the pilot and confirmed at the February meeting.

Action

Melanie Carew to draft a paper updating the Committee on the position relating to Line 3 on the Priorities Table regarding Children's Rules and the Practice Direction.

EU EXIT

- 5.1** The EU Exit working group is considering Ministry of Justice Policy's contingency preparations for a no deal scenario in family law, with particular regard to the draft statutory instrument covering the Family Procedure Rules and Practice Directions. The Acting Chair confirmed that the next meeting of the FPRC EU Exit working group would take place on 14 December and she expressed thanks to Judge Waller and Judge Williams for their work in producing papers to date.
- 5.2** Ministry of Justice Legal confirmed that they expected the next meeting of the working group to focus on provisions covering cases already in the system on exit day, as well as the amendments they have produced to the draft Family Procedure Rule SI following comments from the working group. Ministry of Justice Legal also confirmed that they had the additional benefit of looking at the work undertaken by the Civil Procedure Rules Committee EU Exit working group. The Acting Chair stated that it would be useful to make contact with the Chair of that working group, Mrs Justice Carr, to understand that committee's approach to transitional provisions.

Action

The Acting Chair to contact the Civil Procedure Rules Committee to build on the work that their working group already have in place.

UPDATE ON PILOT PRACTICE DIRECTION 36H WHICH CAME INTO FORCE ON 23 JULY 2018

- 6.1** HM Courts and Tribunals Service gave an update on the pilot's progress which was established to look at the gap in the policing of Forced Marriage Protection Orders (FMPOs) and Female Genital Mutilation Protection Orders (FGMPOs). The pilot developed a national process to co-ordinate the collection and dissemination of all FMPOs and FGMPOs, together with other relevant court orders, to police forces.
- 6.2** HM Courts and Tribunals Service raised the issue of poor compliance and the actions being taken to improve this. The actions included emailing the pilot practice direction to every local authority; updating job cards; including the practice direction in the Association of Directors of Children's Services' weekly bulletin and requiring Court Managers to report on compliance to HMCTS Governance and Assurance team on a quarterly basis.
- 6.3** Ministry of Justice Policy stated that they had identified areas that need further time including where Police are asking their local regional officers for feedback but this is

not happening. Ministry of Justice Policy asked the Committee to consider whether the pilot could be extended for a further six months, which would then ensure that the Police will have to take responsibility for serving the status of response.

- 6.4** Ministry of Justice Policy also stated that the extension of the pilot would offer more time to look at issues such as the point at which the police are taking action which could involve individuals who are over 17, as this has major implications on FMPOs. Hannah Perry stated that it is important to consider the timing of an application as it could pose a risk to vulnerable applicants.
- 6.5** Ministry of Justice Policy stated that as part of the process they intend to look at arranging regional meetings involving the Police and Practitioners; and Imran Samuel from Resolution and Marianne Hillyard from Luton were suggested as names to consider, as the regional event will also involve training.
- 6.6** The President of the Family Division stated that he agreed with the reasons for extending the pilot but asked whether he should be involved in this process moving forward.

ACTION

Ministry of Justice Policy to begin the formal process of seeking an extension of the pilot with Ministers.

ANY OTHER BUSINESS

Notification to parents without parental responsibility under Practice Direction 12C

- 7.1** The Deputy Director from the Ministry of Justice's Family Justice Policy Team summarised a recent high-profile case in which a local authority served a Form C6A notification to a father (who is a convicted rapist) without parental responsibility as this raised concern about the clarity of PD12C and how aware local authorities are of the option to seek permission from the court to not serve the C6A form in certain circumstances, in accordance with case law. The Deputy Director proposed to the President and the Committee that consideration should be given to amendments to PD12C to clarify the position.
- 7.2** The President of the Family Division agreed that this could be considered. He underlined that the notification is a limited rule in any event which does not carry wider parental responsibility or participation rights; and that exceptions will be granted in limited circumstances only according to case law.
- 7.3** Melanie Carew agreed that it would be helpful to make an amendment to clarify the position. Judge Theis underlined that there is a high threshold for exceptions to the notification rules. [Judge Raeside expressed concern that the reporting of the case could suggest that the rules were different than they were or had been applied

improperly, potentially reinforcing misperceptions about decision-making in the family justice system].

- 7.4** The President of the Family Division stated that the proposed work should proceed and asked that this be presented more fully to the Committee at the February meeting.

ACTION

Ministry of Justice to present this issue at the February meeting of the Family Procedure Rule Committee

Standardising Orders

- 7.5** The President of the Family Division stated that he had now visited 12 of 42 designated family courts and that at each court, judges, magistrates and legal advisers were expressing concerns that court orders take a long time to complete, often don't add much value and can be bewildering for litigants in person. Concerns were also expressed that the operative parts of the order were often 2-3 pages in to the order, and that some HMCTS templates take a long time to use. It had been suggested the templates be considered optional, or at least only for use in the first case management order, and that subsequent orders could refer back to the first and more succinct. The Central London Family Court had moved to short form orders on a pilot basis – one side of an A4 page.
- 7.6** The President stated that he had also recently been made aware that the standardised orders produced by Mostyn J and HHJ Hess and published by Class Publishing is not in widespread use and asked for opinions of legal practitioners in considering this further. HM Courts and Tribunals noted that there are data protection issues which might prevent this, although Michael Horton noted that if a Judge wants to use the package it was a question of individual choice. However, he thought that the tone and consistency used in the software still needed further work. Judge Godwin said that Court Staff currently have to type out the long orders onto 'FamilyMan' without the ability to copy and paste which takes a long time; he suggested that the recitals to orders should be placed within a schedule which could then simply be appended by staff to orders once approved by the judge, with the operative part of the order coming first as was always the case in the past. That would help simplify the process, and improve litigants in person's understanding of the order. District Judge Suh stated that the system was particularly burdensome with Michael Seath noting that in feedback he has received from Legal Advisers, it had taken them up to two hours a day to re-submit the same information from the schedules.
- 7.7** The Acting Chair proposed that a system be adopted similar to the Manchester Pilot as there are no changes made to the process which is more condensed although she stressed that it is important not to lose consistency.

- 7.8** The President of the Family Division stated that this is an issue that he would like to discuss further with colleagues from HM Courts and Tribunal Service and asked for a meeting to be arranged.

ACTION

HM Courts and Tribunals Service to speak to the President of the Family Division's Office to arrange for a conversation to take this forward and report back to the February meeting of the Family Procedure Rule Committee

Registration of orders under Brussels IIa and Hague 1996

- 7.9** The Acting Chair raised a concern that orders are registered under Brussels IIa and the 1996 Hague Convention in the High Court rather than the family court. The concern stems from the low number of Deputy District Judges there are in the High Court to carry out such registrations. The Acting Chair requested that the Ministry of Justice consider this concern and potential solutions, including whether and how this responsibility might be transferred to the family court, as part of a working group that would include certain judicial colleagues and that would meet in the new year.

ACTION

The working group and Ministry of Justice to consider the matter further.

Deed Poll name changes

- 7.10** The Acting Chair stated that it had been brought to her attention that the number of applications for deed poll name changes had gone up from 500 to 6741 and are currently considered at High Court master level. Concerns had been expressed that the deed poll applications regarding children, which include a best interests test, are not being heard by family judges (either in the Family Division or the family court), by virtue of relevant legislation, and queries had been made as to whether they should be, both from the perspective of reducing the workload at High Court master level as well as the perspective of the nature of the test to be applied. Issues were also arising in gender recognition cases.
- 7.11** The President of the Family Division proposed that this issue should be looked at further.

DATE OF NEXT MEETING

- 8.1** The next meeting will be held on Monday 4 February at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary
January 2019
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