



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In Judges Conference Room, QB1M
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 9 December 2019

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Waller	Circuit Judge
District Judge Suh	District Judge
Michael Seath	Justices Clerk
William Tyler QC	Barrister
Melanie Carew	Cafcass
Rob Edwards	Cafcass Cymru

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Lord Justice Baker, HHJ Godwin, HHJ Hickman, Michael Horton, Fiona James and Dylan Jones.

MINUTES OF THE LAST MEETING: 4 NOVEMBER 2019

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

ACTIONS LOG

- 3.1 The action log is to be updated to include progress and what month it is expected that each item will be discussed.

ACTION

Action log to reflect progress and expected discussion dates

MATTERS ARISING

Annual Report and Members Interests Register

- 4.1 Forms asking Committee Members to declare their interests were handed out at the meeting. An electronic version of the form will be sent out to ensure that those not in attendance can complete the exercise.

Legal bloggers consultation update

- 4.2 The Committee agreed to issue the consultation in the new year, after the general election has taken place.

Legal Bloggers in First Hearing and Dispute Resolution Appointments (FHDRAs)

- 4.3 The Acting Chair discussed a request from the Transparency Project (TP) regarding the scope for legal bloggers to attend FHDRAs. The Committee agreed to consider whether the current pilot allows for legal bloggers in FHDRAs and to discuss further in February.

ACTION

MoJ Legal to provide further analysis of the pilot for discussion in February.

FPRC membership update

- 4.4 MoJ Policy reported that there were currently two vacant member posts (DJ(MC) and solicitor although the recruitment process had already begun. Clarity was sought about the post for a PRFD DJ (as only one PRFD DJ remains in office) and whether that could be occupied by a DJ of the County Court.
- 4.5 The Acting Chair asked whether a system could be put in place for early recognition of when posts come up for renewal to ensure against the length of time that a post may remain dormant. The Secretariat confirmed that this is now in operation. The President of the Family Division asked that when filling the District Judge role, that his office be contacted as he had made good links with contacts on recent court visits.
- 4.6 The President of the Family Division also proposed that he would write to Hannah Perry following her recent decision to step down from the FPRC due to her appointment as co-chair of the Association of Lawyers for Children.

ACTION

- 1. The President of the Family Division to write to Hannah Perry.**
- 2. The Secretariat to confirm in a paper for the February meeting the system in place for renewal of posts, the position about the DJ PRFD post and an update on the recruitment.**

CATJAFS WORKING GROUP

- 4.7 The Working Group are due to meet in January.

ACTION

Michael Seath to provide a re-draft of the current guidance to Justice's Clerks/Assistants for the February FPRC meeting

ENFORCEMENT: UPDATE FROM THE RECENT MEETING OF THE WORKING GROUP

- 5.1 MoJ Policy reported that the Enforcement Working Group met in November and are scheduled to meet again in January. MoJ Policy updated the Committee on current plans and asked the Committee to agree the current planned timetable.
- 5.2 The Working Group's intention is to review the current rules, practice directions, forms and guidance to make changes that can come into force late next year. The Working Group will meet next month to discuss the rules they propose to amend.
- 5.3 The Acting Chair summarised the position proposed by the Enforcement Working Group and the Committee accepted and agreed to the general approach with a view that issues around consultation and timelines should be discussed further in February Committee. Members asked whether consideration needs to be given to more fundamental changes in the enforcement framework, particularly given that the current framework can be unfair on women going through divorce. The Committee agreed that in the first instance it would take the proposed approach of limited rule, PD, guidance and form changes, to deal with the most pressing issues, but it would be important to consider wider reforms in the future.

ACTION

The Enforcement Working Group to meet in January and report back in February.

OPEN MEETINGS AND TRANSPARENCY OF THE COMMITTEE

- 6.1 The Committee discussed the format of the open meeting and publication of minutes and agreed to continue publishing minutes and agreed to have one open meeting a year, that will remain open for the whole meeting rather than including a closed session.
- 6.2 The Acting Chair asked if an up to date list of stakeholders could be circulated to Committee Members to discuss in February.

ACTION

Secretariat to circulate Stakeholder lists for discussion in February

CORRESPONDENCE, TRANSCRIPTS AND RECORDINGS – MIRRORING THE CPR PROVISIONS – REVISED DRAFT FPR PROVISIONS AND PD DISCUSSION

- 7.1 The Committee discussed the draft rule provisions for correspondence, transcripts and recordings. MoJ Legal noted that at the November meeting it was agreed that the draft rules should allow for correspondence to be returned to sender, or to be sent on to other parties by the court. However, concerns had been raised since that this might be difficult to administer. It was agreed that the rules should only provide for the return of correspondence, unless the court directs otherwise.

- 7.2** The Committee discussed whether there should be a Practice Direction setting out exceptions from the requirement to copy correspondence to all parties and, if so, what it should contain. It was agreed that there should be a Practice Direction and that the exceptions should be for adoption proceedings and for any case where the sending party does not know where the other party is – for example, if the other party is unrepresented and has filed a C8 form for their address to be kept confidential.
- 7.3** The Committee discussed whether the provision on transcripts should allow for any person, rather than just parties, to be able to request a copy of a transcript of family proceedings held in open court. It was noted that the current FPR provisions do not allow for this, and that there could be practical difficulties in knowing which element of a given hearing was heard in open court and which was in private. It was agreed that the proposed new rule should remain as drafted and not make different provision for hearings in open court.

ACTION

- 1. MoJ Legal to include final rule provisions in the Statutory Instrument to be formally signed at the February Committee meeting.**
- 2. MoJ Legal to prepare a draft Practice Direction for discussion at that meeting.**
- 3. HMCTS to work with the Family Court Operational Forum to draft**
 - (a) standard wording for inclusion on directions and orders about a requirement to copy correspondence (etc)**
 - (b) standard wording for inclusion when returning correspondence to senders**
 - (c) guidance to court staff on when to return correspondence/ not do so/ to refer a matter to the court to decide.**

DRAFT RULE PROVISION RELATING TO PROCEEDING BY ELECTRONIC MEANS

- 8.1** MoJ Policy referred to previous discussion and asked whether the Committee were content with the rules, noting that amendments made since the last meeting related more to terminology rather than content. The Committee agreed. It was confirmed that the definition of “documents” is intended to include emails.

ACTION

- 1. MoJ Legal to incorporate final provisions in SI for signing at February meeting**
- 2. MoJ Legal and Officials to prepare draft Part 41 PDs for discussion at the February meeting.**

COSTS REFORMS (PART 1) - DRAFT RULE AND PD AMENDMENTS

- 9.1** MoJ Legal presented a revised draft Keeling Schedule showing proposed rule and PD amendments, together with a draft SI listing out the proposed rule amendments and a draft PD amending document listing out the proposed PD amendments. A number of questions for Committee consideration were included within the Keeling Schedule.

- 9.2** In the first instance the Committee discussed whether the filing of costs estimates one day ahead of a hearing was sufficient for court staff to ensure that these estimates reached the court file in time for the hearing. The Committee noted the potential difficulties. It was agreed to keep the requirement to file one clear business day before the hearing, but to also add a requirement for parties to bring a hard copy of costs estimates to a hearing, to ensure they were available to the court on the day.
- 9.3** The Committee was content with the proposed drafting around serving costs estimates and open proposals on “each other party”, which allows for the possibility of there being more than two parties to a case.
- 9.4** The Committee agreed that there should be a requirement for a cost estimate of a represented party to be “discussed with” that party by the legal representative. Other minor drafting points were agreed by the Committee.
- 9.5** The Working Group had proposed a number of new standard forms for providing costs estimates, each catering for a different scenario. It was agreed that it would be acceptable to have one form, with optional sections for each scenario. It was agreed that the form should include space at the outset for the date of the next hearing to be set out, which would help HMCTS to identify documents which needed to be processed quickly.
- 9.6** The Committee did not consider that paragraph 4.4 of PD28A needed further amendment in light of the pending rule and PD amendments.

ACTION

- 1. MoJ Legal to produce final rule and PD amendments, to be formally signed at the February meeting.**
- 2. MoJ Officials to produce draft new form for estimates of costs (to replace current form H and H1).**

HIGH COURT’S POWERS TO SET ASIDE CERTAIN CHILDREN ORDERS

- 10.1** MoJ updated the Committee on the consultation responses, and following requests for extensions from the Child Abduction Lawyers Association, the Committee agreed to the plan to settle the final changes to the rule via email ahead of the February meeting, if at all possible. A further response to the consultation was also flagged up as being provided by Mr Justice Williams on behalf of the Family Division judiciary and MoJ Policy said that this too will be considered.
- 10.2** The Chair noted that Lord Justice Moylan had asked outside of Committee for his thanks to be recorded for raising this subject and for the work undertaken to date.
- 10.3** The Committee also considered two related items on setting aside decisions, one on the exercise of the inherent jurisdiction in the case of vulnerable adults and another

on challenges to ex-parte orders, and agreed that the main proposed rule amendments should proceed without the need to resolve these two issues first.

10.4 MoJ Legal were thanked for all of their work on this project

ACTION

MoJ Policy/ Legal to work to produce final rule and PD provisions for agreement out of Committee, to be agreed by the Working Group as the first step. If possible, rule provisions to be included in the SI to be formally signed at the February Committee meeting.

OVERVIEW AND NEXT STEPS FOR THE FPR SI

11.1 MoJ Policy asked for at least seven, ideally more, members to be present at the February meeting for signing the SI. MoJ Legal also reminded Committee Members that no changes to the SI will be allowed at the February meeting and so it is important to agree the text before then. The President of the Family Division will be invited to sign the supporting Practice Direction amending document at the February meeting.

ACTION

Final SI and PD amending document to be produced for the February meeting.

CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK

12.1 MoJ Policy said that a formal link has been made with the Civil Procedure Rule Committee and that arrangements have been made for CPRC minutes and an agenda (when available) to be sent to FPRC members. Two issues were discussed; contempt and the matter of bundle requirements when certain cases transfer from the Chancery Division to the Family Division in the High Court.

12.2 On contempt the Acting Chair noted that she has been in contact with Mr Justice Kerr who Chairs the CPRC sub-group. Mr Justice Kerr asked for the FPRC to wait for their analysis before beginning any work. The President of the Family Rule Committee has asked whether Mrs Justice Lieven could formally sit on the CPRC sub-group.

12.3 On bundles, the CPRC had sought the FPRC's views on including in the CPR Bundles PD a cross-reference to FPR PD27A (bundles) so that it is clear which provisions apply when matters transfer from the Chancery Division to the Family Division. The Committee agreed that the CPRC's proposed amendment seemed sensible.

ACTION

- 1. Chair to contact Civil Procedure Rule Committee to see whether the CPRC Contempt working group can accommodate Mrs Justice Lieven.**
- 2. MoJ to feedback on the bundles PD issue to the CPRC.**

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 13.1** The Committee asked if the work undertaken in both the Public and Private Working Group reports, which are due to produce final reports early in 2020, will be reflected within the priorities table.

ACTION

Discussion on the Public and Private Working Group reports to be placed on the March FPRC agenda.

FEBRUARY 2020 AGENDA

- 14.1** The Committee proposed that the ‘forged documents’ issue originally raised by District Judge Devlin be removed from future FPRC agendas and that this be discussed within the judiciary’s over-arching digitisation Committee of which Lord Justice Baker is a member.

ACTION

- 1. FPRC Secretariat to write to District Judge Devlin on the forged documents issue and to explain that this issue will be taken forward elsewhere.**
- 2. Lord Justice Baker to be asked to raise this issue with the wider Digitisation Committee.**

ANY OTHER BUSINESS

- 15.1** MoJ to consider the issues recently raised by District Judge Harrison on pension providers.

ACTION

MoJ to consider the issue raised by District Judge Harrison and let her know that this will be discussed at a future meeting.

- 15.2** The Committee asked whether there is scope to consider putting all the papers for a meeting into one document such as a PDF version rather than emailing large numbers of Word documents.

ACTION

MoJ Policy to look at options and report back in February.

- 15.3** The President of the Family Division paid tribute to HHJ Waller who is retiring in February as this meeting will be his last. The President of the Family Division said that HHJ Waller had played a leading role in the work of the Family Procedure Rule Committee over many years, including acting as chair of the Committee, and contributing extensively to the development of the Family Procedure Rules 2010. He read a number of quotes from colleagues recording the significant role he had played over the years and said that HHJ Waller’s expertise, enthusiasm and friendly approach will be greatly missed.

DATE OF NEXT MEETING

16.1 The next meeting will be held on Monday 3 February at 11.00am at the Royal Courts of Justice.

Simon Qasim – Secretariat

December 2019

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