

## **Minutes of the Civil Procedure Rule Committee**

Friday 7<sup>th</sup> February 2020, The Rolls Building (Royal Courts of Justice) Fetter Lane, London.

### **Members attending**

Lord Justice Coulson (Chair)  
Mr Justice Birss  
Mr Justice Kerr  
HH Judge Jarman QC  
HH Judge Bird  
Master Cook  
District Judge Parker  
District Judge Cohen  
Brett Dixon  
Masood Ahmed  
Richard Viney  
John McQuater  
Lizzie Iron

### **Welcome and Apologies**

1. Apologies were received from Mr John Dagnall and Dr Anja Lansbergen-Mills.

### **Minutes of the last meeting**

2. The minutes of the meeting on the 06 December 2019 were approved.

### **Action Log and Matters Arising**

3. The action log was reviewed and updated. The Chair advised that (i) Housing related actions may take longer to complete as there is the potential for wider implications in terms of the Government's other possible reforms on this subject (ii) in relation to the Whiplash (RTA Portal) actions, the short paper from the sub-committee was noted. In particular it was noted that, after a long delay, material had very recently been provided by the MoJ to the sub-committee but not to the full committee. No decision had yet been made by the MoJ on one way adjudication, so it was not possible to make any further progress. Concern was expressed about the continuing delay. **Action:** the matter would return to the full committee in March 2020.

### **Item 2 Contempt Sub Committee CPR(20)01**

4. The Chair opened the item by welcoming Mrs Justice Lieven to the meeting, as the Family Procedure Rule Committee representative. Praise was also expressed for the quality and speed with which Mr Justice Kerr and the sub-committee had approached this matter.
5. Kerr J followed by reiterating the background and task for the sub-committee before setting out the proposals, which were discussed in detail. The Chair took the view that the annotated version of the proposals was extremely helpful. The discussion today should focus on the substance and items for inclusion in a consultation, rather than detailed drafting points, because it was inevitable that by consulting, additional changes would follow.
6. It was explained that, pursuant to the October 2019 meeting, the three principal judicial bodies were informally consulted and from whom there was broad support. Each made some specific points which have informed the proposals and a response was also received from the Attorney-General's office.

7. Following that initial consultation, there has been further informal liaison with others, including the senior judiciary and Presiding Judges, the Lord Chief Justice's Working Group, the Law Commission and policy officials. Katie Fowkes is serving as lead drafting lawyer and from whom various helpful comments have been made; some of which are still being considered.
8. The sub-committee's proposals provided for a new CPR Part 81 which essentially provides for a uniform procedure for all types of contempt, thus reducing the number of rules from 38 to 10, it (a) omits nearly all the substantive law (b) deals with procedure in rules not PDs (c) dispenses with the PDs and Practice Guidance Note (PG), subject of course to the concurrence of the Lord Chief Justice in the case of the Chief's PD and PG; and (d) proposes amendments to rule 32.14 and the PD/PAPs, arising from the *Jet 2 Holidays* case along with the Lacuna sub-committee's recent item (ref LSC2019/35) from the December 2019 meeting.
9. It was also noted that the sub-committee have, additionally, considered any knock-on effects to Part 71 which deals with oral examination of debtors/orders to attend court for questioning, because non-appearance for examination can lead to contempt proceedings and this is something previously raised by the District and Circuit Judge members. Those proceedings are then governed by Part 81. The conclusion is that the sub-committee do not see the need for any amendment to Part 71, but, have not addressed whether Part 71 should be amended on its own merits.
10. Kerr J explained the consequential need to review the suite of court forms; PD4 prescribes some 27 prescribed forms for use in contempt proceedings. It is therefore proposed that there be a significant reduction in the number of forms and those that remain should be generic, versatile and usable in all types of contempt proceedings.
11. The sub-committee recognise that, locally, judges will need to continue to consult and be guided by their leadership judges on practical issues, such as the point at which the line is crossed from a tolerable to an intolerable level of dissent in court and the extent to which local staffing and logistical issues, such as the use of bailiffs, tipstaff, police et al will be utilised. To these ends, the role of Presiders was readily acknowledged and it was explained that the proposed reforms have been framed in a way that seeks to respect that, so that the design of administrative and consultative processes locally can be dealt with separately.
12. DJ Parker raised a point concerning District Judges' power to commit; DJ Cohen expanded with some practical examples and HHJ Bird raised the potential overlap with PD2B. It would be reasonable to refer to PD2B within the consultation at the point at which reference is made to DJ powers within Attachment of Earnings proceedings. The Chair was keen not to fetter flexibility and referred to the recent work on modifying the Appeal provisions, highlighting the connected issue with Deputies. The view was that the final version of contempt provisions should set out what level of judge can deal with committals. Lieven J also spoke to the point concerning Deputies and the issue of consistency across jurisdictions and with the rules and Circuit guidance. The Chair's view was that where there is not currently consistency, that this is likely due to the circumstances which led to this review and in the absence of clarity within the current rules, Circuits have needed to form a position and issue their own guidance, if only on an interim basis.
13. Differing views were shared in relation to the proposed r81.4 as to whether it should be set out in chronological or subject matter sequence. This was discussed in some detail and the sub-committee will review the points in finalising the draft proposals. Within the discussion, Lieven J raised a point regarding draft r81.4 (2) (k) whereupon it was **RESOLVED** to remove sub paragraph (k) from the redraft.

14. Additional drafting points were also raised, wherein it was **RESOLVED** to remove the last sentence of the last paragraph of the drafting note under 81.4; to use, “may” in place of “has”; to use, the court’s “own initiative” in place of, “own motion” and to remove, “or parties” from draft r81.6 (4). The observations as to whether the revised rules 81.7 and 81.8 need express time limits included, should be raised within the consultation. The relationship between CPR Part 39, specifically r39.2, and the proposed r81.8(1) was also discussed in the context of open justice and equality issues, which ventilated a point as to r81.8(2) and robing, which would also form part of the consultation exercise. Katie Fowkes was also conscious of the Joint Committee on Statutory Instruments and highlighted the importance that drafting notes make clear that the proposals are not seeking to interfere with the substantive law on contempt.

15. It was **RESOLVED** that:

- i. The CPRC will conduct a cross-jurisdictional consultation exercise. The indicative timetable is to allow for an eight-week consultation period with the aim to launch in March 2020 and for the matter to return to the committee in July 2020.
- ii. Subject to final drafting, the proposals will be presented in a way which provides explanatory notes annotated against each redraft so that the rationale is clear and consultees gain the fullest understanding of the proposed reforms.

**Actions:** (i) Drafting lawyers and officials to work with the sub-committee to finalise the material for consultation, to include a draft foreword and consultee list. (ii) Secretariat to update the agenda programme to schedule in time for prospective items at the June and July meetings.

16. Turning to the issues raised at the December meeting which arose following the *Jet 2 Holidays* case, the committee were taken through the suggested redraft of CPR Part 32.14 (false statements) and suggested wording to be added to the generic PD on PAPs and to all PAPs. A drafting discussion ensued and it was **AGREED, subject to final drafting** that the revised wording of CPR 32.14 is to read:

‘Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for statements of truth.)

(Part 81 contains provisions in relation to proceedings for contempt of court.)’

17. It was further proposed that additional wording should be added at or near the start of all PAPs to read, ‘*A person who knowingly makes a false statement in a pre-action protocol letter or other document prepared in anticipation of legal proceedings may be subject to proceedings for contempt of court*’. However, it was noted that the Civil Justice Council (CJC) are expected to conduct a wider piece of work on PAPs generally and as such it was **AGREED** to take no specific action at this stage, pending the CJC’s work.

### **Item 3 Transfer of Jurisdiction to Enrol Deeds Poll CPR(20)02**

18. John Sorabji was welcomed to the meeting. Dr Sorabji advised that the Senior Master had raised concerns regarding the continuing suitability of child name change Deeds Poll being enrolled the Queen’s Bench Masters, particularly from name changes arising out of family breakdown and for transgender children. The focus of the concerns is the extent to which it would be preferable for Family Court Judges, who have greater familiarity with

such issues, to enrol such Deeds Poll. Master Cook confirm the position and elaborated on the practical aspects.

19. It was noted that the Master of the Rolls and President of the Family Division have agreed that responsibility for such Deeds Poll should transfer to the Family Court and Family Division of the High Court.
20. Consequently, the CPRC were asked to draft the necessary amendments, which are likely to include modifications to Regulation 8 of the Enrolment of Deeds (Change of Name) Regulations 1994 (SI 1994/604) and CPR PD5A.
21. It was **RESOLVED** to form a sub-committee, the membership of which would be Master Cook, with John Sorabji and Alasdair Wallace ex officio and to maintain liaison with the Family Procedure Rule Committee. Post Meeting Note: it was further agreed that the Senior Master will serve on the sub-committee and that input would be sought from both Civil and Family policy officials at the Ministry of Justice. **Action:** Secretariat to note for inclusion in future SI/PD Update, prior to which the matter is to return to the CPRC.

#### **Item 4 Forms Sub Committee CPR(20)03**

22. Master Cook explained that the sub-committee was in a position to report on three specific court forms, which were considered by the sub-committee following a referral submitted by a legal stakeholder. It was noted that HMCTS had been consulted, from an operational perspective, and they endorse the recommended changes.
23. The context of this item is that, in December 2016 form changes were mandated in response to the judgment in *Cardiff County Council v Lee (Flowers)* [2016] EWCA Civ 1034 to cover requests for warrants when the original possession order was suspended on payment terms and a revised form N445 for requests for re-issue of warrants was also introduced. The new N325A and the revised N445 forms contained an additional certification confirming that, "a *statement of the payments due and made under the judgment or order is attached to this request*". This certification reflected the temporary work-around introduced to cover the effect of rule 83.2(3)(e) which had been highlighted by the *Cardiff-v-Lee* case. This rule required judicial permission for a warrant to be issued whenever enforcement of an order or judgment was dependant on a condition in the order or judgment having been fulfilled. The work-around was implemented so that the warrant request or re-issue request could also serve as the application for judicial permission and the Court could then decide whether to grant permission for the warrant to be issued.
24. On 1 October 2018 *The Civil Procedure (Amendment No 3) Rules 1998* came into effect. This modified CPR 83.2(3)(e) by adding the wording "*other than where non-compliance with the terms of suspension of enforcement of the judgment or order is the failure to pay money*" This amendment rendered form N325A obsolete. Taking each form in turn:
25. Form N445 Request for Reissue of Warrant. It was explained that the proposed changes go beyond those suggested by the court user who raised the query and the meeting was taken through the various drafting changes in detail. The following was **AGREED**:
  - i. Remove paragraph 3 of the certification box narrative which reads "(3) a statement of the payments due and made under the judgment or order is attached to this request"
  - ii. Add a new certificate "(3) the terms on which the warrant was suspended have been breached."
  - iii. Delete the final footnote which relates to paragraph 3 and replace it with "delete unless the warrant was suspended on terms"

- iv. Omit the words, “The reissue fee applies only to warrants of execution” from sections 4 (A) and 4 (B)
  - v. Delete the “s” from “Parts warrants” in the heading to section 4B
  - vi. Delete the third box and its associated wording from section 4
  - vii. Remove the heading note at the foot of the form, “Suspended possession orders: You must provide a statement of payments due and made under the judgment or order”
  - viii. Remove box “Warrant of committal” form the top of the form
  - ix. Remove the heading note at the foot of the form “Reasons for requesting reissue (information you are relying on to support your request for reissue eg. Address for execution has changed, failure to make payments under a suspended order etc.)
26. **Actions:** (i) Secretariat relay changes to MoJ Form Designers for implementation as soon as practicable (ii) HMCTS to communicate changes to court staff/users
27. Form N325A Request for Warrant of possession of land following a suspended order for possession: It was **AGREED TO WITHDRAW Form N325A**. **Action:** (i) Secretariat to notify the form designers/publishers/stakeholders (ii) HMCTS to advise the courts.
28. Form N325 Request for Warrant of possession of land: The **AGREED Action** was to: Refer the matter to the Housing sub-committee.
29. Master Cook continued his report by explaining that some of the Standard Directions Orders online at [www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/list-of-cases-of-common-occurrence](http://www.justice.gov.uk/courts/procedure-rules/civil/standard-directions/list-of-cases-of-common-occurrence) are out of date or wrongly described. However, the Multi Track Clinical Negligence RCJ forms have been updated and are now current. Nonetheless, incorrect versions appear under the Multi Track Clinical Negligence County Courts and District Registries forms. It would seem that at some point in the past these forms have been replaced with earlier versions of the RCJ forms. **Action:** Officials have been tasked with obtaining the original forms and replacing them.
30. Whilst reviewing the Standard Directions Orders it was also apparent that many do not have a date on them for the purposes of version control, unlike court forms produced by the MoJ Forms Designers and this was discussed. It was **RESOLVED** that **Action** (i) all standard forms/orders should contain a date of issue (eg *v. Jan 2020*) so that their evolution can be properly traced and that (ii) HMCTS should keep an archive of old forms which are replaced.

**Item 5 OCMC: Proposal to increase Directions Questionnaires Online to all cases up to £10,000 in value CPR(20)04**

- 31. Mr Justice Birss opened the item by providing an overview of the Online Civil Money Claims (OCMC) service and its evolution; in doing so, Kerry Greenidge (HMCTS Service Manager) was introduced.
- 32. It was explained that the proposal, which seeks to increase the online Directions Questionnaire (DQ) process for all OCMC cases (ie up to £10,000 in value), had previously been discussed in detail by the sub-committee and agreed in principle at its meeting on 9 January 2020.

33. It is proposed in the context of a successful plan of phased changes hitherto which were managed in a way so that any issues or technical bugs could be dealt with and restricted to a limited group of users; this being the general approach taken when new features are released in OCMC. This was discussed.
34. It was in September 2019, pursuant to the 111<sup>th</sup> PD Update, that the new DQ Online feature was introduced. Initially it was only made available for defended claims up to £300, being approximately 20% of claims and in December 2019 the feature was made available to defended claims up to £1,000, which represents approximately 50% of claims issued. As such, whilst the proposal may at first sight be seen as a significant increase in terms of the value of the qualifying claims increasing ten-fold (from £1,000 to £10,000) the volume of cases is more modest.
35. The committee were pleased to note that the new DQ Online feature almost immediately improved timeliness for this part of the process, from four days on average compared to 59 days in business as usual. It also provides better information for staff and Judges that are dealing with defended cases and automated a previously administrative process. The service also provides for an additional question regarding reasonable adjustments which the parties may require at any future hearings.
36. Ms Greenidge advised that the feature continues to perform well and to deliver timeliness improvements.
37. The Chair acknowledged the success of these reforms, highlighting the significant time saving to all concerned and this point was supported with a perspective from HHJ Bird.
38. It was **RESOLVED** to endorse the recommendation to increase the online DQ process for all OCMC cases up to £10,000 in value, whereby it was established that no further PD/rule changes were required because the provision for online DQ's is already provided for with the existing PD.

*Lord Justice Coulson leaves the meeting due to a speaking engagement elsewhere; accordingly, Mr Justice Birss takes the Chair.*

#### **Item 6 Any Other Business:**

39. **Costs Sub Committee: Budget Variations:** Birss J, in the Chair, advised that, the costs sub-committee have been making progress and have decided that although the budget variation changes are pressing, as the next SI and PD Update, in which this could be included, is the summer cycle it has been decided to work on a single set of amendments. **Action:** Secretariat to schedule a slot on the March agenda.
40. **Brexit: The EU (Withdrawal) Act & the CPR:** Alasdair Wallace provided a brief oral update to the committee to advise that, in accordance with the legislation, exit day was deferred to the completion of the *implementation period* and that this is now to be known as the *transition period*. Over which time, the United Kingdom is to be treated as if it were a member of the EU. As such, in terms of the operation of the CPR it will essentially be (as it is now and this assessment would also go for PDs and forms. However, any consequential action required by the committee will depend on the outcome from the Government's negotiations. **Action:** Drafting lawyers and Officials to keep under review and revert to the committee as necessary.
41. It was also **NOTED** from the Chair that Senior Master Fontaine anticipates amendment/s to the CPR for obtaining evidence for foreign courts. This being a direct consequence of the UK ceasing to be a part of the Taking of Evidence Regulation at the end of the implementation period. **Action:** Subject to the matter being committee ready, the Secretariat is to schedule the item on the March agenda.

42. **CPRC meeting dates for 2021:** The Secretary advised that the dates for the calendar year of 2021 had now been set. Subject to room availability, the annual open meeting was scheduled for 14 May 2021. **Action:** Secretariat to circulate to members.
43. **Vulnerable Witnesses and Parties within Civil Proceedings:** It was **NOTED** that the Civil Justice Council's report is likely to be published by the time of the next CPRC meeting. **Action:** Secretariat to schedule a slot on the March agenda.
44. **Video Hearings Pilot PD51V:** It was **NOTED** with thanks that the work concerning the resolution of the December meeting (CPR(19)54) had now been completed and the revised PD Update was, subject to Ministerial approval, to be in force from 02 March 2020 enabling the Video Hearing Pilot under PD51V to operate until 30 November 2020. **Action:** HMCTS to bring the matter back before the CPRC (prior to June 2020) to allow for review and consideration of incorporation into the next mainstream Update (to be settled at the June 2020 CPRC meeting) in accordance with the common commencement date of October 2020 onwards.

C B POOLE  
February 2020

**Attendees:**

Nicola Critchley, Civil Justice Council  
Carl Poole, Rule Committee Secretary  
Amrita Dhaliwal, Ministry of Justice  
Alasdair Wallace, Government Legal Department  
Katie Fowkes, Government Legal Department  
Andy Currans, Government Legal Department  
Andy Caton, Judicial Office  
Kerry Greenidge, HM Courts & Tribunals Service  
His Honour Judge Lethem  
Katy Durrans, Judicial Press Office  
Mrs Justice Lieven, Family Procedure Rule Committee (for item 2)  
Dr John Sorabji, Judicial Office (for item 3)