



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 16 November 2020

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
District Judge Gareth Branston	District Judge
District Judge Anna Williams	District Judge
Fiona James	Lay Magistrate
William Tyler QC	Barrister
Michael Seath	Justices Clerk
Dylan Jones	Solicitor
Tony McGovern	Solicitor
Melanie Carew	Cafcass
Rob Edwards	Cafcass Cymru

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from His Honour Judge Godwin, District Judge Suh, Michael Horton and Bill Turner.
- 1.2** Tony McGovern was welcomed as the Solicitor member of the Committee.
- 1.3** Invited guests were welcomed to the annual meeting of the Family Procedure Rule Committee, which for the first time had to be undertaken remotely. The Acting Chair thanked attendees for their interest in attending the meeting.

MINUTES OF THE LAST MEETING: 5 OCTOBER 2020

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

ACTIONS LOG

- 3.1** The Acting Chair said that the Actions Log contained issues not scheduled for discussion during each meeting except for the D81 Form which will be spoken to under the Forms update.

MATTERS ARISING

Divorce, Dissolution and Separation Act 2020 update

- 4.1 MoJ Policy reported that the Working Group had met a number of times and there will be further meetings to follow. The intention is to return in December as a substantive item.
- 4.2 The Committee said that they recognised the progress made to date and thanked the Working Group for their hard work.

ACTION

To return to the Committee as a full agenda item in December

Brexit Working Group Update

- 4.3 MoJ Policy reported that the FPRC Brexit Working Group met on Wednesday 11 November where an update was provided on the progress of the Private International Law (Implementation of Agreements) Bill which is expected to be in place by the end of the year; and the interim period between the end of the transition period and acceptance to the Lugano Convention.
- 4.4 The Acting Chair said that work on the operational issues was also considered within discussion and will be followed up on at the next meeting of the FPRC Brexit Working Group which is due to meet in the last week in November.
- 4.5 MoJ Policy also said that a point was raised regarding assisting EU children in care/leaving care in applying for settled status under the EU Settled Status Scheme and that this will be further considered under AOB to this meeting.

ACTION

To return to the Committee on the EU settled status scheme as a full agenda item in December

FGM Mailbox update

- 4.6 MoJ Policy said that the Current Practice Direction end date has been extended to 31 December 2020 whilst final arrangements for the new system to notify the police of FM and FGM protection orders are put in place. It is expected that the new system will go live shortly.

Re:NY - Inherent Jurisdiction

- 4.7 MoJ Policy said that the issues raised by NY (A Child) [2019] UKSC 49 still require further consideration and therefore this update was to simply inform the Committee that it is intended to bring this item back, following conclusion of the analysis, to the December meeting.

ACTION

To return to the Committee as a full agenda item in December

Costs - without prejudice offers

- 4.8 MoJ Policy said that the Costs Working Group met on Wednesday 11 November to discuss the additional feedback received from Resolution's Regional Liaison Committee and the Litigants in Person Committee. MoJ Policy said that they would provide a full update in December.

ACTION

To return to the Committee with an update on the costs working group discussions in December

Opposite Sex Civil Partnerships Act

- 4.9 MoJ Policy noted that the Government Equalities Office are leading on the regulations which will give effect to the conversion rights brought in through the Civil Partnerships, Marriages and Deaths (Registration Etc.) Act 2019 and GEO Policy will update the Committee on the intended timetable and what is required of the Committee. GEO are working on the policy issues and the intention is that they return as a substantive item at the December meeting.

ACTION

To return to the Committee as a full item in December pending progress.

Electronic Statements of Truth

- 4.10 MoJ Policy reported that the pressure of other priorities had meant that analysis over the broader extension of electronic signatures on statements of truth was not yet ready for the Committee's consideration. The proposal is that this item could return in February 2021 when it will be covered under the more general Statements of Truth issue due to be discussed then.
- 4.11 The Committee requested that this issue be given greater prioritisation especially through the period of the pandemic as it is currently difficult for people to print and sign documents in hard copy and then post them to the court. The Acting Chair proposed that this remain on the agenda for more immediate discussion in December.

ACTION

To return to the Committee for consideration in December

Announcements in Open Court: Consultation

- 4.12 MoJ Policy updated the Committee on progress on the consultation process, noting that four replies had been received. The proposal is that these are examined and to return as a full item in February.

STANDING ITEM: CORONAVIRUS RELATED ITEMS

a) PILOT PRACTICE DIRECTION RENEWALS: 36Q AND 36R

- 5.1 MoJ Policy reported that the two Practice Directions were amended in October to extend their expiry dates from 30 October 2020 to 31 March 2021.
- 5.2 The Committee were informed that PD36Q enables temporary local flexibility over procedures for progressing applications for Child Arrangements Orders during the pandemic.

- 5.3 MoJ Policy said that PD36R modified Practice Directions 2C and 12A to make provision for additional functions to be given to Justices' Legal Advisers on a temporary basis. Practice Direction 5B was also modified under Practice Direction 36R to temporarily enable Local Authorities, adoption agencies, Cafcass and Cafcass Cymru, or their legal representatives, to email documents relating to adoption proceedings (other than applications for adoption orders) to the courts.

LEGAL BLOGGERS IN THE FAMILY COURT

- 6.1 MoJ Policy presented the Committee with findings in relation to the consultation on the pilot to allow legal bloggers access to family proceedings which are heard in private. The pilot is due to expire on 31 December 2020.
- 6.2 The purpose of pilot PD36J was to assess the use of new practices and procedures to allow for attendance at hearings in private by certain lawyers (known as "legal bloggers"), with a view to their being able to report on proceedings on similar terms as duly accredited representatives of news gathering and reporting organisations.
- 6.3 Evidence about the uptake of the pilot and its impact was limited and was insufficiently clear to support a recommendation that the pilot arrangements should be made permanent at this point. MoJ Policy proposed that the pilot PD be extended to 31 December 2021, but with a view to permanent provision being made in the Family Procedure Rules in autumn 2021 unless evidence pointing to a decision to the contrary comes to light in the meantime.
- 6.4 The Committee agreed that there was no evidence to suggest that the legal bloggers pilot should be withdrawn but asked for consideration of either or both, a code of ethics and safeguards to be put in place.
- 6.5 The President of the Family Division noted that the pilot scheme already makes clear what identification a duly authorised blogger will be expected to carry with them to enable court staff, or if necessary, the court itself, to verify that they are "authorised" bloggers. This was introduced to provide an adequate safeguard. This requirement mandates that the blogger must present a signed written statement confirming that their attendance is for journalistic, research or public legal educational purposes and that the Judge is aware of the requirements of this arrangement.
- 6.6 The Acting Chair suggested that the group of Committee members who originally met to look into matters such as safeguarding when the pilot was first introduced be gathered again to work on the areas of concern raised.

ACTION

MoJ Policy to provide Committee with minutes providing the context and discussion which took place when the legal bloggers pilot was originally created. The small group of members is to report to the May 2021 meeting.

ENFORCEMENT OF FINANCIAL REMEDY CONSULTATION UPDATE

- 7.1 MoJ Policy provide the Committee with an update on the consultation relating to the enforcement of family financial orders. The consultation ran from June to August 2020 and the responses had now been assessed by the working group.

- 7.2** MoJ Policy reported the key findings. These included strong support for transposing into a new Part 33 FPR elements of the Civil Procedure Rules. In relation to the General Enforcement Application, there was support for the use of standard directions and helpful suggestions on further information to include in them; and support for the court's ability to order debtors to provide information ahead of the first enforcement hearing (although there was some concern that this could be seen to be over-burdensome).
- 7.3** MoJ Policy also noted the concerns raised by the consultation. These included concerns in relation to the length of time that should be allowed for the debtor to supply the required information to the court, how the proposals would fit with REMO disputes, and the risk that the current proposals will lengthen the process.
- 7.4** MoJ Policy highlighted areas which required further clarity and these included: clarity about the nature and limitations of the general enforcement application; detail in relation to the conduct of the hearing; questions about the level of judge to whom a case should be allocated (although this is not a matter for the FPR 2010); the means of service of a notice of enforcement proceedings; costs and expenses; guidance; and both REMO and domestic cases in which the working group will need to consider the move to make hearings more effective and workloads.
- 7.5** MoJ Policy said that the intention is, after the working group meet on the 24th November, to report back to the Committee for final sign-off of proposals once the working group has itself come to a final view. The draft rules will then come back to the Committee in 2021 to review prior to laying the common commencement statutory instrument in July.
- 7.6** The Committee said that this was an effective consultation and asked that the working group consider the point that in the majority of cases in which this work relates has real-life consequences, many of which involve an unfair gender bias.

ACTION

To return as a full agenda item in February

PROPOSALS FOR AMENDMENTS TO FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014

- 8.1** MoJ Legal updated the Committee on the proposed amendments to the Family Court (Composition and Distribution of Business) Rules 2014 (DoB). These Rules are made by the President, with the agreement of the Lord Chancellor, after consulting the Committee. This discussion was, in effect, that consultation.
- 8.2** Three issues had been raised: removing references to the Senior District Judge of the Family Division (as this role has been vacant for several years); amending routes of appeal from decisions of deputy DJ PRFD in financial remedy proceedings; and the court (i.e family court or High Court) and/or the level of judge to whom proceedings under sections 12 and 13 of the Matrimonial and Family Proceedings Act 1984, and the Civil Partnership Act 2004 equivalents, should be allocated.
- 8.3** On the issue of the reference to the Senior District Judge of the Family Division, MoJ Legal noted that this office is referred to in other legislation, including the FPR, and as such it would not be appropriate to omit a reference in the DoB Rules alone. The Committee agreed with this view.

- 8.4** On the issue of appeal routes from deputy DJ PRFD, it was agreed following discussion that they should be treated the same as DJ PRFD. The President concluded that there was no longer a need for appeals from decisions of DJ PRFD (including deputy DJ PRFD) to be routed to the High Court. He agreed that rule 7(1)(b) of the DoB Rules should be omitted. It was noted that FPR PD30A will need amending consequentially.
- 8.5** On the issue of applications under sections 12 and 13 MFPA 1984 (and the civil partnership equivalent), it was agreed that if the concern is that parties are seeking to issue these in the High Court, then this should be addressed by reference to the requirement in the FPR to issue in the family court (save in exceptional circumstances). As regards such proceedings in the family court, it was agreed by the President that the starting point should be that these cases should be allocated to DJ level. The DJ should only refer complex cases up to a higher level of judge. It was noted that consequential amendments will be needed to the Guidance issued by the previous President in 2015. The Acting Chair said that this should be added to ‘matters arising’ on the December agenda. MoJ Legal said that an application will need to be made to the Parliamentary Business and Legislation (PBL) Committee for space within the parliamentary timetable to amend the DoB Rules

ACTIONS

MoJ Legal to liaise with the President’s office regarding the detail and timing of amendments to the DoB Rules, and regarding consequences for the President’s 2015 Guidance.

DEED POLL NAME CHANGES FOR CHILDREN

- 9.1** MoJ Policy updated the Committee on progress on the work to review the regulations for the enrolled court process for a person changing their name by deed poll, and specifically to ensure that deed poll name changes for children are heard in the family court. This work is being taken forward by a Judicial Working Group, set up by the Civil Procedure Rule Committee, following a request from the Master of the Rolls, to consider amendments to the Enrolment of Deeds (Change of Name) Regulations 1994.
- 9.2** MoJ Policy updated the Committee on the Working Group’s considerations and agreed direction of travel. The Working Group has agreed to pursuing reform by amending the current rules in both civil and family so that applications for the civil enrolled process for change of name where a child’s name is being changed should be referred to the Family Court which would allow the normal gatekeeping processes to happen in these cases. This would ensure consistency of approach to child name changes in the civil and family jurisdictions and ensure proper Children Act based scrutiny of cases. The changes will involve amendments to the Civil and Family Procedure Rules, the Enrolment of Deed Regulations and any other consequential secondary legislation amendments. The Working Group also agreed that where possible, changes and guidance should be contained in Practice Directions as the Working Group considered the use of Practice Directions to be more user friendly and easier to amend. The Group also thought that this work should be spread out to family court centres around the country rather than being centrally based.
- 9.3** The President of the Family Division was content with the proposed way forward and that this will address the increased number of gender applications which can be detailed as part of modern life. The Committee reinforced this point and discussed the number of applications they have been recently faced with.

- 9.4** CAFCASS queried how many cases were currently heard within a year and questioned how many of those turned out to be complex. MoJ Policy confirmed that there were approximately 900 applications a year and that at present only a small number were complex and contentious. It was noted that there may be the potential for a higher number of complex cases due to the added safeguards and considerations that would take place in the family court.
- 9.5** MoJ Policy noted the forward plan and the Committee agreed to seeing a first draft of the new rules, regulations and Practice Directions to be considered in December, consideration of a final draft of new rules, regulations and Practice Directions in January; and SI rule changes in April 2021. The same timetable will be considered by the Civil Procedure Rule Committee.

ACTION

To return to the Committee as a full item in December

EMERGENCY RULE PROVISION

- 10.1** MoJ updated the Committee on progress to create a new rule to allow for modifications to be made to the FPR 2010 (both to existing rules and practice directions) in situations of national emergency (such as a public health crisis). The matter was discussed by the Committee in June 2020 where the Committee agreed that it would pursue the change in the autumn, when the Civil Procedure Rule Committee was also planning to consider a mirroring new rule. The Civil Procedure Rule Committee had considered the matter at its meeting on 6th November and concluded that a new rule should be included in its next CPR amending statutory instrument in Spring 2021
- 10.2** The Committee's reiterated its agreement to make a new rule provision which would closely mirror the provision already included at r36.2 FPR (which is in identical terms to r51.2 CPR).
- 10.3** MoJ Legal asked the Committee to consider the precise wording of the new rule and the Committee agreed to the following; "Practice directions may modify or disapply any provision of these rules-(a) for specified periods; and (b) in relation to proceedings in specified courts, in order to address issues for the work of the courts arising from the Coronavirus outbreak or any other public emergency."
- 10.4** The Committee agreed that the CPRC should be asked to consider adopting the same wording, as it would be preferable for the FPR and CPR to have the same provision. MoJ will revert to the Committee in December with an update on the CPRC's views. Subject to that, it was agreed that the new rule should be included in the Spring SI.

ACTION

To return to the Committee at the December meeting following discussions of precise wording at the CPRC December meeting.

INVITED QUESTIONS

- 11.1** The Committee were asked questions by those invited guests who expressed an interest in doing so.
- 11.2** Thomson Reuters asked "*When will the Family Procedure Rule changes arising as a result of Brexit be made available? Will they be made available to publishers on an embargoed basis prior to public release?*"

- 11.3** The Committee said that “the Family Procedure Rule Committee has, through the FPRC EU Exit Working Group been looking at the implications Brexit will have on the Family Procedure Rules and the associated Form Changes. We will update you further via the notices sent out by the Secretariat to those on the FPRC stakeholder list. The SI (2019 No 517 Exiting the European Union – Family Proceedings which came into force on 8 March 2019) as well as associated guidance on Brexit changes is on the Gov.Uk page and the accompanying Practice Direction update changes will be added to the Family Procedure Rules section shortly. There will be slight tweaks made to the SI as these were drafted to reflect a ‘no-deal’ scenario and these will mainly change the transitional provisions and references to “exit day” to align with the Withdrawal Agreement. We will of course, keep you updated to ensure that you are prepared for 31st December and beyond.”
- 11.4** Both Parents Matter asked “*What is the Committee’s analysis of needs for Litigants in Person and what flowing from that what specific and measurable actions will the Committee be taking in the next 12 months to improve understanding of and access to the Family Procedure Rules to assist the majority of users of the Private Law Family Justice system who are unrepresented?*”
- 11.5** The Committee replied, that “they have been considering this question and topic over the past few months following a report from JUSTICE in 2019 which recommended that all of the Procedure Rule Committees increase the accessibility of court rules to litigants in person. We appreciate that the power to make the Rules must be exercised with a view to securing that the rules are both simple and simply expressed, and we always work with this in mind. The Rules do need to be precise and relatively technical in order to set out matters of practice and procedure accurately and to cover the wide range of circumstances that might come before the court. It must also be noted that procedure rules are only one part of the legal picture and that it is not their role to repeat information on case law or substantive law. We recognise that this may be challenging for litigants in person at times. In terms of action we are taking, the Committee is currently considering exploring the options for setting out in outline summaries what each Part of the FPR does. This would be as a supplement to the Rules and would complement the range of family court guidance already provided to unrepresented parties [on gov.uk and] by third party organisations. We are aiming to progress this work in the coming months. We are also aware that other rule Committees are considering what more can be done to increase accessibility for litigants in person and we will ensure our work is informed by other committees’ plans.”
- 11.6** The representative from the Court of Protection Rule Committee and International Family Law Committee asked “*Would it be for the FPRC or the Civil Procedure Rules Committee to consider a Practice Direction relating to inherent jurisdiction cases relating to adults? The cases are heard by Family Division judges, but they are not governed by the FPR however, they also have distinct features which are not entirely happily ‘housed’ within the framework of conventional civil litigation and hence the CPR. Especially as there are increasing numbers of such cases being determined, it would be useful if a PD could be developed, and I am seeking to understand where best this should be done*”.
- 11.7** The inherent jurisdiction of the High Court concerning welfare of children is well established with wardship being its best-known mechanism. The inherent jurisdiction with respect to adults is a much more recent development and is still developing. Under rule 2.1 of the Civil Procedure Rules, subject to exceptions set out in rule 2.2, the CPR apply to all proceedings in the High Court. The exceptions in rule 2.2 include “family proceedings”. “Family Proceedings” are defined in s.32 of the Matrimonial and Family Proceedings Act 1984 as meaning “proceedings which are family business”. “Family business” is defined as meaning “business of any description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under s. 61 of (and Schedule 1 to) the Senior Courts Act 1981”. Schedule 1 makes no reference to the inherent jurisdiction in

realition to vulnerable adults. Caselaw from 2016 confirms that these cases are outside of the FPR, although as a matter of practice they are allocated to the Family Division.

- 11.8** There is a case for amending Schedule 1 to the 1981 Act to include these proceedings. This could be done by a secondary legislation Order. It is an interesting issue, which it is proposed that the Committee should consider at a future meeting and invite MoJ views.
- 11.9** The President indicated that he would encourage this being taken up by MoJ, albeit it is not crushingly urgent. Most cases involving adults go to the Court of Protection, but there is a small group of people where the adult has capacity but requires the intervention of the court. Such proceedings need to be family proceedings and need to be covered by the FPR.
- 11.10** The Committee proposed that MoJ Policy officials be invited to consider how to proceed and said that liaison would be needed with the Civil Procedure Rules Committee and, the Court of Protection Rules Committee

ACTION

A timetable to be provided on the steps necessary to provide for these proceedings to be “family proceedings” for the December meeting, with a view to this project being taken forward in 2021.

- 11.11** The representative speaking on behalf of the International Family Law Group and the Law Society asked, *“Given the concerns expressed in both the Lords and the Commons about the opportunity for petitioners to delay serving the petition thereby giving respondents little notice of the 20 week period and so defeating the purpose of divorce through a period of time, and the commitment by government to refer this point to the Rules committee for consideration, what rules concerning notice will be brought forward? Could it provide perhaps four weeks for service so there is say a minimum of 16 weeks between service and the conditional order? Will our rules then follow CPR R7 to require application for extension of time to serve after e.g. four weeks, with the 20 weeks then reset? This would allow good opportunity of period of notice for respondents. There could be a specific power for the courts to abridge the 20 weeks if there is evidence of deliberate intent to frustrate service and therefore prevent time running”*.
- 11.12** The Committee said that the Government gave an assurance to Parliament that it would work with the Family Procedure Rule Committee to address the issue of timely service on the respondent of the notice of proceedings by the applicant party. The Ministry of Justice is delivering on that commitment, supporting the Committee in forming a dedicated Working Group to consider procedure rule changes necessary for the implementation of the Divorce, Dissolution and Separation Act 2020 (“the Act”). These include consideration of procedure rules in relation to the important issue of service, on which the Committee anticipates it will wish to consult. The Committee will welcome a wide range of views from stakeholders at consultation.
- 11.13** The Law Society then asked *“What are the FPRC doing to resolve these concerns raised about the significant risk of a final order before the making of a final financial order, particularly incorporating a pension sharing order including when it comes into effect. The paying party who dies after the final order but before financial settlement will create huge problems for the claimant, invariably the more vulnerable financial spouse. The Committee is*

urged to consider a direction that if there is a Form A underway, there should be no final order until the final financial order unless the owner of the likely pension share is able to show there will be no prejudice to the claimant spouse if there were to be this death between the final divorce order and what would otherwise be final financial order”.

- 11.14** The Committee replied that it is this Committee’s current priority is to make procedure rule changes necessary for the implementation of the reforms under the Divorce, Dissolution and Separation Act 2020. As part of this exercise, the Committee will consider procedure rules that may be required as a result of the extension of current special protection for some respondents at s.10 of the Matrimonial Causes Act 1973 to all respondents. The Committee anticipates this is an issue on which it will wish to consult. Separately, the Committee is due to consider a number of issues in relation to pensions at its December meeting.
- 11.15** The Transparency Project raised a point on the legal bloggers pilot which was discussed earlier and recognised that the points they were hoping to raise within this slot on the proposed way forward for the pilot from 2021 were covered under the earlier agenda item.
- 11.16** The Committee thanked the Transparency Project for their continuing interest in the pilot.

CIVIL PROCEDURE RULE COMMITTEE, CRIMINAL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINKS

Information sharing protocol and rules

- 12.1** MoJ Policy updated the Committee following previous discussion relating to the potential for further work on the rules and protocols relating to information sharing between criminal and family courts. The intention is that further analysis be undertaken and that this returns to the December meeting.

ACTION

To return to the Committee at the December meeting

Accessibility of Procedure Rules

- 12.2** MoJ Policy noted that the item will return for Committee in consideration in December.

ACTION

To return to the Committee at the December meeting

PRACTICE DIRECTION UPDATE

- 13.1** MoJ Legal updated the Committee on the various PD-related projects that are underway or pending. These include a new PD to underpin the ability to file appeal documents via an online system where the appeal in family proceedings lies to the High Court; an update on the PD (and the subsequent new PD) relating to the FGM notification to the police; and the fact that amendments to PD36N on

contested financial remedy applications will soon be in place to enable the online system to be used by legal representatives of respondents.

- 13.2** MoJ Legal referred to the recent email communication on PD41B where the Committee's views have been sought as to whether the proposed amendments to PD41B (to build in the provision for legal representatives of respondents to use the online consent FR system) should come before the Committee, or whether the amendments can be sent direct to President of the Family Division. The Committee agreed that this should go through the President of the Family Division.
- 13.3** The Committee asked whether consideration had been built in for when the respondent lawyer to file a consent application? MoJ Legal said that only legal representatives of applicants can currently do so but this will be possible after the changes have been put in place. [Note: MoJ Legal have subsequently corrected this point: only applicants can apply for a consent financial remedy order. The amendments to PD41B will not alter this position, which is set in r9.36 FPR 2010.]

FORMS UPDATE

- 14.1** MoJ Policy updated the Committee on the various strands of work in relation to Family Court Forms. The FPRC Forms Working Group are due to meet on Tuesday 17 November and will be considering which forms need immediate attention and will prioritise the work going forward. The group will also be looking at the suite of forms designed to reflect the new Part 37 FPR on Contempt; and the FL401 court form (and the associated guidance), used to apply for non-molestation and occupation orders, which has been amended as it was found to be difficult to use and understand for unrepresented users.
- 14.2** MoJ Policy also updated the Committee on progress made by the data collection working group led by Mostyn J in developing a revised D81 form, the Statement of information for a consent order in relation to a financial remedy. MoJ Policy set out some of the changes that have been made to a revised draft of the form. MoJ Policy said that if any Committee Members wished to see the draft, they should contact the Secretariat and a version will be sent out. The Committee thanked the Policy Team for their excellent work on this project.
- 14.3** Committee Members also raised discussion of potential amendments to the C100 so as it could be seen if a case was a returning case. CAFCASS will provide further recommendations at the December meeting.

ACTION

FPRC Secretariat to circulate the D81 form to Committee Members who request to see it.

Melanie Carew to provide further recommendations on proposals for amendments to the C100.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 15.1** MoJ Policy updated the Committee that the work relating to the Family Justice Council Report and consideration of amendments to the overriding objective of the FPR 2010 for vulnerable parties and witnesses has been added to the work programme.

DECEMBER 2020 AGENDA

- 16.1** The Acting Chair said that this will need to be changed to reflect the discussion points from this meeting.

ANY OTHER BUSINESS

Overriding objectives within FPR 2010 – Family Justice Council Report

- 17.1** The Acting Chair updated the Committee on a Family Justice Council paper to the FPRC, following a meeting on Monday 19 October. The paper recommends that the Family Procedure Rule Committee consider amending the overriding objective in the FPR 2010 to make explicit reference to ensuring all parties can fully participate in proceedings, and that parties/witnesses can give their best evidence.
- 17.2** The Committee discussed the drivers behind the paper and that it stemmed out of the Harm Panel report and the implications of the various national lockdowns. The Committee agreed to look into the recommendation further at the December meeting, but noted that the overriding objective had been carefully crafted when it was initially drafted in 2010. It had also been considered by this Committee between the years 2015 and 2017 when Part 3A of the FPR, and PD3AA, were being developed; the voice of the child working group also considered the matter in depth.
- 17.3** The Committee agreed that in the first instance it would be most helpful to be reminded of those discussions and decisions.

ACTION

MoJ Policy to provide discussion from the voice of the child working group and the Committee's discussion relating to the creation of Part 3A FPR and PD3AA.

EU Settlement Scheme (EUSS) and children in care

- 17.4** The Acting Chair updated the Committee on an issue raised by Mr Justice MacDonald at the EU Exit Working Group meeting. The matter concerns emerging evidence that local authorities are experiencing difficulties in assisting EU children in care/leaving care to apply for settled status under the EU Settlement Scheme. The matter was also subsequently discussed at the International Family Law Committee.
- 17.5** The difficulty is that in order to apply to the EUSS scheme for settled status in respect of a child in care or leaving care, the local authority must disclose to the Home Office a copy of the care order. In circumstances where this disclosure does not appear currently to come within PD12G of the FPR, this means that the local authority has to seek consent from the court for an order to be disclosed to the Home Office in each individual case.
- 17.4** The Acting Chair said that in circumstances where this problem is likely to arise it would assist if local authorities were able, under the rules, to disclose the relevant orders to the Home Office for the purpose of an application to the EUSS without the need to seek permission by way of an order of the court. The Committee were therefore invited to consider the implications of amending PD12G and the detailed intention of any amendment.
- 17.5** The Committee were also asked to consider the priority which should be applied to this work and if it is deemed as high priority, then consideration of where this will sit alongside other commitments will need to be confirmed. The Committee saw this as being of reasonably high status and the Acting Chair suggested that this return in December as a substantive item.

ACTION

To return to the Committee as an agenda item at the December meeting

Magistrate Bench Numbers

- 17.6** The Committee discussed the issue of Family Panel Chairs and whether it was becoming the norm to sit as a bench of two. The President of the Family Division said that this was not an issue he was aware of, but he is due to attend a Magistrates meeting on Wednesday 18 November and he will gather further information. In the meantime, he asked whether the Lay-Magistrate Member of the Committee could find out further details especially as remote hearings should not have an impact on the number of those sitting on the bench.

Open Meeting

- 17.8** The President of the Family Division asked for thoughts on the open meeting being undertaken remotely and that of other Committee meetings.
- 17.9** The Acting Chair closed the meeting and thanked those invited participants for attending and hoped that they found the experience of value. The Acting Chair also said that the Secretariat will send out a feedback questionnaire in due course to seek their further views which will help enhance the annual open meeting in 2021.

DATE OF NEXT MEETING

- 18.1** The next meeting will be held on Monday 14 December at 11:00am via Microsoft Teams (*and the following meeting will be on Monday 8 February 2021*).

Simon Qasim – Secretariat
November 2020
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