

Approved

Minutes of an EXTRAORDINARY MEETING OF THE CIVIL PROCEDURE RULE COMMITTEE

Friday 22nd January 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Master of the Rolls and Head of Civil Justice (Chair)
Mr Justice Birss, Deputy Head of Civil Justice, Designate
Mr Justice Kerr
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching QC
Tom Montagu-Smith QC

Apologies

No apologies were recorded.

Item 1 Welcome & Introductory Comments

1. The Master of the Rolls and Head of Civil Justice, The Rt Hon Sir Geoffrey Vos, opened the extraordinary meeting with thanks to everyone for attending. Tribute was also paid to Sir Colin Birss on his appointment as Deputy Head of Civil Justice, which officially takes effect later this month; he served on the CPRC as one of the High Court Judge members from November 2014 to October 2020. His knowledge and experience of civil justice is extensive and well recognised; he will serve as the CPRC's de-facto Chair on behalf of the MR.

Item 2 RTA Portal (Whiplash) – CPR(21)02 & CPR(21)03

2. The MR introduced the item, explaining that he was very grateful for the huge amount of work carried out by the sub-committee, officials and drafting lawyers. Since taking up office, this is a subject he has been considering and within the wider online reform agenda. In doing so, a renewed direction has been given to the sub-committee and this has helped address many of the previous issues.
3. The legislative context was also emphasised. The "whiplash reforms" arise from the Civil Liability Act 2018. Legislation is a political decision. The CPRC's role in this is confined to providing workable rules of court that are just and fair and which reflect the legislation. The purpose of this extraordinary meeting today is specifically focused on the proposed new Pre-Action Protocol (PAP) and its Annexes, so that the MR can be appraised of members' views before considering whether to approve the PAP. The draft PD and other consequential changes, including revised forms, will be before the full CPRC in due course. The February meeting was likely to contain a significant item on Whiplash, which the MR intends to Chair.
4. It was noted that the Lord Chancellor issued a Written Ministerial Statement to Parliament on 11 January 2021, which confirmed that delivering these reforms remains a key Government priority and recognised the importance of industry preparedness. For that

reason, the Government is implementing the Whiplash Reform Programme in May 2021, not April 2021.

5. His Honour Judge Bird introduced the sub-committee's report, which was duly **NOTED**, as was the MoJ's report.
6. A discussion ensued which acknowledged the scale of the work carried out and ongoing to meet the May 2021 implementation timescale. Various drafting points were aired, which would need to be addressed in the user Guide. This is currently being drafted and is intended to support litigants in person. Lizzie Iron is providing advice and assistance on this, which is very much appreciated.
7. The portal comprises a large number of screens and variations depending on inputs. Overall the sub-committee's impression is that the portal build so far is impressive, user-friendly and uses clear and accessible language. In addition, Call Centre Support will be provided to users of the portal by the "Portal Support Centre" which will also support those who wish to make a claim but who cannot access the portal.
8. Mr Justice Birss observed that, the statutory context of these specific reforms is quite different from most of the work of the CPRC. He endorsed the praise for the outstanding work done by the sub-committee and others over a sustained period of time and is confident that the system is far better for it.
9. Overall, the sub-committee's view was that the portal follows the PAP in all material respects and that there are no issues which would merit the rejection of the PAP.
10. It was **RESOLVED** to:
 - Recommend that the MR approves the draft PAP: Road Traffic Accident Small Claims Track Pre-Action Protocol ('RTA SCT PAP') and its Annexes: Annex A (statement of truth form), Annex B (standard instructions for use by compensator requesting further medical report on the claimant's behalf), Annex C (non-protocol vehicle costs claim document) and Annex D (non-protocol vehicle costs response document), subject to any further comments sent to the MR by return.
 - Co-opt additional members on to the sub-committee with up-to-date and practical relevant experience to assist with the Standard Directions drafting which is anticipated to form part of the proposed new PD. DJ Cohen and DJ Parker are to be co-opted following consideration of further consultation with the Association of HM District Judges.

Actions: (i) DJ Parker to submit his list of drafting points to the sub-committee, MR and MoJ for consideration by 25 January 2021 (ii) Matter to return to the 05 February CPRC meeting.

Item 3 Business & Property Courts (BPC) Witness Evidence PD57AC - CPR(21)01

11. This item was included as an urgent action from the December CPRC meeting when the matter was agreed in principle, subject to final drafting. The MR briefly introduced the item, confirmed he had seen the revised drafting and reiterated that he considered the reforms to be a very valuable addition to the BPC. The MR then left and Birss J took the Chair.
12. The proposed new PD 57AC is to address a BPC problem to ensure that witness statements reflect the facts of the case at trial as opposed to a narrative. It follows extensive work and consultation by the BPC Witness Evidence Working Group led by Mr Justice Andrew Baker.

13. Baker J thanked members for their input out-of-committee, especially Isabel Hitching QC as the CPRC representative assigned to work with him to finalise the drafting and to District Judge Parker for his assistance with the incorporation of plain language and in doing so, by simplifying the drafting. All points had been very carefully considered and were set out in a comprehensive table to provide a point by point commentary on the changes proposed, as well as the suggested changes that had not been adopted.

14. Following discussion, it was **AGREED** to adopt:

- PD 57AC Trial Witness Statements in the Business and Property Courts, as drafted;
- Appendix to PD 57AC, the Statement of Best Practice in relation to Trial Witness Statements, as drafted;
- To come into effect on 06 April 2021 in line with the CPR common-commencement date cycle.

15. **Actions:** (i) Secretariat and Legal to incorporate into the 127th PD Update (ii) Secretariat to notify Baker J and Isabel Hitching QC when the PD Update is ready for publication, in order that wider communication can take place at the earliest opportunity.

Item 4 Any Other Business & Closing Remarks

Birss J raised the following points:

- Vision for the CPRC and Civil Justice: In advance of the next meeting, members, officials and regular attendees were asked to think about the question, “if there was one thing you could change about civil justice or the CPRC, what would it be?” A preliminary discussion would then take place to capture any feedback at the 05 February meeting. **Action:** all.
- Anti-Social Behaviour Injunctions (ASBI) Sub-Committee: In order to consider the recommendations from the Civil Justice Council’s report, published in October 2020, a CPRC sub-committee is being formed and up to two more volunteers are needed. **Action:** Interested members to email the Secretary and/or Chair by 05 February 2021.
- Form N510 Notice for Service out of the jurisdiction where permission of the court is not required: In consequence of Brexit, this form requires revision. Senior Master Fontaine has provided drafting points to the Forms Sub-Committee in readiness of the February CPRC meeting. **Action:** Secretary to incorporate into the 05 February agenda.

C B POOLE
January 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service

His Honour Judge Lethem
Master Dagnall
David Parkin, Ministry of Justice Policy (Item 2)
Jayne Bowman, Ministry of Justice Policy (Item 2)
Andrew Parker (Item 2)
Jonathan Scarsbrook (Item 2)
Andrew Underwood (Item 2)
Mr Justice Andrew Baker (Item 3)