



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 8 February 2021

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
His Honour Judge Godwin	Circuit Judge
District Judge Suh	District Judge
District Judge Gareth Branston	District Judge
District Judge Anna Williams	District Judge
Fiona James	Lay Magistrate
Michael Seath	Justices Clerk
Melanie Carew	Children and Family Court Advisory Support Service
Rob Edwards	Cafcass Cymru
Tony McGovern	Solicitor
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

1.1 No apologies were received.

MINUTES OF THE LAST MEETING: 14 DECEMBER 2020

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

ACTIONS LOG

3.1 MoJ Policy said that there are currently five items on the open actions log table, and that the accompanying closed table reflected items which have been moved. The open actions included that on the overriding objective which will return as a substantive item in March; the Domestic Abuse Bill update which will be provided at this meeting; the Information sharing between Criminal and Family Courts which will be on the agenda for either March or April; the D81 Form which will be mentioned

under the Forms discussion at this meeting; and the Harm Panel report which is due to be updated on in March. This final issue was linked with the existing work stream in relation to the 'voice of the child' on the Priorities Table and the Committee were keen that this project should continue to be reflected on the forward look issues.

MATTERS ARISING

Member recruitment update

- 4.1 MoJ Policy reported that the recruitment process is almost complete and that final clearance from the Lord Chancellor is being sought with a view to the three new members being in place to attend the March meeting. The Committee were pleased that this is nearing finalisation but asked whether provisions could be put in place to ensure against potential gaps in membership going forward.

Brexit update

- 4.2 HMCTS said that strong contingency plans which were put in place to deal with issues from an operational perspective before the 31st December worked well and this only resulted in a handful of minor issues which were dealt with and prioritised and there have been no subsequent issues.
- 4.3 HMCTS also reported the work in respect of the Brexit changes to both the citizen and solicitor journey for the online divorce service is making good progress and the online service should be updated by end of February 2021
- 4.4 MoJ Legal said that the EU Exit legislation has been included online within the general legislation pages but work on including this within the rules will still need to be completed. The FPRC EU Exit Working Group will be meeting again in February to discuss the position in relation to the UK's access to the Lugano Convention. MoJ Legal said that discussion will centre on the bits taken out of statute when the UK joined the EU as these will need to be rolled back into a larger SI although international decisions on the return to Lugano have not been confirmed.

Accessibility of Procedure Rules: Summaries of the FPR 2010

- 4.5 MoJ Policy reported that contact will be made with the resource identified to work on the first drafts of the summaries of the FPR Parts over the coming month. This work will then be cleared by MoJ Policy and Legal before the summaries are presented to the Committee in due course.

Domestic Abuse Bill and Harm Panel Implementation

- 4.6 MoJ Policy said that the DA Bill is expected to receive Royal Assent in April, having completed its passage through the Commons last summer. Second reading in the Lords was on 5 January and it is expected that the Committee stage will be completed this week. MoJ Policy said that the Bill contains a number of provisions relevant to the family courts, in particular in relation to the new Domestic Abuse Protection Order; special measures; and the prohibition on the cross examination of DA victims by the perpetrator (and vice versa). The implementation plans are being developed and will be discussed further with the Committee in March.

Deed Poll name changes

- 4.07** MoJ Policy reported that the drafting issues previously discussed in Committee has proved to be more difficult to resolve quickly than first envisaged and that the timetable for implementation had slipped to July from the original April date.
- 4.08** MoJ Policy said that the Working Group, which was 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. The amendments were in relation to concerns originally raised by the Senior Master of the Queen's Bench Division on the suitability of child name changes being dealt with without the expert input of family judges; will need to be convened to look at the issues further.
- 4.09** The Committee recognised the complex issues identified but asked whether it would be possible to have sight of the draft regulations at the same time as they'll be presented to the working group. MoJ policy said that they would arrange for this to take place and will also make arrangements for the working group to meet.

ACTION

MoJ Policy to arrange the next meeting of the working group and to arrange for the draft regulations to be circulated to the Committee.

PARLIAMENTARY ITEMS

SIGNING the Family Procedure (Amendment) Rules 2021

- 5.1** MoJ Legal referred to correspondence sent out of Committee which sought sufficient signatures to be quorate for the final SI which will both make a correcting change to a rule relating to service out of the jurisdiction and will insert a new enabling rule to provide for rules to be temporarily modified by Practice Direction in the case of a public emergency. Following collation of 'wet-ink' signatures, the final SI will then be signed by the Minister and laid in Parliament on the 15th February 2021 with a provisional coming into force date of 6th April 2021.

Distribution of Business Rule Amendments

- 6.1** MoJ Policy referred to previous discussion at the November FPRC meeting and updated the Committee on the progress of the timetable submitted by MoJ to the Parliamentary Business and Legislation Committee which requested agreement to lay a new SI to amend the Family Court (Composition and Distribution of Business) Rules 2014. The amendments proposed are those discussed previously and will alter routes of appeal from decisions of DJ PRFD (including DDJ PRFD) in financial remedy proceedings and change the level of judge to which applications for financial remedy after an overseas divorce or dissolution are allocated. MoJ Policy said that the intention is that the amending Rules will be laid before Parliament on 26 April 2021.
- 6.2** The amending Rules are made by the President with the agreement of the Lord Chancellor. The President indicated he would wish the Committee to have sight of the draft Rules before they are put to him for formal making.

ACTION:

Draft amendments to the Family Court (Composition and Distribution of Business) Rules 2014 to be considered at the March Committee meeting.

STANDING ITEM: CORONAVIRUS RELATED ITEMS

a) Coronavirus Pilot Practice Directions Review (PD36Q and PD36R)

- 7.1** MoJ Policy introduced this issue and asked the Committee to consider how to proceed with two current pilots Practice Directions (36Q and 36R) which are currently set to expire on 31 March 2021. The Committee were asked to consider a further extension of the pilots for six months, especially taking the current lockdown protocols into account. The Committee were also asked to note that such an extension will allow the Private Law Working Group to continue their analysis of the two pilots.
- 7.2** The Committee noted that use was being made of the flexibility allowed by PD36Q in relation to local modifications to the Child Arrangements Programme. The Committee would like more information about how the PD is being used and how transparency about local arrangements is being achieved. The Committee suggested that sharing information could be achieved by undertaking a study of each area which reported a successful outcome and these examples be gathered as a means of sharing best practice and moderating a common practice moving forward.
- 7.3** MoJ Policy said that avenues exist within the Private Law Family Group to assess the range of initiatives including those introduced by both of these Practice Directions and suggested that action be taken to bring the concerns raised at this meeting to that forum. The Acting Chair summed up that the main concerns raised at this meeting were on data collection, transparency and sharing practices and asked whether these areas could be looked at further.
- 7.4** The Committee agreed with this interim action and recommended that Practice Directions 36Q and 36R should be extended for a further six months.

ACTION

MoJ Policy to speak to contacts on the Private Law Advisory Group as a first step in uncovering information on data collection, transparency and data sharing

b) Legal adviser functions – CATJAFS Working Group Update

- 7.5** The Committee were updated on the current progress of the CATJAFS work in relation to the functions given to justices' legal advisers through PD36R. It was reported that up to January there were around 2000 orders although the uptake varied greatly from region to region with figures for the Midlands, Wales and the North West being considerably higher than those in London and the South East.
- 7.6** The Committee were informed that arrangements are being made to circulate questionnaires to both the Magistrates Association and DFJs to obtain preliminary findings to assist the CATJAFS Working Group make a recommendation to the Committee regarding the functions of justices' legal advisers. The impact of PD36Q and PD36R are also included in the questionnaires and these will be circulated within the next couple of weeks. The Committee proposed that the Private Law Advisory Group be added to the list of those consulted and HMCTS said that they would explore options for this and for the wider suggestion that this be sent out to all stakeholders.

- 7.7** The Committee agreed that take-up had been variable and that despite there being some concern from Magistrates around incentives, it was noted that there was feedback that Magistrates were keen to sit more so the information from the questionnaires will be useful and welcome. The President of the Family Division said that he is due to meet with the Magistrates Association and he will raise this issue within that forum.

SUBSTANTIVE ITEMS

AMENDING THE STATEMENT OF TRUTH ON FAMILY FORMS

a) Enabling Electronic Signatures

- 8.1** MoJ Legal referred to draft amendments to PD17A which had been circulated out of Committee and which would make it clear that that electronic signatures may be used on a statement of truth in a document other than a standard form. The amendments also include a failsafe to enable the court to require a wet-ink signature on a statement of truth.
- 8.2** MoJ Legal noted that Lord Justice Baker had liaised with them and with Lord Justice Birss regarding the need to consider aligning FPR and CPR provision in relation to electronic signatures. This matter will be taken forward in due course.
- 8.3** The Committee agreed to the wording in Practice Direction 17A

b) Amending Statement of Truth in line with CPRC

- 8.4** MoJ Policy made a recommendation to amend the statement of truth wording in family forms which already contain a statement of truth (around 73 forms) to include wording relating to the consequences of giving a false statement of truth, to mirror amendments made to the CPR statement of truth wording last year. MoJ Policy also made a recommendation to add a statement a truth into certain forms that do not currently contain one where the form is an application or provides a form of answer, with some exceptions.
- 8.5** MoJ Policy presented a proposed triaged process for amending the 73 forms which already contain a statement of truth and will present a similar product for amending the forms without a statement of truth at the March FPRC meeting after the forms are identified and the costs and timings for this work has been assessed. It is envisaged that amending the 73 forms will take approximately 3-4 months to complete and that it has been advised that no destruction costs will be applied to this exercise.
- 8.6** The Committee agreed to the proposed approach for amending the statement of truth wording on all forms that currently contain one and accepted the need for all types of forms which are an application or provide a form of answer to be amended to include a statement of truth, and to the proposal that this be completed through the triaging process. The Committee also asked for assurances that consideration had been given to including these forms in Welsh language text.

PRACTICE DIRECTION 25B AND REPORTS FROM UNREGULATED EXPERTS

- 9.1** MoJ Policy invited the Committee to consider whether further work should be undertaken to consider the strength of current provisions concerning the regulation of experts (principally by reference to Practice Direction 25B) and if so, the relative urgency of this work. This exercise was prompted by correspondence, signed by 77 co-signatories, to the President of the Family Division which proposed that no unregulated expert shall be allowed to report in a family case. MoJ Policy said that further views were sought from practitioners and although some concerns were raised the Committee were asked to consider whether they wished to review standards for experts in family proceedings and, if so, where this issue sat in light of the large range of other priorities.
- 9.2** The Committee said that this issue hadn't been raised over the last four years since the FPR provisions on experts were revised. They gave the example that the threshold established by representatives from officials such as the Independent Social Workers was relatively high. The Committee also said that there was no specific definition of "expert evidence" and, unless there were such a definition, it would be difficult to say a person could not give expert evidence unless they were registered with a regulatory body.
- 9.3** The Committee agreed that this issue should not be taken forward. The President indicated that he would respond to the authors of the letter which prompted this matter and reflect the Committee's conclusions. Those that the President's office had consulted on this matter should be informed of this outcome too.

ACTION

The Office of the President of the Family Division to write as outlined above

Re NY AND PD12D AMENDMENTS

- 10.1** MoJ Legal put forward amendments to Practice Direction 12D which make clear the circumstances in which it may be appropriate for the court to make an order under its inherent jurisdiction for the return of a child to or from another state, following comment on this issue from the Supreme Court in the case of Re NY in 2019 and from previous discussion in Committee.
- 10.2** The Committee agreed to the proposed amendments to Practice Direction 12D paragraphs 1.1 and 8.5 and that these should be included within the forthcoming PD Update.

TOXICOLOGY ACCREDITATION

- 11.1** MoJ Policy updated the Committee on the impact of Practice Direction 25 G, which introduced minimum accreditation standards in for laboratories carrying out toxicology testing to inform expert evidence in the family courts over the abuse of drugs or alcohol.
- 11.2** MoJ Policy said that to support an assessment of the impact the change has had since its introduction, feedback was sought from stakeholder organisations and the groups most likely to have been affected. The UK Accreditation Service (UKAS) reported that there hasn't been an influx of new applications from laboratories for accreditation ; the Law Society reported no impacts; the Magistrates Association also said that there was no significant impact although members noted that the change could be publicised more widely to those working in the family courts; the Bar Council were unable to provide specific information.
- 11.3** The Committee recognised the work put in to assess PD25G and raised the point that the UKAS website was a useful tool for understanding which laboratories are accredited. Due to the collated

feedback indicating that no specific issues have been raised the Committee decided that no further action was necessary and that the issue can be removed from the list of priorities.

CONSULTATION ON ANNOUNCEMENTS IN OPEN COURT: REVIEW OF REQUIREMENTS IN PD10A and PD12K

- 12.1** MoJ Policy referred to the matter considered previously by the Committee in relation to concerns that due to the lack of open court sessions during the coronavirus outbreak, it was not possible to comply with the requirements to announce certain orders in open court as contained within paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A. The Committee previously recommended that the requirements should be temporarily suspended for a period of 9 months which was implemented through pilot PD36S. The Committee agreed to consult with FPRC stakeholders to further understand what risks and benefits might be associated with a permanent abolition.
- 12.2** MoJ Policy said that the responses received were broadly consistent in supporting permanent removal, although concerns regarding transparency and the respondent's awareness of the order were raised. The Committee recognised the views collated from the consultation including the concerns regarding transparency.
- 12.3** MoJ Policy recommended that the requirements concerning open court announcements within paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A should be permanently removed to eliminate the requirement for judges to announce certain orders in open court. MoJ Policy also recommended that these changes be kept under review and be revisited in a year's time to check that there are no concerns/issues arising from removing the requirements. The Committee agreed to this recommendation and agreed that these changes should come into force at the point at which the temporary PD36S provisions cease to have effect (31st March 2021), and that the issue is revisited at the February 2022 FPRC meeting to see whether any further steps are required in relation to transparency issues which may arise.

ACTION:

Permanent amendments to be made to PD10A and PD12K. Matter to be reviewed in one year.

ENFORCEMENT OF FINANCIAL REMEDY PROCEEDINGS

- 13.1** MoJ Policy updated the Committee on progress on this issue. They reported that because of increased pressures on the team dealing with the Divorce, Dissolution and Separation Act 2020, resources could not be focussed on the enforcement project, especially bearing in mind additional pressures being exerted lockdown and school closures; and they therefore recommended that this work be paused.
- 13.2** MoJ Policy said that they were certain that the work undertaken so far would not be wasted and, although considerable amount of work remains to be done, the good progress made to date will provide a solid springboard with which to pick this project up again. MoJ Policy said that these are important reforms and the commitment to delivering them as soon as practicable remains. The team therefore suggested that this exercise be reviewed in July.
- 13.3** The Committee recognised the pressures the team were under and agreed that this issue should be returned to in July. In the meantime, the Committee suggested that Gavin Smith be co-opted to the Enforcement Working Group before they next meet.

ACTION:

Agenda forward to the July 2021 meeting to review the capacity to recommence work on this project.

FORMS WORKING GROUP UPDATE

- 14.1** MoJ Policy said that the Forms Working Group meets on a monthly basis and that those live issues will be raised more widely with the Committee at each meeting. A table of forms work will be circulated with meeting papers and this will provide an update on the form changes requiring FPRC sign-off.
- 14.2** MoJ Policy presented a suite of forms as previously agreed which have been designed to mirror the approach taken by the CPRC to reflect the new Part 37 (applications and proceedings in relation to contempt of court) of the Family Procedure Rules. The new forms, which will be served by the prefix FC (Family Contempt) have been discussed in detail by the Forms Working Group and the Committee agreed that these should be signed off when a final draft is complete and included on the forms catalogue.
- 14.3** The Committee asked for an update on the D81 form. MoJ Policy said that this is also subject to the resource issues flagged up previously in relation to the team dealing with the Divorce, Dissolution and Separation Act 2020. However, the Committee were informed that lots of good work (including destruction testing) had gone into where it currently sits although further comments received from the Costs WG will need to be reflected and could mean a re-write. MoJ Policy said that the intention is that the form be presented in its current state to the Forms Working Group as a means to providing a way forward.

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 15.1** MoJ Policy said that there were no new issues to raise although discussion on the 'overriding objective' is detailed for next month. The Committee said that some work has already gone into analysing the differences between the Civil Procedure Rules and the Family Procedure Rules and that a paper has been drawn up. The Acting Chair asked whether this paper could be circulated for consideration amongst other existing priorities.

PRIORITIES TABLE

- 16.1** MoJ Policy asked for views that the line on the criteria for experts in Family Proceedings (PD25B) be removed. This was agreed.
- 16.2** The Committee asked for an update on the line on the Priorities Table in relation to the 'voice of the child' work. MoJ Policy said that consideration on this issue will come out of discussions on the Domestic Abuse Bill and from the Harm Panel report and these will be raised at the next Committee meeting in March.
- 16.3** The Committee asked whether the table could be amended to ensure that only an update on the Divorce, Dissolution and Separation Act 2020 be provided in March as it was recognised that there may not be sufficient time to provide anything more substantive from the consultation by that point.

PROGRAMME OF PRACTICE DIRECTIONS AMENDMENTS

- 17.1** MoJ Legal presented a table setting out the various Practice Direction related projects that are underway or pending. The table will be updated before each Committee meeting and includes the Practice Direction amendments discussed and agreed at this Committee meeting.
- 17.2** MoJ Legal discussed the section on mediation vouchers which related to the implementation of proposals for a temporary offer of a £500 contribution to mediation costs, as a Covid 19 response in order to divert suitable private law cases from court. The Committee were informed that policy and operational details were still being developed. A pilot Practice Direction may be needed to underpin the scheme and if so, MoJ will revert to the March Committee meeting to discuss. The Committee noted that mediators used to attend FHDRAs and wondered if resuming this might prove another way of diverting cases from the courts. MoJ Legal undertook to pass this information to the relevant MoJ Policy team.

MARCH 2021 AGENDA

- 18.1** The Committee agreed with the draft agenda as it presently stands and were content that the mediation vouchers issue has been included for discussion.

ANY OTHER BUSINESS

Items

- 19.1** The President of the Family Division raised the issue of Financial Remedies Courts. He noted that he had concluded that there is no need for provision within the FPR 2010 to establish these Courts. Subject to liaising with the Master of the Rolls, the President indicated his intention to announce that the pilot phase for Financial Remedies Courts is over, and that there is now such a court in every court location.

DATE OF NEXT MEETING

- 20.1** The next meeting will be held on Monday 8 March 2021.

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February 2021
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