Ministry of JUSTICE

FAMILY PROCEDURE RULE COMMITTEE
In the Conference Suite, 2nd Floor Mezzanine, Queen's Building, Royal Courts of Justice
At 10.30 a.m. on Monday 13 June 2016

Members

Sir James Munby	President of the Family Division
Mrs Justice Pauffley	Acting Chair of the Family Procedure Rule Committee
Marie Brock JP	Lay Magistrate
Richard Burton	Justices' Clerk
Melanie Carew	Children and Family Court Advisory Support Service
District Judge Carr	District Judge (Magistrates' Court)
District Judge Darbyshire	District Judge (County Court)
Jane Harris	Lay Member
Michael Horton	Barrister
Dylan Jones	Solicitor
Lord Justice McFarlane	Judge of the Court of Appeal
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
Mrs Justice Theis	High Court Judge
William Tyler QC	Barrister

Observer

Lawyer – Appeals Office, Court of Appeal

Officials

Legal Secretary to the President of the Family Division

MoJ Legal

Deputy Director, MoJ Policy

MoJ Policy

Head of Committee Secretariat

HMCTS

ANNOUNCEMENTS AND APOLOGIES

1.1 The President of the Family Division informed the Committee that his Legal Secretary will be retiring at the end of June 2016. The President of the Family Division and members of the

Committee thanked her for her help and support over the past years and wished her the best for the future. The President of the Family Division echoed comments made by Committee members that she has provided many years of dedicated service to the Rule Committee and to previous holders of the role.

1.2 The President of the Family Division introduced the incoming Legal Secretary to the President of the Family Division who currently works as a lawyer in the Appeals Office of the Court of Appeal. The President of the Family Division and members of the Committee welcomed the new Legal Secretary.

1.3 Apologies had been received from Judge Waller.

MINUTES OF THE LAST MEETING

2.1 Judge Raeside noted that on page 10 of the minutes, the second line of the third paragraph should read "where the parties have not lodged a consent order with the court".

2.2 Subject to this amendment the minutes where approved as a correct and accurate record of the meeting on 16 May 2016.

MATTERS ARISING

Declaration of Parentage and Official Solicitors Guidance Note

3.1 MoJ Lawyers have spoken with the Official Solicitor's Office about timing for amending the Official Solicitor's Guidance Note linked to representation in applications for a declaration of parentage. The Official Solicitor's Office hope to revise the Guidance Note in the next month or two, therefore the proposed Rule and Practice Direction amendments will be included in the set of amendments to come in to force in October 2016. MoJ Lawyers are awaiting confirmation from the Official Solicitor's Office that they are content with this.

3.2 MoJ Lawyers also sought clarification from members of the Committee on the proposed amendments to Part 16 of the FPR – specifically Rule 16.4(1A) and 16.5 (1A) and whether these needed to be caveated to say that the court has a discretion not to require the child to have a children's guardian or a litigation friend if it is satisfied that welfare needs do not require one.

3.3 Theis J noted that there is already provision in Rule 16.6, so this is merely duplication and therefore not required.

Setting Aside Rules and Practice Directions

3.4 In response to two questions raised by members at the last meeting the MoJ confirmed that the term 'judge' includes lay magistrates as the intention is that the term has the same meaning as FPR 2.3(1) (and incidentally also section 31C(1)(y) of the Matrimonial and Family Proceedings Act 1984). Terms used in Practice Directions generally carry the same meaning as they do in the Rules. A double check of existing Practice Directions shows that most do not specify that defined terms have the same meanings as in the Rules.

3.5 Clarification was also sought as to whether the references to Practice Direction 30A in Practice Direction 9A remain correct in view of the proposed amendments to Practice Direction 30A. MoJ officials confirm that the references to Practice Direction 30A are correct and not affected by the proposed amendments.

Practice Direction 3A – MIAM amendments

3.6 An agreed implementation date has been set for 1 October 2016. The amendments will be included in the Practice Direction amending document which it is planned to send in July for consideration by the President of the Family Division and the Minister. This will most likely come into force in October 2016.

Pension Sharing Appeals

3.7 Officials are currently clarifying the position in respect of issues that had arisen about PD30A provisions on appeals against pension sharing orders. Officials will provide further information to the Committee once the position has been clarified, hopefully at the July 2016 meeting.

DRAFT FPR PART 3A (CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE) AND DRAFT PRACTICE DIRECTIONS 3AA AND 3AB IN RELATION TO CHILDREN AND VULNERABLE WITNESSES

4.1 The President of the Family Division outlined his thoughts that any amendments from today's Committee meeting should be added to the documents over the coming days. He explained that he wanted the documents to be used, heavily caveated, for upcoming judicial training events in the next week.

4.2 The President of the Family Division outlined that he wanted revised Practice Directions to come back to the July FPRC meeting and a final version to be agreed for consultation on over the summer. MoJ Legal noted that they had proposed, if the President of the Family Division were agreeable, to restructure the draft Practice Directions so that these follow more closely the structure of the draft rules. The Committee endorsed this proposal.

4.3 Melanie Carew outlined the concerns Cafcass had about the potential for additional work and additional burdens. She also highlighted that Cafcass cannot be the first port of call where it is not clear in the Rules or Practice Directions where specific resource is going to come from. She used the example of PD3AA paragraph 20(d) which states "give directions to put witness support in place for the child". Cafcass were keen to hear where that resource would come from to as it is not likely to come from them.

4.4 In relation to paragraph 18 (f) which refers to other hearings, Cafcass also made clear that they aren't in a position to become involved in proceedings that are not already in their statutory function or are currently already committed to.

4.5 The President of the Family Division made reference to *Re E* where McFarlane LJ had recently given judgment about the lack of child participation and noted that this culture needed to change.

4.6 It was noted where in the Practice Directions "witness support" had been used as a phrase, in PD3AB this had now been amended to "support" and it was agreed that as a principle the same "support" language should be used across the two PDs. The President of the Family Division queried whether HMCTS would provide this support.

4.7 Will Tyler QC said that he has drafting points which he would share with MoJ Lawyers and the President's Office outside of the meeting.

4.8 He queried the headings in PD3AA and suggested that the heading in PD 3AA-1: "The Child's written and/or recorded evidence" doesn't fully cover the content and changes should be considered. He further suggested Rule 18.2 required a fuller expansion of Re W as per the judgment of Lady Hale. Judge Raeside questioned why not simply refer to the case law as this would be easier. Will Tyler noted that the case law is already out of date and Michael Horton responded that it also raises an issue of accessibility for litigants in person who will not be familiar with guidance contained in case law. For this reason you need the relevant core principles in a practice direction or in an annex. Marie Brock suggested an annex would be better and Will Tyler acknowledged that it is more difficult to set out the headlines in a Practice Direction. Jane Harris noted that Rule 18 (2) reads well up to "paramount consideration" but considered it would be better if the paragraph ended at this point. Theis J considered an annex makes it longer and difficult to absorb. The President of the Family Division noted that in practice practitioners would not have the Re W principles with them and litigants in person would be in ignorance of them. The President of the Family Division indicated he would take this point away for further consideration.

4.9 Will Tyler questioned whether there was a drafting error in making a mandatory requirement in Rule 18 (3) by use of "must" and suggested "must consider" might better reflect the intention.

4.10 Pauffley J raised concern about the appropriateness of taking a child to a police interview suite for the taking of evidence. This environment was likely to increase anxiety and she was unconvinced that it was appropriate to go to a police interview suite with a child. The President of the Family Division agreed with this and suggested removing references to police interview suites as they were used as one example of a location where such conversations could occur. Pauffley J suggested social services offices and Judge Raeside suggested NSPCC offices as an alternative. District Judge Darbyshire noted that there was also a reference in paragraph 25 to police stations.

4.11 Will Tyler noted that paragraph 21 raises the same question in relation to children whose evidence in chief is already the subject of an interview. At paragraph 25 (3), when a child is neither a subject nor a party, he asked whether both examination in chief and cross examination should be pre-recorded for the purposes of the proceedings? Pauffley J questioned how this addresses a child's wishes and feelings.

4.12 Judge Raeside noted that there has been a clear need from the start to distinguish between evidence of the child's wishes and feelings and the child giving evidence whether recorded or in person at court, and a need to have different headings for these two distinct concepts.

Hannah Perry noted that this view was endorsed by the sub-group who agreed that this was an issue.

4.13 The President of the Family Division noted that evidence of wishes and feelings might come from the child but it may also come from someone else, for example a guardian or social worker.

4.14 Judge Raeside re-iterated the need for clear processes for children as witnesses coming to court and giving evidence. In her opinion this needs to be differentiated from the provisions about obtaining information (evidence) on the child's wishes and feelings, including their views about matters in the proceedings. There needs to be a clear division between these two processes. She suggested if MoJ officials are going to re-draft the Rules and Practice Directions then this could be considered as part of the re-drafting exercise. This was endorsed by Hannah Perry who noted that it is difficult for a litigant in person to understand the Practice Direction in its current form and it would be helpful for MoJ officials to re-consider the structure of the Practice Directions.

4.15 Theis J queried whether the wording of Rule 3A.3 requires adjustment or not. Judge Raeside emphasised that in re-drafting officials need to make it clear the children's wishes and feelings are evidence. MoJ Legal suggested that "views" in rule 3A.3 could be used as a more informal way of obtaining information, whereas the provisions of rule 3A.5 have a more formal connotation of "giving evidence" that could lead to cross examination. Judge Raeside noted that information on the wishes and feelings of the child is evidence and she would not want people thinking it is not evidence. Will Tyler endorsed this, noting that the Practice Direction needed to promote a culture change such that the child's evidence should be as direct as possible rather than second or third hand, and obtained as early as possible. MoJ Legal agreed to look at the wording of Rule 3A.3 and consider how it could be re-drafted to make this clearer.

4.16 District Judge Darbyshire noted that children's views matter and evidence on their views is needed in some form. District Judge Carr considered there is an issue about the form of evidence and how children's wishes and feelings are put before the court. However, regardless of the form of evidence and whether direct from the child or others' views on the child's wishes and feelings, it remained evidence. Theis J noted that there will be a culture change from recent cases in how such evidence is obtained and admitted in proceedings. Marie Brock suggested such evidence could include a drawing or workbook or anything where the child has expressed their views.

4.17 Michael Horton raised that there is an assumption in the draft Practice Direction that the child's welfare needs to be considered in all proceedings; whilst the welfare of the child is a relevant consideration in some cases it may not be in other cases. District Judge Darbyshire noted that the court may or may not take into account the child's views if it is not a welfare matter. The President of the Family Division noted that there is a need to remember that the child's wishes and feelings may not be verbalised for example a baby's reaction to being held by their mother may be an indication of the baby's wishes and feelings, based on expert evidence.

4.18 Judge Raeside endorsed the need for clarity amongst the judiciary when considering the wishes and feelings of children in knowing what the Rules say, and what the options available to the court are and what must be taken into account in the decision making

process, in addition to a clear process for the type of hearing and support when a judge meets a child. This was further endorsed by Pauffley J who noted the need for clear procedures particularly for children who do not want to be involved in the process.

4.19 The President of the Family Division disagreed that the Rule should be rephrased in a manner that would give the child a veto on whether to give evidence. In some cases the child may be a key witness and the court is entitled to say the child should give evidence. Melanie Carew noted that a list of examples where a child may or may not give evidence is not always helpful, as they may be cases where there are factual issues to be resolved not cases where the child is actually required to give evidence of their views. Jane Harris noted that in Rule 3A.5 evidence given by a child is fundamentally different to their views in Rule 3A.3. In both these rules different sorts of information is required but specified in different places to make it clearer. Judge Raeside reiterated it is a question of structure not content.

4.20 The President of the Family Division emphasised the need for a document to be available for release at the judicial college training event on 20 June 2016. Lord Justice McFarlane questioned whether they can be released in their current form. MoJ Legal noted that the Rules as currently drafted are quite different to the version of the Rules which were consulted on. They further noted that if there is to be a consultation on the Practice Directions then it may not be appropriate to release the Practice Directions at this stage. It was suggested that sharing the draft rules, plus the detailed expertise of Ms Justice Russell, may suffice for the initial judicial training purposes, rather than the draft PDs being shared, given the agreement that these should now be restructured by MoJ Legal.

4.21 The President of the Family Division responded that the approach of releasing an early draft Practice Direction was adopted with the Public Law Outline and judicial engagement with this project led to significant improvements. He further noted that the family justice system is seen as lagging behind the criminal justice system, so there cannot be further delay. He endorsed Lord Justice McFarlane's comments made in a recent judgment (Re E) calling for a culture change within the family justice system and recommended that the most effective way of doing this in relation to children and vulnerable witnesses is through the judiciary, as evidenced through the public law outline previously implemented.

4.22 This was endorsed by Judge Raeside who noted that the Judicial College training event is a continuation course which can be used to get the principles behind the changes in relation to children and vulnerable witnesses before the judiciary. She further noted that the changes requires to the rules and practice directions involve a restructure and this will be the last opportunity to make the rules accessible. Jane Harris also endorsed the comments made but raised a concern about the judiciary seeing a version of the rules and practice directions at an early stage and practitioners and the public seeing a different final version. Pauffley J noted that it is worth discussing with the judiciary the principles in relation to children and vulnerable witnesses at the Judicial College training.

4.23 Will Tyler noted that it had been agreed previously to adopt the change to the list of reasons for the child seeing the judge to include the suggestion of Judge Raeside at paragraph 8 (2). These were that it was an opportunity for the child to meet the decision making and to assure themselves that the court had before it all the relevant information including on the child's wishes and feelings. It had also been agreed at PD 3AA2 (9) the word "allow" would be removed.

4.24 He further noted that in relation to the vulnerable witnesses practice direction he had raised concerns previously about the list at paragraph 11 (4) and its overlap with the draft rules.

4.25 District Judge Carr noted that the draft PD3AA has a provision at paragraph 5 where the child is told that the purpose of the meeting is not to ascertain the child's wishes and feelings but at paragraph 6 it specifies that the purpose of the meeting must be agreed and paragraph 8 limits the purpose to three specified purposes. District Judge Carr questioned whether the purpose of the child meeting the judge needs to be specified in the directions as there is little else that can be done at the meeting as it is specified in the rules. Judge Raeside suggested that judges can agree with parties that the purpose of the meeting is for the child to meet the decision maker but acknowledged that children may have a different point of view of the purpose of the meeting. She considered it imperative that it is acknowledge that the purpose of the meeting is not for the tribunal to take evidence from the child.

4.26 Pauffley J raised concern with the mandatory requirement for the meeting with the child to take place in the presence of court staff. This is because the child would already have met a family court adviser and other professionals but a member of court staff would be a stranger. HMCTS raised resourcing issues in relation to this requirement. District Judge Darbyshire noted that someone must be present. The President of the Family Division suggested re-wording the requirement to suggest the meeting takes place "in the presence of an appropriate adult – ideally someone the child knows". Melanie Carew responded that this could not be CAFCASS particularly in private law proceedings as it involves a separate meeting unless they are already involved in the proceedings. Marie Brock noted the concern about court staff being impacted and the resourcing implications and a new unknown person for the child but also noted that ushers and legal advisers are used to interacting with families and children and can often put the child at ease. Jane Harris suggested it should be an independent adult to ensure a parent does not attend the meeting with the judge. District Judge Darbyshire noted "appropriate" keeps it sufficiently wide but it could be supported by guidance from the President of the Family Division.

4.27 The President of the Family Division noted that all public bodies are saying it is not for them to support children meeting judges due to resource implications. Marie Brock noted that the number of children wanting to meet the judge in proceedings is not high. This was endorsed by Melanie Carew based on the evidence from the Yorkshire Pilots. She further noted that if court orders are required to set out why the judge is meeting the child, Cafcass will need to have some input into any guidance for the purpose of the meeting.

4.28 Judge Raeside raised concerns about why paragraph 13 in Practice Direction 3AA was required as 13 (1) could wrongly imply that wishes and feelings have precedence over other factors. This was endorsed by Pauffley J. Theis J suggested something could be included in the preamble in paragraph 6 or 7 to emphasise the importance of the child's wishes and feelings being before the court in an unadulterated form.

4.29 Pauffley J noted in relation to the Practice Direction 3AA provisions about a judge meeting a child, she had no issue with recording but would not find it helpful to have to use tape machines / audio equipment. She further questioned whether there would be a resource implication if transcripts were requested. She noted her personal practice is to make a detailed written note immediately after the meeting (taking limited notes during the course of the meeting itself) and once the meeting has concluded check her note with the other

person who was in the room during the meeting. Judge Raeside suggested an amendment to make clear that there "must be a record" but to leave open the option of a written note. HMCTS noted that there is a cost to staff but there is a bigger resource implication with turning audio tapes into a transcript. HMCTS also drew attention to Paragraph 21, which refers to pre-existing evidence / interviews and the transcript of these, and suggested further clarification is required by HMCTS as to who is to pay as it may not take place on the court estate. Judge Raeside noted that there may be a funding difficulty for parties in private law proceedings particularly in relation to transcripts. Will Tyler added that it was unclear how cross-examination of a child, presumably in the presence of both advocates and the judge, was to be managed in practice, including provisions for recording and transcription of evidence.

4.29 MoJ legal noted that paragraph 20 in relation to ground rules hearings suggests that these are compulsory, additional hearings, but HMCTS were concerned that this would have significant resource implications. Michael Horton questioned whether this could be part of case management and therefore does not need to be an "additional" hearing. Lord Justice McFarlane considered that whilst there needs to be a ground rules hearing where a child is to give evidence in proceedings this can be dealt with in any hearing. The President of the Family Division noted that the ground rules hearing is mandatory but acknowledged the use of the word "additional" suggesting an extra hearing is causing a problem and should be removed.

4.30 Judge Raeside raised concerns about the term "directly affected children because it gave the courts very little guidance as to which children fall within this definition. She further noted that a lack of clarity could cause delay and expense in the proceedings if judges are unsure when children fall within this definition and instead choose to err on the side of caution. The President of the Family Division responded that it is not possible to have a textbook specifying when a child is directly affected. He further noted that there is a fundamental problem as there is very little case law as to which child's interests are paramount in proceedings where there is more than one child and their interests may conflict and therefore the courts have a tendency to treat children as a package. Pauffley J noted that in many cases where the mother is under the age of 18 their welfare interests conflict with the interests of their child who has just been born. The President of the Family Division acknowledged that a long time could be spent on creating an exhaustive list but in practice the courts could encounter a case that falls outside the list making such a list redundant. Michael Horton noted that as rule-makers consideration would be needed on this in the future particularly in relation to financial proceedings where the child is not a party. The President of the Family Division considered that it may be that the need to be considered within a specific case in which further guidance could be provided.

4.31 Members agreed that the Rules and Practice Directions have been considered as far as possible with amendments proposed. MoJ Legal are to recast the Practice Directions without changing the substance. An initial draft could be returned to the President of the Family Division and Russell J in next week or 10 days with changes highlighted, and then if they were content, it could come back to July meeting for further consideration by members. It was agreed that the drafts prepared by MoJ Legal should also be sent to the Committee's CVW working group, with comments being returned to MoJ Legal in advance of the July meeting. The President of the Family Division also confirmed he was content for MoJ officials to propose drafting changes to respond to any remaining policy issues that officials

had already flagged to the Committee but which had not already been dealt with in the course of discussion at the meeting.

DESTINATION OF FAMILY APPEALS

5.1 MoJ Policy updated the Committee on the progress the affirmative Order has made in Parliament. It was debated in the House of Commons on Weds 8 June 2016 and to be debated in the House of Lords this evening, Monday 13 June 2016.

5.2 The Committee have already considered and approved consequential amendments to the FPR 2010 and to PD30A. The Committee were asked by MoJ Legal to consider if they have any comments on further amendments made to PD30A which reflect proposed changes to procedures to apply in family appeals to/within the High Court. The President has previously provided comments to the MoJ on the initial draft.

5.3 Judge Raeside queried whether the proposed short form notice should be used for DJ to CJ appeals in the family court as well. The President of the Family Division responded that he plans to revisit appeals in the family court in the future as a next step for this work. McFarlane LJ agreed that at first this new procedure and forms should be trialled by High Court before any consideration is given to wider use.

5.4 Michael Horton queried the wording of DJ PRFD in the table at 2.1. The President confirmed that the policy is that District Judge (PFRD) are not being replaced when they retire.

5.5 MoJ Legal asked the Committee which listed the documents for the High Court bundle which should be sent in duplicate. On examination of the current paragraph 5.8 (on current requirements for additional copy documents) the President queried why we need two additional copies of the appellant's notice. MoJ Lawyers said they will look at what is in paragraph 5.8, suggest amendments to that paragraph and then mirror as appropriate into a new provision about additional copy documents to be filed in appeals in/to the High Court.

5.6 MoJ Legal had previously queried the purpose and meaning of paragraphs 13.1 and 13.2 of PD30A with HHJ Waller, as there appeared to be overlap with paragraph 5.9. The President of the Family Division acknowledged that he does not want to encourage additional applications within an appeal, but it was accepted that there was a need to specify the procedure that should apply were such an application to be made. The Committee concluded that the detail in paragraph 13.2 was not needed: that paragraph should be removed, as only paragraph 13.1 is required.

5.7 Michael Horton queried whether the new provisions on bundles for High Court cases should apply where there is an appeal to a judge of High Court judge level in the family court, as well as where there is an appeal to the High Court. The current draft amendments provide for the latter. MoJ Legal indicated that they would to liaise further with the President on this point out of Committee.

DIVORCE REFORMS

6.1 The Committee were updated on the development of the Divorce Reform Project which aims to provide an online service for citizens who seek to dissolve their marriage or civil

partnership. MoJ Policy and HMCTS were seeking Committee member views on the approach to be taken to be taken in relation to the future modification to Rules and Practice Directions by way of a pilot scheme using the FPR Rule 36.2 procedure.

6.2 HMCTS outlined that previously reform projects took a number of years and were expensive and inflexible. The HMCTS Reform programme is investing around £700 million over the next four years to update the court and tribunal estate, including installing modern IT processes. The Divorce Reform Project will deliver an end to end digital divorce service that is flexible, clear, easy to follow and meets the user need. This will be built in an agile way with a minimum level of build before it is out in to a testing domain as soon as possible. HMCTS outlined for the Committee the Discovery, Alpha, Beta and Live stages of the project.

6.3 The President of the Family Division queried whether the scope of the divorce project is defined anywhere and whether there is a document of assumptions upon which the draft delivery plan was produced. HMCTS agreed that they could share the project brief with the President's office and the Committee.

6.4 HMCTS in answer to Judge Raeside confirmed that this delivery plan does not at present cover financial cases. HMCTS stated that the de-linking work is to be looked at shortly after the divorce system has been built.

6.5 MoJ Policy confirmed that the system will be built in stages. They highlighted the difficulty in drawing together all required Rule changes initially. They were keen to use this FPRC meeting to gauge the views of the Committee to see if it would be possible to use the procedure in FPR 36.2 for piloting. They highlighted a few of the proposed changes required to support the first stage of the pilot in Annex B of their paper.

6.5 Hannah Perry highlighted her concerns and issues with the CCMS system which is a relatively new system built by the MoJ.

6.6 DJ Darbyshire asked what is being done to put marriage certificates online more generally. HMCTS confirmed that there is a births and deaths register online, but only with recent details and that the Passport office have been trying to link in to this for a year or so.

6.6 The President of the Family Division outlined his hope that the intention is that wherever possible information will be auto checked with other relevant government databases. At present he said that there was no means of checking if a respondent address is a real address and wondered if the system would link up with the Post Office for example. He asked whether the system will go further and then check name details with the Electoral Register and with DWP. The President of the Family Division made the point that if the system interacts with other government IT there is much less scope for fraud.

6.7 The President of the Family Division and DJ Carr queried who is on the Project Board for this work and made reference to the little legal expertise available on the Board with experience of this matter.

6.8 MoJ Policy asked whether the FPRC wanted to set up a small working group / subcommittee to consider proposed Rule and Practice Direction amendments.

6.9 The President of the Family Division said that Rule 36.2 had previously been used for the PLO pilots and that the advantage is that you can change the Rules via making a Practice Direction.

6.10 MoJ suggested that coming back to the full Committee each time change is required would be time consuming and suggested that a subcommittee might be appropriate.

6.11 HMCTS suggested that currently a first pilot Practice Direction might be required by December 2016. The Committee agreed they cannot make a judgment about the most appropriate way forward to make these Practice Directions without first seeing a draft of one.

6.12 MoJ Policy suggested that they bring the first Practice Directions to the full Committee when it is drafted, perhaps in October 2016, and then take a view on how to proceed.

6.13 The President of the Family Division outlined his concerns that no one had so far done any review of the Rules, Practice Directions and other statutes to see what is likely to be needed to support this project, and MoJ Policy confirmed that both Policy and Lawyers in MoJ were currently involved in this task.

6.14 MoJ Policy briefly raised that point that work is being undertaken to assist those who cannot use digital tools and that the Rules may still need to provide for both digital and paper if paper is required for assisted digital users.

6.15 The President of the Family Division queried whether the scope of this work is to have an online process to cover marriage, civil partnership and same sex marriage including nullity, divorce and separation. MoJ Policy confirmed that the intention is to have one process for all of the above.

6.16 The President of the Family Division said that in principle he is content to use FPR 36.2, and that there are to be a number of pilots. He stated that until the Committee as a whole has an idea about what is to be proposed, any papers and PDs should come to the full Rule Committee and they can then decide on the most appropriate way of working going forward.

COMMITTEE'S CONSTITUTION

7.1 MoJ Policy provided a short update to the Committee to inform them that they have started a conversation with colleagues in Wales about this matter but would follow up outside of Committee.

FUTURE WORK

8.1 The Committee was asked to consider a table of future work and the associated priority given to it by MoJ Policy. The Committee was asked to outline any concerns they had with a priority given to proposals in the table.

8.2 Members noted that changes to Part 30 / and Practice Direction 30A in relation to appeals, particularly plans to change the test and procedure for appeals to the High Court should be moved to future work as this is not current work of the committee.

8.3 Members agreed that in relation to future work, Rule and Practice Direction amendments in relation to a statement of truth being added to the D8 petition and wider reforms requiring rule and practice direction amendments as part of the online divorce project should be linked. Members also considered work in relation to Rapisarda v Colladon should be joined within this project. Members agreed with the priority status of high accorded by officials.

8.4 In relation to Part 6 and work in relation to service and updating practice direction 6C, members considered the priority should be increased to high priority given how outdated the practice direction is.

8.5 In relation to service of non-molestation orders and service of these orders by litigants in person the Committee considered this to be high priority due to the risks associated with litigants in person seeking to serve documents themselves.

8.6 With regard to Enforcement in relation to Part 33 the Committee endorsed officials' view of low priority but considered the matter needed to be reviewed in December 2016 pending the outcome of the Law Commission's report on financial enforcement.

8.7 The Committee noted the item in relation to Practice Direction 12G and disclosure of information in relation to child support appeals could be removed as this has been completed.

Action: Future work table when updated to be shared with Committee members.

DISCLOSURE OF INFORMATION BY CAFCASS

9.1 This item was briefly discussed and then deferred until a future meeting as the President of the Family Division is hearing a case which covers similar issues.

ANY OTHER BUSINESS

10.1 No other business was raised at the meeting

DATE OF NEXT MEETING

11.1 The next meeting will be on Monday 18 July 2016 at 10:30 am at the Royal Courts of Justice

Head of Committee Secretariat

FPRCSecretariat@justice.gsi.gov.uk