



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 11 June 2018

Present:

Sir James Munby	President of the Family Division
Mr Justice Baker	Acting Chair
Melanie Carew	Cafcass
District Judge Carr	District Judge (Magistrates' Court)
His Honour Judge Godwin	Circuit Judge
Jane Harris	Lay Member
District Judge Hickman	District Judge (County Court)
Michael Horton	Barrister
Fiona James JP	Lay Magistrate
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
District Judge Suh	District Judge
Mrs Justice Theis	Circuit Judge
His Honour Judge Waller	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Acting Chair acknowledged that this is the last meeting the President of the Family Division will attend in person. It is hoped that he will be able to join the July 2018 meeting by telephone.
- 1.2** Judge Raeside thanked the President of the Family Division for his time and commitment to the work of the Family Procedure Rule Committee. She acknowledged his efforts to introduce reform within the family justice system to improve outcomes for all children.
- 1.3** The President of the Family thanked Members for their words and token of appreciation and wished the Committee success for the future.
- 1.4** Apologies were received from William Tyler QC and Robert Edwards
- 1.5** Dylan Jones dialled in but the telephone link disconnected early in proceedings.

MINUTES OF THE LAST MEETING: 16 APRIL 2018

- 2.1** Michael Horton raised an amendment to paragraph 4.8 and 4.9 of the April minutes which now reads:

4.8 Judge Raeside said that the Committee were in favour of modifying, simplifying and codifying the process of a single online procedure. Michael Horton put forward the view that this would not be straightforward if it was intended to apply to Trusts of Land and Appointment of Trustees Act 1996 and Inheritance Act claims as these were civil claims, and it would follow that there would need to be coordination with the Civil Procedure Rule Committee.

4.9 The Acting Chair said that the view of the judicial members of the committee was to proceed on the basis of a single form of application. Michael Horton said that further work was required as the different types of application had different procedures (eg not all required the completion of forms E or financial statements). In order to take this forward HMCTS agreed to set up a meeting to look at financial forms: the meeting would include Judge Waller, Michael Horton and the rest of the financial remedy working group with MoJ Policy and to report back at the July meeting with an update on points 8 and 9 of Paper 4A.

- 2.2** Subject to these amendments, the minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING

Children Rules and Practice Direction

- 3.1** MoJ Policy updated members that the Minister is still considering the advice given.
- 3.2** The Acting Chair asked MoJ Policy to request a decision to be made as soon as possible. The President of the Family Division confirmed his intention to raise this subject at the Children and Young Peoples Conference on 24 July 2018.

Amendments to the costs rules in family proceedings

- 3.3** The Legal Secretary to the President of the Family Division updated members that Mr Justice Mostyn had been approached to undertake a scoping exercise of required amendments to the cost rules in relation to family proceedings.
- 3.4** The President of the Family Division proposed that the Family Law Bar Association, Resolution, and Association of District Judges be approached to join the working party. Judge Waller also proposed that someone be approached from the Costs Office at the Royal Courts of Justice as their experience in this matter would greatly assist.

ACTION

The Secretary to the Family Procedure Rule Committee to ensure that this item is on the agenda for the meeting in October.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1** Members considered Paper 4 which set out a project plan of all the Committee's workstreams. Each individual workstream outlined the tasks involved to conclude that project and were presented in the order of priority agreed by members at the May 2018 meeting.
- 4.2** MoJ Policy explained that the table was produced using project management techniques and designed to assist the Committee in setting its priorities over the next two years. This document was designed to give the Committee a preliminary indication of timeframes for each workstream. The tasks for each workstream identify the type of official resource required at each stage taking into account the key steps based on indicative dates for laying a statutory instrument in Parliament.
- 4.3** MoJ Policy drew members' attention to those workstreams that required further assessment of tasks as an example of how the document will continue to be updated in the future. As this is a living document, MoJ policy recommended members review this document at the start of each meeting to ensure the Committee's priorities were identified and balanced against the level of official resource required to support that work.
- 4.4** Judge Waller noted that the table would assist the Committee in making informed decisions about prioritisation based on the individual tasks and indicative timescales. MoJ Policy confirmed that as the table was intended to be a living document, it would be regularly revised and updated to reflect new workstreams that arise - for example, to further Ministerial priorities, court reform projects etc. MoJ Policy indicated that the table would be shared at the conclusion of the meeting and members' comments on the document were invited in advance of the July 2018 meeting.
- 4.5** Mrs Justice Theis questioned the workstream on live stream broadcasting in the Court of Appeal. MoJ Policy acknowledged that this is not work necessarily before the Committee as it is being driven by the court reform team in response to a letter from the Master of Rolls to the Lord Chancellor, but is an example of how official resource is being used for other priority work outside the Committee. The President of the Family Division indicated that he was aware of, and supports this workstream, having been consulted on the proposal by the Master of the Rolls.
- 4.6** The Acting Chair thanked MoJ Policy for their work in producing the table. He welcomed the opportunity for members to comment on the table. Members agreed that a review of this table will be undertaken at the start of each meeting. The Acting Chair did however voice his regard for this work and welcomed the proposal that the

table be circulated by email and that this item be added as an ongoing issue for future meetings.

ACTION:

The Secretary to the Family Procedure Rule Committee to send the workstreams in a digital format to members.

Members to provide any comments on this document to the Secretary to the Family Procedure Rule Committee by 25 June 2018.

TRANSPARENCY

- 5.1** Members considered Paper 5 and the annexes. MoJ Policy reminded members that the paper addresses two separate issues under the heading of transparency, namely the hearing of family appeals in the High Court in public and the admittance of “legal bloggers” to family proceedings.
- 5.2** In respect of appeals before the High Court being heard in public, MoJ Policy drew members attention to Paper 5b which was a revised rule and practice direction incorporating views of members discussed at the April 2018 meeting. This revised draft has been approved by the Transparency sub-group. The Acting Chair invited members’ comments on the revised draft.
- 5.3** Michael Horton proposed minor drafting amendments to the revised rule and practice direction in respect of the numbering and cross-referencing within the draft. He questioned the removal of “judge of high court level” from the revised draft. He acknowledged the risk that parties may argue for a different appeal venue based on whether the appeal was to be heard in public or not but recognised that this was ultimately a decision for the judge.
- 5.4** MoJ Legal explained that the rule permits proceedings specified to be heard in public and the practice direction sets out those specified proceedings. It was intended to be a flexible approach to enable the concept to be further expanded in the future if considered appropriate to do so. Mrs Justice Theis noted that the intention is to restrict appeals heard in public to those listed before a full time High Court Judge. Members approved the revised draft rule and practice direction amendment subject to minor drafting amendments.
- 5.5** Mrs Justice Theis considered the main issue to relate to how the media would be notified about the template order in individual cases, particularly if the judges varied the order to make it narrower or wider. MoJ Policy agreed to work with HMCTS to consider the operational arrangements for this once the template reporting restriction has been agreed.
- 5.6** MoJ Policy noted that the outstanding issue related to the template reporting restriction order to accompany the rule and practice direction. An initial draft has

been shared with the Transparency sub-group and MoJ awaits their comments. MoJ Policy questioned whether members were content for the Transparency sub-group to agree the final version of the draft or whether it should be returning to a full Committee for approval. Members agreed the final draft should be delegated to the Transparency sub-group.

- 5.8** MoJ Policy referred members to Paper 5C which set out Lucy Reed’s response to questions raised by members in relation to the automatic admittance of legal bloggers to family proceedings. A revised pilot practice direction has been produced in consultation with the Transparency Sub-Group who took Lucy Reed’s response into account. The principal change has been the inclusion of educational charities within the scope of the pilot. MoJ Policy will need to work with the office of the President of the Family Division to further consider how the list can be set up and maintained.
- 5.9** District Judge Suh proposed drafting amendments to the pilot practice direction to ensure that there was parity between bloggers and journalists in the way that they were allowed access to hearings. She said that these amendments will improve clarity and consistency in cross-referencing. Michael Horton questioned how the changes address the mischief of a person attending court for a personal reason. He noted that the definition of “journalistic purposes” could be interpreted quite widely and questioned the parameters for monitoring the purpose for which legal bloggers attended court. He particularly noted the risk of pressure groups attending proceedings to further their own campaigns under the guise of legal blogging.
- 5.10** Members welcomed the inclusion of educational charities but questioned how the practicalities would work. The President of the Family Division noted the importance of the list being clear and transparent to avoid accusations of favouritism when deciding who should be added to the list. This was endorsed by Mrs Justice Theis who noted the difficulties of policing this in practice if the criteria are not clearly established. District Judge Carr suggested that the McKenzie friend letter, currently in operation within HMCTS, could be used as a model for a document to inform those wishing to attend a hearing as legal bloggers about the criteria and to assist the court in checking that anyone wishing to attend a hearing as a blogger satisfies the criteria. This was supported by Judge Raeside who noted such a letter could be retained on the court file. This was endorsed by Mrs Justice Theis and District Judge Suh. The Acting Chair questioned whether it would be appropriate to extend the criteria for practising lawyers to apply also to lawyers employed by a Higher Education Institute or an educational charity. Members approved this amendment to the pilot practice direction
- 5.11** Judge Raeside questioned who would bear the responsibility for checking whether those attending court on the basis of being a legal blogger satisfied the criteria. MoJ Policy reported that HMCTS has already devised a preliminary spreadsheet, designed to identify the location, case and purpose of attendance for bloggers which would be compiled at each individual courthouse and then collated centrally. MoJ Policy noted that it will be necessary to further discuss the operational arrangements with

HMCTS once a final model for the pilot had been agreed by the Committee. Mrs Justice Theis suggested that this be further addressed by the Transparency Sub-Group which was agreed by members.

- 5.12** MoJ Policy sought members views on the proposal for the pilot to apply to all courts nationally. Judge Raeside further questioned whether the pilot should start before specific tiers of judiciary and specific courts to more easily monitor any abuse of these provisions in practice. The Acting Chair noted the difficulty of ensuring the right types of hearings and the right courts were captured if the pilot were to be limited in this way. He considered that the assessment of the pilot will determine if there are any problems with the proposed approach. This was endorsed by Michael Horton and Judge Waller. Members agreed that the pilot will operate nationally once the contents of the final pilot practice direction have been agreed.
- 5.13** Judge Raeside also questioned whether there would be guidance on who is responsible for pursuing any contempt of court proceedings if this became necessary. Judge Waller noted that the approach to be taken will depend on the seriousness of the nature of the alleged contempt of court. MoJ Policy responded that it is likely that judicial guidance will be necessary to address such issues and there will be further liaison with the office of the President of the Family Division.
- 5.14** Members endorsed the approach in principle, but requested the Transparency sub-group further consider the issue of potential abuse and how risks may be mitigated. The Transparency sub-group will meet to consider this further and members agreed that Lucy Reed be invited to that meeting to consider how the Committee's concerns can be addressed in practice.

ACTION:

MoJ Policy to liaise with the President of the Family Division's Office to address a list maintained by this office and the possibility of judicial guidance.
MoJ Policy to write to Lucy Reed setting out the Committee's concerns and to invite her to the next meeting of the Transparency sub-group.

DIGITAL FINANCIAL REMEDY PROCESS

- 6.1** HMCTS provided an oral summary of the project to digitise the financial remedy process. HMCTS noted that the project is still in its early stages and being developed using best practice principles and lessons learnt from the online divorce reform project. The project is initially looking at the solicitor "journey", (i.e. cases in which the parties are represented) particularly digitising applications for a financial remedy order where the outcome is agreed between the parties. This first phase will involve testing in private beta at the end of the Summer.

- 6.2** The President of the Family Division updated members that he had recently met with HMCTS to discuss the project and supports how the project is being developed. He noted that of all divorces issues, 30% will involve a financial remedy claim of which 70% will be consent cases and 86% of consent cases are issued by involve legal professionals. He recognised the pace with which progress has been made but agreed that other areas such as online forms in the Welsh language etc will need to be considered with later stages of the project.

ACTION:

HMCTS to present a walk-through of the digital process before the next meeting.

BUNDLES PRACTICE DIRECTION

- 7.1** Members considered Paper 6
- 7.2** The President of the Family Division acknowledged proposed amendments from Michael Horton but considered these to be consequential rule changes which could be addressed once the practice direction was made. The President of the Family Division confirmed that the Master of the Rolls approves the proposed practice direction amendment considering its impact on civil proceedings. Michael Horton also proposed minor drafting amendments to improve the clarity and cross-referencing within the draft.
- 7.3** Judge Godwin noted that Practice Direction 25 does not specifically restrict the number of pages of an expert report to no more than 40 pages. Michael Horton responded that instructions to experts are generally based on a standard template by solicitors. The President of the Family Division considered a maximum limit of 40 pages to be appropriate as his experience is that some expert reports were longer than they needed to be to address the issues in the case.
- 7.4** Members approved the revised draft. The President of the Family Division confirmed he would send MoJ Policy a final version for incorporation into a practice direction. He noted the potential for savings through this practice direction through experts not charging as much for shorter reports and legal professionals not charging additional costs for reading lengthy reports. He questioned when the practice direction would come into effect. MoJ proposed Monday 23 July to enable time for drafting and internal clearance procedures. Members agreed this approach.
- 7.5** Judge Raeside asked whether it would be possible to share this information with the Judicial College to facilitate judicial training The President of the Family Division agreed that the final version could be shared with the Judicial College.

FORM C1A

- 8.1** Members considered Paper 7
- 8.2** Judge Waller confirmed that revisions proposed by members at the May 2018 meeting have been incorporated into the revised version. Melanie Carew said that these changes reflect HMCTS practice and show the importance of the C1A. She noted that amending the template safeguarding letter was not straightforward for Cafcass but the intention is to send an accompanying message to all Family Court Advisers notifying them of these changes and advising them to address these changes in their safeguarding letter to the court. District Judge Suh suggested an amendment to reflect the fact that the notice of hearing was issued after gatekeeping and the court timetable needed to reflect this.
- 8.3** Judge Waller asked if the proposed changes to Practice Direction 12B could be made at the same time as changes to the Bundles Practice Direction. MoJ Policy confirmed this was possible and this would also come into force on 23 July 2018.

PROPOSED CHANGES TO DEDUCTION ORDERS FOR CHILD MAINTENANCE PAYMENTS

- 9.1** Members considered Paper 8 and its annex.
- 9.2** Department of Work and Pensions (DWP) Policy explained their intention to maximum collection of child maintenance by introducing regulations to allow deduction orders to be made against joint accounts and unlimited partnership accounts. The enabling power to make such regulations is set out in Sections 32A - 32K of the Child Support Act 1991. District Judge Suh raised the point that the committee had not been provided with details of the enabling powers for the regulations and it was hard, therefore, to follow some of the drafting and understand the definitions in the draft.
- 9.3** DWP Policy said that they were working towards introducing this policy which would affect approximately 430 deduction orders per year in relation to joint and partnership accounts. DWP Policy requested the Committee consider making amendments to Practice Direction 30A to ensure the appeal rules apply to joint account and unlimited account holders, in line with the changes being introduced through the Collection and Enforcement Regulations. The Regulations are due to come into effect on 5 November 2018. DWP Policy explained that a deduction from a joint or partnership account would only apply where a minimum threshold was met. The share of the parent due to make payment would be calculated based on a review of bank statements, particularly noting salary incomes or any other income against their name.
- 9.4** The President of the Family Division said that it would not be possible for the Committee to agree the proposed changes without having sight of the draft regulations. He raised particular concerns about service on an innocent third party and their rights under the new process. This was endorsed by Mrs Justice Theis who noted the need to ensure third parties were protected as far as it is possible to do so

against the consequences of non-payment by another parent. Michael Horton pointed out that, at present, PD30A para 9.19 appeared to prevent any extension of time in an appeal against a deduction order, which might operate unfairly against the other joint account holder

9.5 District Judge Carr asked whether the DWP had tested their policy against the Law Commission report on Maintenance. DWP Policy noted that there has been no contact with the Law Commission that they are aware of, but they would note the proposal.

9.6 DWP Policy agreed to provide a further update to the Committee at the July meeting particularly addressing the following concerns of the Committee:

- Sharing the draft regulations;
- Detailing what powers exist to enable DWP to use bank records to chase individuals who do not pay their child maintenance;
- Details of how service will be affected on innocent third parties;
- How each proposed change to the Practice Direction reflects changes being made under the regulations.

AOB

10.1 The President of the Family Division confirmed that HMCTS had contacted him to extend Pilot Practice Direction 36E to enable the next stage of the online divorce project to be developed. He has indicated his approval to the proposed extension but raised this so the Committee was aware of the progress being made.

DATE OF NEXT MEETING

11.1 The next meeting will be held on Monday 16 July 2018 at 10.30 a.m. at the Royal Courts of Justice.

FPRC – Secretary
June 2018