



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In the Conference Suite, 2nd Floor Mezzanine Level
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 10 June 2019

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Waller	Circuit Judge
District Judge Hickman	District Judge
District Judge Suh	District Judge
Michael Seath	Justices Clerk
Fiona James JP	Lay Magistrate
Rob Edwards	Cafcass Cymru
Michael Horton	Barrister

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from Lord Justice Baker, His Honour Judge Godwin, William Tyler, Dylan Jones, Melanie Carew and Hannah Perry.
- 1.2** The Acting Chair sent best wishes to the MoJ, Head of Public Family Justice Policy on behalf of the Committee as this will be his last meeting before taking up a post in Dublin. The President of the Family Division endorsed this view and recognised the productive relationship during his tenure in post.
- 1.3** The President of the Family Division congratulated District Judge Hickman on her promotion to Circuit Judge. District Judge Hickman asked for confirmation that her membership status will change when this appointment is confirmed and whether a new District Judge member will need to be sought.

MINUTES OF THE LAST MEETING: 8 APRIL 2019

- 2.1** Michael Horton asked whether paragraph 6.4 could be amended to include the following line before the third sentence. 'He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue.' The paragraph now reads as:

Michael Horton noted that there was no need for a set-aside rule in relation to Children Act 1989 proceedings (and others) as the courts already have statutory powers to vary orders. There may not be many areas where there is no statutory power to vary. He queried whether there were sufficient numbers of applications to set aside Hague return orders to warrant the Committee allocating time to the issue. Judge Mostyn noted that applications to set aside are not uncommon in his court. He is concerned that the current position is unclear and should be the subject of rules. Melanie Carew noted that around 30% of private law cases are already return applications, so care would need to be taken around creating another route to challenge or alter an existing order.

2.2 District Judge Suh asked for her name to be added to the list of attendees.

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

MATTERS ARISING

Update on the appointment of a lay member to the FPRC

3.1 MoJ Policy reported that following interviews two suitable candidates have been identified and advice will go forward to Ministers although as this process falls within the Public Appointments guidelines, it is expected to still take a further 6-8 weeks.

ACTION

The Acting Chair asked for early contact with the new lay-member once their appointment has been confirmed.

Update on Pilot Practice Direction 36J – “Legal Bloggers”

3.2 HMCTS Policy said that a total of 9 attendees had been recorded and that the pilot is due to end on 30 June 2019. MoJ Policy asked for views as to whether the Committee would consider extending the pilot to see if that would produce more evidence and allow MoJ to evaluate results more fully. The President of the Family Division said that he had no objections to an extension of the pilot, and that this should be for a further year. To address concerns raised by some stakeholders when the pilot was commenced, he suggested that a consultation be undertaken within the period of extension.

3.3 Judge Mostyn asked whether significant publicity was given when the pilot was first initiated and it was confirmed that there was quite wide publicity. The President of the Family Division asked the Policy teams to consider both the consultation and raising the profile of the pilot and asked the Committee to consider extending the pilot until 30 June 2020. This was agreed by Committee Members.

ACTION

MoJ Policy to prepare a consultation document to go out in October and to propose to the Minister that the pilot be extended for a further year until 30 June 2020.

Review of the current court process under which applications and orders for female genital mutilation protection orders (FGMPOs) and forced marriage protection orders (FMPO) are made

- 3.4** MoJ Policy said that they were working towards providing Ministers with advice in line with the route proposed at the recent meeting at New Scotland Yard, namely HMCTS informing the police when an interim order is made (would could be before the Respondent is served) and providing for service of all FGMPO and FMPO by the police. MoJ Policy felt that this still needed some further consideration as to any legal risks and operational implications, and as to how to mitigate these if possible. MoJ Policy proposed that the current pilot to improve communication in relation to FMPO and FGMPO to the police be extended for a further year. The President of the Family Division asked whether it would be possible to receive clearance from Ministers in terms of extending the project to cover notifying the police and police serving orders before the current pilot runs out. MoJ Policy advised that they are working on trying to get that through.
- 3.5** The President of the Family Division indicated that he welcomes this direction of travel. MoJ Policy noted that the position as regards the notification to/ service by the police in the case of other protection orders needs to be considered, but it was agreed that this was a much bigger resource issue.
- 3.6** The Acting Chair proposed that this be put back on the agenda for the in July FPRC meeting.

ACTION

MoJ Policy to provide an update to the July meeting.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1** MoJ Policy said that the table has been amended to reflect priorities and asked for in the Committee's views in relation to the changes. Judge Mostyn asked that the table also needs to ensure to reflect any completed actions as part of this exercise, especially with a view to the Costs Rules.
- 4.2** Judge Raeside referred to Line 15 - Enforcement. She asked whether there has been a Government response to the Law Commission report. Michael Horton noted that the Government had responded indicating a wish for a simpler Part 33. He said that he worked last year with District Judge (MC) Carr and Judge Waller to look at ways in making Part 33 easier including writing improved guidance notes for court users. He said that he is content to circulate these to the Committee again. Judge Waller said that he would like to look at the progress made to date but this will need MoJ Policy and Legal overview too. Judge Mostyn said that he also had a view on this. He had recently given a judgment on a case involving rule 33.4, which has very old origins. Judge Mostyn noted that a surprising number of orders still come to the High Court

for enforcement. MoJ Legal noted that although the priorities table indicates work will be done on rewriting Part 33 in August 2019, there is a need to discuss whether this remains feasible or not.

- 4.3** The Head of MoJ's Public Family Justice Policy team said that the Priorities table is now more reflective of the Department's position in light of the increasing strains on legal and policy resource and that items positioned further down the list will take longer to complete going forward. The Acting Chair suggested that MoJ Policy return in July with a simplified briefing note, possibly on two sides of A4 paper which denote the work streams in an easier to understand format.
- 4.4** Judge Raeside noted that Item 6 on the priorities list relates to Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (CATJAFS) reforms. The Acting Chair advised that this is back on the agenda for the July meeting. The Acting Chair asked whether non-contentious probate rules need to make provision in relation to CATJAFS. It was noted that those rules are a matter for the President of the Family Division, not the Family Procedure Rule Committee.

ACTION

MoJ Policy to provide a note for the July meeting summarising the priorities table and laid out in priority order.

ELIGIBILITY TO FORM A CIVIL PARTNERSHIP - OPPOSITE SEX COUPLES IN ENGLAND AND WALES

- 5.1** The Government Equalities Office (GEO) Policy team introduced this item and explained that they are co-ordinating work across government to implement opposite-sex civil partnerships by the end of the year.
- 5.2** In June 2018, the Supreme Court declared that the provisions in the Civil Partnership Act 2004 preventing opposite-sex couples from entering into a civil partnership were incompatible with the European Convention on Human Rights and in October 2018, the Prime Minister announced that the government would extend civil partnerships to opposite-sex couples.
- 5.3** The Government Equalities Office (GEO) plans to publish a command paper over the summer setting out the changes. This will be accompanied by a consultation paper seeking views on whether couples should be permitted to convert from a marriage to a civil partnership and vice versa.
- 5.4** A number of potential consequential amendments to the FPR have been identified in relation to conversion rights and the Government Equalities Office Legal asked the Committee to consider the amendments to the FPR in the initial regulations extending civil partnership eligibility which are to be laid in autumn 2019 although they explained that it is more likely that they would seek to make amendments to the FPR in a separate instrument in early 2020. The GEO explained that they have presented this issue early as there is a possibility that the necessary changes can be

identified in time for the earlier instrument to be laid in autumn 2019 and if so, they intend to inform the Committee of the precise changes proposed in September.

- 5.5** Judge Waller thanked the GEO and said that if they follow the same sex model, then he did not envisage wide changes. Judge Mostyn asked whether any consideration had been given to the possibility that conversion rights would be abolished altogether.
- 5.6** The Acting Chair suggested that this be put on the agenda for October but if the GEO want to return in July then they could do so.

UPDATE - THE COSTS WORKING GROUP

- 6.1** Judge Mostyn noted that he was grateful that the PD28A amendment had been made. It has already been seen by practitioners and they are taking it seriously. He said that he was happy with the draft consultation documents put forward by MoJ officials. The Committee approved the two consultation documents and agreed that they should be issued.
- 6.2** In terms of who should be consulted on the shorter/ more limited consultation, MoJ officials advised that they hold a list of stakeholders. It was agreed that this list should be circulated and Committee members should advise if they consider any others should be added to the list.
- 6.3** Judge Mostyn asked the Committee to agree the timing of both consultations. MoJ Policy said they need to advise Ministers of the pending consultation before the papers are issued. The hope would be to get that advice up, and agree consultees, within the next week or so. Once the Minister has acknowledged the proposals, the consultations will be issued. The shorter one will run to a date, four weeks after the date of issue. The second consultation paper (Calderbank reforms) will be issued at the same time, but the Committee agreed that that should run until the end of October 2019. The Committee accepted that this might mean it would be difficult for MoJ Officials to analyse the responses and report back to the Committee's November meeting. Judge Waller noted that the timing for making any resulting rule changes this would have to be reviewed depending on the consultation responses: the way forward might not be straightforward.

ACTION

MoJ Policy to:

- **circulate the list of stakeholders to Committee members and ask if any should be added as consultees on the shorter consultation paper**
- **contact Ministers to alert them of the consultation and**
- **finalise the draft consultation papers and start the two consultation processes.**

PRESIDENT'S GUIDANCE: SHORT FORM ORDERS IN CHILDREN CASES

- 7.1** The President of the Family Division advised that in going around courts across the country, he has seen that the benefit of having long narrative orders is clear- but it is outweighed by the detriment in terms of the burden on the DJ or legal adviser of having to draft such orders. He is proposing new guidance. The purpose is not to say that there cannot be long narrative orders, but that there do not have to be such orders after the first hearing. The guidance would just be for the time being – hopefully technology will catch up in time.
- 7.2** The Acting Chair endorsed this and said that the new guidance would have the support of practitioners and judges. HMCTS Policy noted that at present, there was very little take up of the existing tick box method on the CMS sheet.
- 7.3** Mr Justice Mostyn noted that narrative orders began to be used in 2011, before the standard orders project. He considered there is some merit in questioning the need for these long orders. Judge Raeside noted that the previous President was very worried about matters such as jurisdiction and fact finding and the need for it to be clear on the face of the order what has been considered at the first hearing. But it was accepted that this information is often repeated unnecessarily on subsequent orders.
- 7.4** MoJ Legal noted that they fully appreciated the rationale behind the draft guidance. They had a few rather technical concerns about the content. It was agreed that these would be forwarded to the President of the Family Division's office. In particular, HMCTS are to ensure that the Guidance does not override any existing requirements to make and specify on the face of the order any case management directions/orders.

ACTION

MoJ Legal to write to the President of the Family Division's office as soon as possible laying out their specific concerns about the guidance.

ANY OTHER BUSINESS

- 8.1** The Acting Chair referred to the papers distributed ahead of this meeting on the work of the Digitisation sub-committee and explained that this issue will be discussed more fully at the July FPRC meeting. District Judge Suh mentioned the Bill currently before Parliament to create an online rule committee. The Acting Chair said that Lord Justice Baker might want to deal with this at the July meeting too.
- 8.2** Judge Mostyn advised that matters relating to rules on setting aside will be brought back to the July Committee meeting, with the sub-group meeting before that.
- 8.3** The Committee discussed the note sent through from the Civil Procedure Rule Committee in which they asked for the Family Procedure Rule Committee's views on

the recent report by JUSTICE called 'Understanding Courts' and the suggestion that the overriding objective in the Family Procedure Rules might be amended to expressly refer to the need to take into account the needs of litigants in person. District Judge Suh noted that she had read the report but was not clear about what was meant by the reference to "professionals". The President of the Family Division proposed that a reply be sent quoting the FPR overriding objective, noting that the Committee has considered the JUSTICE report, and agrees with its objective, but noting that the Committee does not consider that changing our overriding objective will change anything. The Committee agreed with this proposal

- 8.4** District Judge Suh noted that there was a second recommendation in the report – for the Committee to review each year as to whether the rules are simple and simply expressed. The Acting Chair noted that this had been raised before. The Committee had been considering having an "overview" paper sitting on top of the Rules and PDs to signpost users to the relevant provisions for their matter. This work was on hold pending the appointment of a new lay member to the Committee.

ACTION

MoJ Policy to respond to the Civil Procedure Rule Committee quoting the FPR overriding objective, noting that the Committee has considered the JUSTICE report, and agrees with its objective, but noting that the Committee does not consider that changing our overriding objective will change anything.

- 8.5** District Judge Suh raised two recent amendments to the Civil Procedure Rules ("CPR") with a view to the Committee considering whether similar amendments to the Family Procedure Rules might assist court users, HMCTS staff and judiciary. They provide that (a) if a party writes to the court, they must copy that to the other party – if they do not then the court can send the letter back; and (b) the court can ask a legal representative to prepare a note of a hearing for a litigant in person.
- 8.6** Judge Raeside noted that the FPR do not really make provision for correspondence. On the face of it, any communication by a party to the court ought to be copied to the other party, but the Committee perhaps needs to think more widely about how to deal with letter/ email communications. The Acting Chair noted that it may be a deliberate choice to not copy correspondence to all parties. District Judge Suh noted that the new CPR provisions allow the court to deal with matters at it sees fit, but at least give an underlying structure. It was agreed that District Judge Suh would prepare a note on this for the next meeting, to be shared with MoJ officials beforehand.

ACTION

District Judge Suh to send a paper to MoJ Policy outlining the two recent amendments to the Civil Procedure Rules and suggesting where these might be placed in the FPR. The finalised paper to be submitted for consideration at the July FPRC meeting.

- 8.7** Judge Waller asked whether thought could be given to access to adoption records by adopted adults under the 2002 Act could be considered. At present the Act and Practice Direction 14F require an application fee of £170 to be paid and this has created a hardship for many applicants which has resulted in a number of applicants seeking assistance from their local authority. HMCTS Policy advised that the President has raised this issue with MoJ and Fees policy colleagues and that there should be a response sent very soon. The Acting Chair proposed that this be on the agenda for the July meeting.
- 8.8** Judge Raeside asked whether statistics exists to show how many step parent adoptions cases there are. HMCTS Policy noted that these cases are listed separately in Family Court tables and that a link to these will be sent to Judge Raeside.

ACTION

HMCTS Policy to send to Judge Raeside a link to the Family Court tables showing statistics in relation to numbers of step parent adoption cases

- 8.9** Mr Justice Mostyn raised a concern about the need to put updates on the Justice website, Family Law and Family Law week each time that any rule or PD amendments are made. Any PD amending documents should be published. This will enable users to know when changes have been made and when they come into force. MoJ Policy acknowledged that work is underway to improve the “update page” on the Justice website section for the FPR.

ACTION

MoJ Policy to seek to ensure that any amending SIs or PD amending documents are published on the “update” page on the Justice website section for the FPR.

DATE OF NEXT MEETING

- 9.1** The next meeting will be held on Monday 8 July at 11.00a.m. at the Royal Courts of Justice.

Simon Qasim – Secretariat
June 2019
simon.qasim3@justice.gov.uk