



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In Judges Conference Room, QB1M
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 3 February 2020

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 Godwin	Circuit Judge
District Judge Suh	District Judge
Michael Seath	Justices Clerk
Michael Horton	Barrister
Dylan Jones	Solicitor
Fiona James	Lay Magistrate
Melanie Carew	Cafcass

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from Lord Justice Baker, Rob Edwards, Will Tyler QC and Bill Turner.

MINUTES OF THE LAST MEETING: 9 DECEMBER 2019

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

ACTIONS LOG

- 3.1** The action log is to be updated to reflect those items expected back for further discussion in March.

MATTERS ARISING

Legal Bloggers in First Hearing Dispute Resolution Appointment (FHDRA)

- 4.2** The Committee was given an initial legal view of the provisions relating to legal bloggers entering FHDRA's. The Committee discussed the fact that FHDRA's generally involve judicially assisted conciliation and negotiation. The FPR preclude attendance of accredited media

representatives and bloggers at hearings involving this. The Committee will discuss further at the March meeting.

ACTION

Agenda item for March. MoJ Policy/ Legal to produce a paper addressing all of the points made by the Transparency Project.

Legal bloggers consultation

- 4.3** The Committee agreed that the consultation will need to be finalised to go out shortly but to check that all stakeholder views already expressed had been reflected in the document.

ACTION

MoJ Policy to check whether the consultation document addresses points already made by stakeholders.

Following this MoJ policy to send a copy of the consultation letter out of Committee, for members to consider before the March meeting.

Allocation of Cases: Applications in the family court for exceptions to notification requirements

- 4.4** MoJ Policy noted that the April changes to the Family Procedure Rules and supporting Practice Directions will clarify that there is an option to apply for an exception to notification rules, so that, for example, parents without parental responsibility need not be informed of proceedings. MoJ Policy confirmed that they have also been looking at the allocation of these cases in the family court as requested when this was last discussed by the Committee. MoJ Policy will be consulting further with the President and updating the Committee shortly.

ACTION

MoJ Policy to provide a paper on the allocation issue, to be discussed at the March meeting.

Committee Member Recruitment update

- 4.5** MoJ Policy updated the Committee on the current vacancies. The President of the Family Division also noted that a number of Committee Members are nearing the end of their tenure this year. He therefore asked if a chart detailing process and guidance for either extending the term or advertising the post could be drawn up for the next President's pre-meeting.

ACTION

MoJ Policy to update the President on upcoming vacancies.

SIGNING THE FAMILY PROCEDURE (AMENDMENT) RULES 2020 AND THE SUPPORTING PRACTICE DIRECTION AMENDING DOCUMENT

5.1 The Committee signed the Family Procedure (Amendment) Rules 2020

5.2 MoJ Legal noted that all changes to the drafting had been seen by the Committee in the run-up to this meeting. These include ensuring that the provisions on estimates of costs and the new provisions on making open proposals to now come into force on 6 July 2020. This change was also reflected in the amendments to PD9A and PD17A which will also come into force on 6 July 2020

5.3 The Committee recorded thanks for excellent drafting. It was noted that new forms will be needed for the new rules on estimates of costs, which would have to include Statement of Truth. Members noted the importance of drafting these new forms quickly and offered the help of the FPRC working group to facilitate this exercise.

5.4 MoJ Policy noted that an impact assessment is to be completed in relation to the proposed new Practice Direction in relation to toxicology evidence. This will be discussed further at the March meeting.

ACTION

1. MoJ policy to draft new form(s) for estimates of costs.

2. The Costs working group to consider the forms on behalf of the Committee.

PRACTICE DIRECTIONS

6.1 The draft new Practice Direction 5C which deals with communications with the court (exceptions to the requirement to copy in all parties) was discussed. The Committee were asked for views on the inclusion of an exception in relation to adoption proceedings, and whether this should apply to all proceedings under the Adoption and Children Act 2002, or only to specific proceedings. The Committee agreed the latter. The Acting Chair agreed to liaise with MoJ Legal to advise which specific proceedings should be listed. The Acting Chair will liaise with FD lead on adoption on this matter.

6.2 The Committee discussed exemption in relation to any proceedings for a FMPO or FGMPO; and whether there should be an exemption where the sender is subject to a non-molestation or restraining order and is prevented by law from contacting the other party. It was agreed that there should be. The Acting Chair said that she would liaise with MoJ Legal to ensure there is certainty and appropriate ring-fencing in the exceptions.

6.3 The draft new Practice Directions making permanent provision for proceeding by electronic means for divorce (PD41A) and consent financial remedy applications (PD41B) were discussed. MoJ Legal said that the drafting was at relatively early drafting stages, but that the Committee's views on the overall approach would be welcomed. The President of the Family Division said that an index and an introductory paragraph would be useful in PD41A.

- 6.4** The Acting Chair noted that only 8% of divorce lawyers were using the online application process. HMCTS are considering whether the position should be that the online system has to be used by solicitors, unless they specifically opt out.
- 6.5** MoJ Legal noted that once the Committee is content with the assessed impact, the President will be invited to approve the new toxicology practice direction.

ACTION

- 1. Practice Direction 5C – The Acting Chair to liaise with MoJ Legal on the wording of the exceptions. FD lead on adoption’s views in relation to exceptions for the 2002 Act to be sought by the Acting Chair.**
- 2. The next drafts of Practice Directions 41A and 41B to be considered out of Committee and this item to be brought back in March.**
- 3. Toxicology – Practice Direction to be considered following conclusion of the impact assessment. Agenda item in March.**

ENFORCEMENT UPDATE

- 7.1** MoJ Policy said that the Working Group met again in January with a clearer list of proposed Rule changes.
- 7.2** The Committee were asked if they wished to consult in relation to the proposed rule changes. It was agreed that there should be a targeted stakeholder consultation, which would help to further refine and clarify how the proposals can make the most impact.
- 7.3** The consultation should be with Judges, Magistrates, HMCTS and the professions.
- 7.4** The Committee asked for information on the volume of “general enforcement” applications and what the impact of the proposed changes around allocation of these cases could be, particularly for district judges.

ACTION

- 1. MoJ Policy to prepare a consultation paper and return; to be an agenda item at the April committee with a timetable.**
- 2. MoJ Policy to establish if the information on volumes of cases is available and to advise the Committee.**

CATJAFS UPDATE

- 8.1** It was suggested that two additional legal advisers be added to the working group – given their familiarity with the current justices’ clerks rules they will be of particular assistance when considering the delegated functions and qualifications to these and the Committee were asked whether there were any objections for their inclusion on the working group. It was explained that as the volume of work needed to complete the exercise was quite intensive, and so additional expertise would help to work through the functions.

- 8.2** MoJ Policy explained that the work will involve considering the various functions and proposals from stakeholders. The Working Group will meet in mid-February and to come back to the committee in March with a clearer idea of the areas they make wish to make changes to and the reasons behind this. MoJ Legal noted that changes to the functions can be made through a Practice Direction amending document which allows more flexibility for timings.

ACTION

- 1. Working Group to contact suggested names to consider their availability to join the working group.**
- 2. To return as an agenda item in March with an update on the Working Group's initial thoughts.**

FORCED MARRIAGE AND FGM PROTECTION ORDERS MAILBOX UPDATE

- 9.1** MoJ Policy said that this issue is still in discussion. A Data Protection Impact Assessment is being progressed.

ACTION

MoJ Policy to update in March if there is anything substantive to report.

WELSH LANGUAGE UPDATE

- 10.1** MoJ Policy updated the Committee to say that they had spoken with the Welsh Language Commissioner about their request to allow information from family proceedings to be disclosed to them without this being a potential contempt of court.
- 10.2** The Committee had already agreed in principle to such changes. MoJ Policy agreed to develop practice direction amendments and share this with the Welsh Language Commissioner with a view to returning at the April Committee meeting.
- 10.3** Members noted that there may be a period of time when (online) forms are available in English but not in Welsh. They asked if there could be a notification online to say that these forms could be completed in Welsh, and where they should be sent. HMCTS agreed to take this point away to see if this is possible.
- 10.4** MoJ Policy and Legal confirmed that provision about the Welsh language was inserted into the Family Procedure Rules in December 2018 (rule 5.6), which mirrors provision in the Civil Procedure Rules 1998 which came into force in October 2018.

ACTION

- 1. MoJ Policy to continue to work with Welsh Language Commissioner to develop the Practice Direction amendments.**
- 2. HMCTS to find out whether English forms can be completed in Welsh and submitted online until the Welsh forms become available online.**

3. For this issue to return as an agenda item in April.

FPRC STAKEHOLDER LIST

- 11.1** MoJ Policy presented an updated stakeholder list and asked the Committee for further thoughts. These were noted and the Committee was asked to email MoJ Policy with any further suggestions. The Committee proposed that the list be widened to ensure a greater reach was attained. They therefore suggested that British Adoption and Fostering (Coram); Family Rights Group; Family Mediation Council; Citizens Advice Bureau; Family Justice Council; Children's Commissioner for England; and the Director of Studies at the Judicial College should also be added to the list. Committee Members also suggested that the list be amended to show that the PSU are now known as Support through Court. Reference to the Council of HM District Judges [and the Association of Circuit Judges] should be removed from the current list, as these bodies do not exist.
- 11.2** The Committee agreed to send further suggestions to the secretariat outside of committee, and for the list to return at the March meeting.

ACTION

MoJ Policy to update the stakeholder list ahead of the March Committee meeting.

CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 12.1** The Acting Chair confirmed that the contempt issue will be discussed at the next Civil Procedure Rule Committee meeting and that it will be ready for consideration by the family committee by the March meeting.

ACTION

MoJ Policy to return with details on the CPRC's proposed next steps in relation to contempt to the March meeting.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 13.1** MoJ Policy confirmed that the tables have been updated to reflect the projects which will come into force in April and July 2020. The Acting Chair asked that the various priorities be discussed in detail at the next President's pre-briefing meeting and then back as an agenda item in March.
- 13.2** The Committee asked for an update in relation to the Calderbank consultation. MoJ Policy said that this is being considered alongside that of the other priorities and that a summary of the consultation responses will be provided. The Costs Working Group offered to help when the first assessment of the results has been completed.

ACTION

1. MoJ Policy to discuss the various items on the priorities table at the next pre- meeting with the PFD and the Acting Chair.

2. MoJ Policy to consider Calderbank consultation responses and send to the working group for their consideration

MARCH 2020 AGENDA

14.1 No further comments were received

ANY OTHER BUSINESS

15.1 The dates for the meetings in May and for the open meeting which has been provisionally scheduled for 16 November are to be confirmed.

ACTION

- 1. FPRC Secretariat to confirm date for the meeting in May (given the bank holiday is no longer on Monday 4 May).**
- 2. FPRC Secretariat to confirm when the open meeting is taking place on 16 November 2020.**

DATE OF NEXT MEETING

16.1 The next meeting will be held on Monday 2 March at 11.00am at the Royal Courts of Justice.

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February 2020
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