



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**Via Skype**  
**At 11.00 a.m. on Monday 6 April 2020**

**Present:**

<b>Sir Andrew McFarlane</b>	President of the Family Division
<b>Mrs Justice Theis</b>	Acting Chair
<b>Lord Justice Baker</b>	Court of Appeal Judge
<b>Mr Justice Mostyn</b>	High Court Judge
<b>Her Honour Judge Raeside</b>	Circuit Judge
<b>His Honour Judge Godwin</b>	Circuit Judge
<b>William Tyler QC</b>	Barrister
<b>Michael Seath</b>	Justices Clerk
<b>Michael Horton</b>	Barrister
<b>Fiona James</b>	Lay Magistrate
<b>Dylan Jones</b>	Solicitor
<b>Melanie Carew</b>	Cafcass
<b>Rob Edwards</b>	Cafcass Cymru
<b>Bill Turner</b>	Lay Member

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1** Apologies were received from District Judge Suh.
- 1.2** The Acting Chair asked the Committee to be aware of the impact Coronavirus has had on the work of the HMCTS when considering its priorities.
- 1.3** The President of the Family Division also noted that there were a number of members whose tenure is coming to an end, and whilst there was the potential for delays in recruitment due to coronavirus, he was keen that the recruitment process for new members start.

## **MINUTES OF THE LAST MEETING: 2 MARCH 2020**

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

## **ACTIONS LOG**

- 3.1** The Acting Chair asked for the letter responding to the query raised by a legal adviser at Plymouth Magistrates Court about the ongoing need for written reasons to be sent out.

## **ACTION**

**The President of the Family Division's Office to send out the letter to Plymouth Magistrates Court**

## **MATTERS ARISING**

### **SI Update**

- 4.1** The amendments made by the Family Procedure (Amendment) Rules 2020 are in now in force (as of 6 April 2020, apart from the changes to costs rules which will come into force on 6 July 2020). Links have been posted on the Government website and stakeholders have been notified.

### **Legal Bloggers Consultation**

- 4.2** The consultation closes on 20 April 2020 and analysis will be provided at the May 2020 Committee meeting.

## **ACTION**

**Agenda item in May.**

### **Pension Sharing Orders**

- 4.3** A paper has been shared with the Pension Advisory Group (PAG) for their consideration and a response is pending. Department for Work and Pensions (DWP) are aware of this issue in the context of the Pensions Schemes Bill and once a response is received from the PAG, MoJ Policy will pick engage with DWP and report back to the Committee.

## **ACTION**

**MoJ Policy to report back in due course.**

### **CATJAFS Working Group Update**

- 4.4** MoJ Policy reported extensive engagement with the Working Group, and consideration is being given to which functions are actually being exercised in courts. There will be an update to the May meeting, after which the Working Group will meet again. It is proposed that this be an agenda item for the June meeting.
- 4.5** The President of the Family Division asked that the Working Group consider what more legal advisers might do during the coronavirus pandemic to support effective case management. It was agreed that the Working Group should give priority consideration to these proposals, and send recommendations to the President's Office directly. The Working Group would report back in May on what has been agreed.

## **ACTION**

**Urgent proposals to be considered by the Working Group and then discussed in May.  
CATJAFs to be full agenda item in June**

### **FORMS: Costs (H,H1) and Financial Remedy (D81)**

- 4.6** MoJ Policy reported that the costs forms, H and H1, had been revised in line with the work undertaken by the FPRC Costs Working Group and had now been shared with the FPRC Forms Working Group.

- 4.7** The Acting Chair proposed that final agreement for these forms should be handled outside of Committee and this was agreed by all.
- 4.8** Discussion on the D81 financial remedy form was instigated by a DDJ in that he experienced a difficulty in determining what a party has before/ after implementation of an order. MoJ Policy would review this issue and update the Committee in May.

**ACTION**

**Final work on the H and H1 forms to be undertaken outside of Committee**

**AGENDA**

**Update in May**

**Contempt Working Group**

- 4.9** MoJ Policy confirmed that the FPRC Contempt Working Group met on 30 March to discuss their response to the CPRC consultation. The Working Group will be asking the CPRC for a short extension to the consultation deadline, so that a draft can be considered by the Committee in May. The Working Group will return to the Committee in May with the final response for sign off, and circulate a draft ahead of the Committee meeting.

**ACTION**

**Working Group to finalise draft response to CPRC consultation. Agenda item in May**

**DNA Paternity Testing**

- 4.10** The Acting Chair had been made aware by a family practitioner of a potential inconsistency between the DNA testing providers accredited for use by the family courts and those accepted by the Foreign and Commonwealth Office in respect of birth registrations. MoJ Policy advised that this may not be an issue for the FPR/PDs, but would investigate further and update the Committee in May.

**ACTION**

**Update in May**

**AMENDING THE FPR: EMERGENCY PROVISION: POSSIBLE NEW RULE TO ENABLE MODIFICATIONS TO BE MADE BY PD TO EXISTING RULE AND PD PROVISION TO CATER FOR EMERGENCY SITUATIONS**

- 5.1** MoJ Legal updated the committee on the discussion in the CPRC about whether an additional emergency provision rule was needed to enable modifications to rules and PDs by PD in order to respond to emergency situations, such as coronavirus.
- 5.2** The Committee was of the view that Part 36 of the FPR gave adequate potential for piloting powers to be used to deal with emergency situations, but agreed that if the need arose, they could reconsider.
- 5.3** In terms of possible emergency pilot provision to assist in the current emergency situation, the Committee were advised that a sub-group of the President's Private Law Working Group had raised a request for pilot modifications to PD12B. MoJ Policy and Legal confirmed that the proposals were under urgent consideration. The President agreed that, given the

urgency of the situation, officials could send proposed pilot PD provisions to him directly without the need to revert first to the Committee. An update will be provided to the May Committee meeting.

#### **ACTION**

**Officials to liaise directly with the sub-group of the Private Law Working Group and with the President on proposed urgent new pilot PD provisions. Update to the Committee in May.**

#### **UPDATE ON THE PROGRESS OF LEGISLATION THROUGH PARLIAMENT - DIVORCE, DISSOLUTION AND SEPARATION BILL AND THE DOMESTIC ABUSE BILL**

- 6.1** MoJ Legal updated the Committee on the progress made on the Divorce, Dissolution and Separation Bill as well as the Domestic Abuse Bill. Final Lords stage was completed on 24 March and was introduced into the Commons the next day. Parliament is now in recess and returns 21 April, with the date for Commons second reading yet to be decided
- 6.2** A key provision in the Bill seeks to introduce is a new minimum 20-week period between the start of proceedings and when the court can be asked to make the decree nisi (or conditional order of divorce as it would be known in future). This period is intended to allow time for reflection and to encourage the parties to consider and make arrangements for the future. There has been much discussion and debate about the operation of this new period and the potential for it to be undermined by late service of notice of the proceedings on the respondent party. Where the applicant serves there is currently no defined period of days or weeks within which this is to be done.
- 6.3** Lord Keen for the Government has said that the FPRC would be invited to consider the service issue as part of its consideration of other changes to rules and practice directions if and when the Bill becomes law and is implemented. As a first step, we propose to bring an outline paper to the May FPRC setting out the broad areas of FPR likely to be impacted by the Bill so that we can begin the consideration process. There will be other contingent changes to online and paper divorce and financial remedy proceedings, including in particular IT changes, which will require planning.
- 6.4** MoJ Policy is working in conjunction with HMCTS to identify and prepare an outline implementation plan. This work will be shared with the FPRC for consideration at the appropriate point.

#### **ACTION**

**MoJ Policy to present its initial assessment of the broad areas of the Family Procedure Rules likely to be impacted by the Bill at the May Committee meeting.**

#### **PRACTICE DIRECTION UPDATE**

- 7.1** MoJ Legal confirmed that a Practice Direction amending document making provision for communication with the court (PD5C), toxicology (PD25G), online divorce (PD41A) and

online consent financial remedy applications (PD41B) had been signed and was coming into force that day (6 April).

- 7.2** HMCTS confirmed that over 100 solicitors are already signed up to use the online consent financial remedy system. The intention is to build up the number of Judges who can be trained to deal with these online applications.

#### **ALLOCATION OF APPLICATIONS IN THE FAMILY COURT FOR EXCEPTIONS TO NOTIFICATION REQUIREMENTS (REGARDING PARENTS WITHOUT PARENTAL RESPONSIBILITY ETC)**

- 8.1** MoJ Policy introduced a paper on the question of whether amendments were needed to either the Family Court (Allocation and Distribution of Business) Rules 2014 (Allocation Rules), or the President's Guidance on Allocation and Gatekeeping for Care, Supervision and other Proceedings under Part IV of the Children Act 1989 (Public Law) (President's Guidance), to clarify that applications for an exception from requirements to notify certain persons of proceedings (including parents without parental responsibility, or with foreign parental responsibility) should generally be allocated either to a judge of circuit judge level or a judge of High Court level.
- 8.2** MoJ Policy presented options for the Committee to consider. The Committee accepted the recommendation to amend Allocation Guidance to clarify that such cases should be allocated either to a judge of circuit judge level or High Court level. The Committee accepted the MoJ's recommended form of words for this additional guidance. The President of the Family Division's office would work with MoJ to take this forward.
- 8.3** In the course of discussion, it was asked whether guidance would be provided that explained that this possibility of seeking an exception to notification requirements was available and noting the kinds of circumstances and thresholds in which it might be granted. The President noted that the Court of Appeal had recently dealt with three cases on the issue and had essentially summarised much of the law in this area. MoJ Legal noted that the Department for Education could also be approached to review whether its guidance to local authorities reflected these recent developments.

#### **ACTIONS**

- 1. The President of the Family Division's office to work with MoJ to update the Allocation Guidance.**
- 2. MoJ Policy to contact Department for Education to clarify the need for updated guidance to Local Authorities**

#### **WITNESS STATEMENTS AND STATEMENTS OF TRUTH: RECENT CPR CHANGES**

- 9.1** MoJ Policy spoke to the point that the CPRC amended their provisions so that a witness statement, and accompanying statement of truth, must be provided in the witness's own language. The CPRC also amended the standard wording of statements of truth. The Committee were asked to consider whether the concerns about witness statements not being in a witness's own language was a concern in family proceedings. They were also

asked to note that amending the standard wording of statements of truth on standard forms would be costly and time consuming.

- 9.2** The Committee considered the case for and against mirroring the CPR changes, including whether caselaw already covers the question of the need to provide translations of witness statements, and agreed that this was not an issue they would seek to address currently. It was agreed to revisit the matter in February 2021.

**ACTION**

**To be placed on the Agenda for February 2021**

**STATEMENTS OF TRUTH: ELECTRONIC SIGNATURES**

- 9.3** MoJ Policy introduced the item on electronic signatures and noted the express provisions on this issue already made in the Civil Procedure Rules and the Criminal Procedure Rules. The Committee were asked to consider whether PD17A should be amended to expressly allow for electronic signatures on statements of truth, where a form or online process includes provision for such signatures. It was pointed out that this option was looking specifically at statements of truth and not on the wider area of signing forms other than with a statement of truth.
- 9.4** The Committee agreed to the suggested way forward, and asked for consideration to be given to Committee Member comments received prior to this meeting about also providing an explanation as to what exactly electronic signatures are.

**ACTION:**

**MoJ to finalise draft PD17A amendment.**

**APPEALS FROM DECISIONS OF LAY MAGISTRATES IN THE FAMILY COURT**

- 10.1** The Committee considered a proposal to introduce a permission filter for appeals against decision of lay magistrates in the Family Court, following a request from a Designated Family Judge to the President of the Family Division. The concern was that there were a high number of appeals in one area of the country from decisions of lay magistrates in the Family Court and a permission filter could help to reduce the number of those appeals that were without merit.
- 10.2** MoJ Policy noted that the lack of a permission filter for appeals from decisions of lay magistrates has been long-standing, in family, civil and in criminal proceedings. The data on the number of such appeals would take time to gather.
- 10.3** The Committee suggested that this is an issue which should not be prioritised under the current climate as it requires court resources. However, the Committee were keen to understand, from the Local Designated Family Judge, the extent of the issue.

**ACTION**

**The President of the Family Division's office to write to the Designated Family Judge who raised the issue.**

## **DISCLOSURE TO THE WELSH LANGUAGE COMMISSIONER**

- 11.1** MoJ Policy updated the Committee on the proposal for amendments to PD12G and PD14E to allow for disclosure of information from family proceedings to the Welsh Language Commissioner without this being a potential contempt of court. The proposed PD amendments have been agreed with Cafcass Cymru and the Welsh Language Commissioner and it is envisaged that these will be introduced within the next 2-3 months.
- 11.2** MoJ Policy said that rather than hold up this exercise further, work will still be undertaken to gain a firmer view on process and if necessary the Committee can receive a further update in due course.
- 11.3** The Committee asked whether PD9B on financial remedy will be considered as part of this exercise and the MoJ agreed to consider whether changes should also be made in this context.
- 11.4** The Committee agreed that the PD12G and PD14E amendments should proceed. The matter should only return to the Committee if PD9B also requires amendment.

## **ACTION**

**MoJ to consider PD9B point. MoJ to finalise the PD12G and PD14E amendments and submit them to the President and then to the Minister for formally signing.**

## **STANDING ITEM: CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK**

- 12.1** It was noted that the links between the Civil Procedure Rule Committee and the Family Procedure Rule Committee had been covered fully within other parts of this meeting.

## **PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE**

- 13.1** The Committee suggested that the work on Contempt be moved up to Tier 1 to reflect the latest position and the short time-frame with which it is being undertaken.
- 13.2** It was proposed that the issue of expanding the online consent financial remedy scheme to cover all types of financial remedy application, and expanding the scheme to allow its use by litigants in person should be moved to Tier 1. HMCTS noted that less than 12% of consent applications are made by litigants in person at present. If they do apply, the application can be scanned into the digital system and they will then have the same advantages as applications made online. HMCTS also noted that 90% of consent applications are already within scope of the scheme. The scheme does not cover variation applications yet. There are a very small number of these. But HMCTS does hope to add functionality for these in the next quarter. There are only around 200 Schedule 1 CA 1989 consent applications a year. Significant changes will be needed to add these to the digital system. These cases have been added to the back-log, and the Committee will be kept informed of any developments.

## **ACTION**

**Add a new Tier 1 category of work: extending scope of digital consent financial remedy applications scheme.**

## **MAY 2020 AGENDA**

## **ACTION**

**Changes to be made to reflect discussion points from this meeting**

## **ANY OTHER BUSINESS**

### **a) The FPRC Stakeholder List**

**15.1** The Committee agreed to send any suggested comments, additions or changes direct to the FPRC Secretariat.

### **b) Birth Certificates**

**15.2** An issue had been raised though HMCTS about whether it was acceptable to send a photocopy of a birth certificate with a placement order application if local authorities cannot get hold of a certified copy. MoJ Legal noted that the FPR do not appear to require certified copies, but the r14.17 deeming provision cannot be applied in the absence of certified copy certificates. It had been proposed to the President that HMCTS should notify local authorities and HMCTS staff that certified copies are not essential when making a placement order application. The President had wanted to seek the Committee's views. It was agreed that the proposed notifications should be sent.

## **ACTION**

**HMCTS to notify Local Authorities and HMCTS staff that it is not essential to provide a certified copy birth certificate with a placement order application.**

## **REMOTE MEETINGS**

## **ACTION**

**FPRC Secretariat to look at the new HMCTS remote meeting system and to see if this can be introduced for the May meeting.**

## **DATE OF NEXT MEETING**

**16.1** The next meeting will be held on Monday 4 May at 11.00am via Skype or another communication system.

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