



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 4 May 2020

Present:

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

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from Dylan Jones
- 1.2** The Acting Chair announced that Mrs Justice Lieven had been asked to join the meeting to cover agenda item 8.

MINUTES OF THE LAST MEETING: 6 APRIL 2020

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

ACTIONS LOG

- 3.1** The Acting Chair noted that points were covered in the agenda for this meeting and so no further discussion on the actions log was needed.

MATTERS ARISING

DNA Paternity Testing

- 4.1** MoJ Policy updated the Committee on an issue raised in April by a family practitioner of a potential inconsistency between the DNA testing providers accredited by the MoJ and those accepted by the Foreign and Commonwealth Office and confirmed that this will now be followed up outside of Committee.

ACTION

MoJ Policy to progress this issue with the solicitor member of the Family Justice Council

Forms H and H1, D81

- 4.2** MoJ Policy said that the forms relating to the costs changes (Forms H and H1) are due to be completed and ready for publication by 22 May.
- 4.3** The Committee thanked all for progress so far but stressed the need to have sufficient lead in period before the new rules and forms come into force on 6 July and asked whether action could be taken to expedite matters.
- 4.4** MoJ Policy said that although changes to the D81 Form are relatively modest, a number of other pressing priorities within the team has meant that no further progress has been made. The draft circulated which gives details before and after implementation of an order will be looked at and the DJ Member offered to consider details off line. A further update will be given at the June FPRC meeting.

ACTION

D81 form will be an agenda item under matters arising in June.

PD12B modifications – update

- 4.5** New Practice Direction 36Q allows (on a temporary, pilot basis) local flexibility to make different provision to that included in the Children Arrangements Programme (CAP) in Practice Direction 12B. This came into force on 23 April. These changes are urgently required to accommodate necessary procedural changes in response to the impact of coronavirus.
- 4.6** MoJ Policy said that there will likely need to be monitoring requirements of the new arrangements and it is hoped that further information will go out by the end of the week.

PD17A Statements of truth. PD12G and PD14E: disclosure to the Welsh Language Commissioner

- 4.7** MoJ Policy updated on two further practice direction changes. The agreed Practice Direction 17A amendments relating to electronic signatures on statements of truth came into force on 23 April. The amendments to PD12G and PD14E which will ensure that disclosure of information about family law proceedings held in private can be made to the Welsh Language Commissioner without this being a potential contempt of court came into force on 30 April.

Deed Poll Name Changes

- 4.8** MoJ Policy reported that the proposed meeting of the Sub-Committee of the Civil Procedure Rule Committee which is looking at changes to the deed poll name change regulations did not go ahead due to issues relating to the coronavirus pandemic. It is hoped that this will be re-arranged shortly and an update will be given at the June FPRC meeting.

ACTION

Agenda item in June

Allocations update

- 4.9** MoJ Policy said that this issue is currently being taken forward with the PFD's office, and that consideration of the DFE guidance will be taken forward in collaboration with them.

Calderbank offers consultation - Update

- 4.10** MoJ Policy said that the consultation responses are being considered in conjunction with a number of other pressing matters and is not yet ready for report before Committee although the matter was being progressed and they were keen to discuss with the working group. The next meeting of the Working Group is proposed for May and a further update will be given at the June FPRC meeting.

ACTION

Agenda item in June

UPDATE ON POSITION IN RESPONDING TO CORONAVIRUS:

a) LEGAL ADVISER FUNCTIONS (CATJAFS)

- 5.1** The FPRC Working Group updated the committee. Over the past month the working group had reviewed the eight additional functions that it had been proposed that justices' legal advisers should temporarily be able to carry out, in order to respond to the changes in work due to the Coronavirus pandemic. The group was of the view that six of those functions should be recommended to be taken forward. These proposals have been discussed with the Magistrate's Leadership Executive and the Magistrate's Association and the intention is for a new pilot PD36R to be sent to the President, then to the Minister, for approval by the end of the week.
- 5.2** The President of the Family Division noted that the question of justice's legal advisers making, by consent, child arrangement orders was a significant change. Working Group members acknowledged this and noted that the proposed modification contains criteria relating to consent and safeguarding. It was also noted that justice's legal advisers would be expected to decline to make orders if making them would be contentious. It was noted that the pilot Practice Direction modifications are to come to an end on 30 October 2020. It was agreed that the impact of the pilot modifications should be discussed at the October Committee meeting. Before that meeting, data should be gathered as to how this function to make CAOs has been exercised by legal advisers and there should be further discussion with the Magistrates' Association, the Magistrates' Leadership Executive and DFJs.

ACTION

Agenda item in October

- b) PILOT PD5B – MODIFICATIONS ABOUT LOCAL AUTHORITIES, CAFCASS, CAFCASS CYMRU AND ADOPTION AGENCIES OR THEIR LEGAL REPRESENTATIVES EMAILING DOCUMENTS RELATING TO ADOPTION PROCEEDINGS TO THE COURT**

- 5.3** MoJ Policy said that the proposed new pilot PD36R will also introduce a temporary modification to PD5B to address difficulties in filing hard copy documents in adoption proceedings during the pandemic. The President of the Family Division has agreed to this temporary measure to permit documents (other than the application itself) to be emailed to the court by Local Authorities, Cafcass, Cafcass Cymru, adoption agencies, or their legal representatives.
- 5.4** HMCTS confirmed that they will continue to print documents for the file and that mandatory training is in position for designated adoption clerks. The Committee agreed to proceed with the proposed way forward. If it is considered that there are problems arising from the need to send adoption order applications in hard copy, HHJ Raeside will raise this via the DFJ route.

UPDATE ON THE POSITION OF PARLIAMENT - DIVORCE, DISSOLUTION AND SEPARATION BILL AND THE DOMESTIC ABUSE BILL

- 6.1** MoJ Policy updated the Committee that the Domestic Abuse Bill was recently reintroduced to the House of Commons with a date for Second Reading yet to be announced.
- 6.2** MoJ Policy said that there is at present no definite timetable for commencement of the provisions in the Divorce, Dissolution and Separation Bill. The amendments of family procedure rules consequent on the Bill fall broadly into three main categories; changes to terminology; changes to evidential requirements; and changes to procedure.
- 6.3** For divorce and dissolution, MoJ Policy confirmed that the existing six-week minimum period between conditional order and when the final order of divorce or dissolution may be applied for is retained. The Bill seeks to introduce an additional 20-week minimum period between the “start of proceedings” and when the applicant (or applicants to a joint application) may confirm to the court that it should proceed to make the conditional order.
- 6.4** MoJ Policy said that the majority of detailed changes will fall on Part 7 FPR with consideration of Part 6 FPR to address the service issue, and some changes to Part 9 to reflect changes in terminology. They also confirmed that there would need to be a wide range of changes in place, beyond the remit of the FPRC, to ensure a smooth implementation of the Bill’s provisions. Other critical changes include changes to HMCTS IT systems, to guidance and to court forms.
- 6.5** MoJ Policy noted that while being wary of presuming Royal Assent, they wanted to give the Committee an indication of the steps that would be needed to proceed to implementation, if and when the Bill did receive Royal Assent. They noted that draft rule and Practice Direction changes consequential on the Bill will be presented to the Committee once the Bill has progressed through the Commons.

ACTION

Agenda item in June for an update

ENFORCEMENT OF FINANCIAL REMEDIES: CONSULTATION PAPER

- 7.1** MoJ Policy asked the Committee to agree to the consultation document to seek stakeholder views on the proposed rule amendments relating to the enforcement of family financial remedies orders. The Working Group have not had the opportunity to meet but it is expected that they will do so in the week commencing 11 May.
- 7.2** MoJ Policy sought views on the draft consultation paper, and on whether questions should be added about enforcement issues during the current Covid 19 pandemic. The Committee concluded that the latter should not form part of the consultation.
- 7.3** The Committee raised a number of questions that they asked the Working Group to consider, and concluded that, subject to consideration of those points, the consultation paper could be issued. It was agreed that there should be an eight-week consultation period.

ACTION

Update in June

FPRC CONTEMPT CONSULTATION RESPONSE

- 8.1** The FPRC Contempt Working Group updated the Committee on their consideration of the new rule for contempt proceedings proposed by the Civil Procedure Rule Committee (CPRC), and said that they had five main points - Level of Judge; This checklist (Requirements); Overarching Rules; Terminology; and Legal Aid.
- 8.2** On the Level of Judge the Committee agreed:
 - a) Contempt hearings should always be determined by a judge of the same level or more senior than the judge hearing the substantive matter.
 - b) If it is an application concerning contempt in the face of the court then the general rule should be it is heard by a different judge. But some flexibility should be retained. This would in the FPRC's view to be best done by dealing with this in a Practice Direction, or if there were a particular need to avoid having a Practice Direction, the rule should provide that the matter be dealt with by a different judge save in exceptional circumstances.
 - c) On other contempt matters, such as non-disclosure in breach of an order, then the FPRC thought there was often merit in the committal proceedings being heard by a different judge, but felt that this should be able to be departed from (so that in some circumstances the same judge could deal) rather than be an absolute rule; and felt that this could be set out in a Practice Direction too.
- 8.3** The Committee proposed that the final response to the CPRC should consider whether in certain non-disclosure cases where an order against disclosing information is breached, the committal proceedings should always be heard by a different judge. The FPRC Contempt

Working Group said that this was considered and the thought was that this issue again could be the subject of more detailed provision in a Practice Direction but it was agreed that this be raised within the consultation response.

- 8.4 The Working Group proposed that the Theis checklist could be split into two sections so that the procedural safeguards/requirements of natural justice were separated from the matters that had to be dealt with in the application. This was discussed in detail by the Working Group and it is proposed that this be reflected when responding to the CPRC via their online platform. The Working Group said that as part of this, the right to remain silent will need to be highlighted and made clear in advance included in the witness statement.
- 8.5 The Committee suggested also that the Theis safeguards as separated out should be clearly set out on the application form served on the alleged contemnor so they are clear and obvious for the parties and judge.
- 8.6 The Committee suggested that the Theis safeguards are clearly set out on the application form served on the alleged contemnor so they are clear and obvious for the parties and judge.
- 8.7 The Committee also considered the issue of legal aid in that a judge in the High Court can award it them-self whereas in other cases it is for the Legal Aid Agency, although it is was accepted that this is not necessarily something for consideration within the Rules.
- 8.8 The issue of service was also flagged up by the Working Group in that the draft rule cuts across the right of the solicitor to come off the record unless the solicitor files evidence.

ACTIONS

FPRC Contempt Working Group to consider the response and reflect comments received with a view to providing a final reply to the CPRC by 11 May.

LEGAL BLOGGERS CONSULTATION UPDATE

- 9.1 MoJ Policy said that there had been limited uptake of the consultation, and following a brief extension to 30 April, eight responses had been received. The Committee were now being asked to consider extending the pilot Practice Direction 36J for a further six months to gather further experience of legal bloggers attending hearings, and for the Committee to consider whether to make permanent provision. The Committee agreed that the pilot PD36J should be extended to the end of the year. MoJ to update the Committee on the consultation responses in June.

ACTION

1. **Agenda consultation responses for consideration in June**
2. **Extend the expiry date for pilot PD36J to the end of 2020.**

PROTECTION ORDER MAILBOX UPDATE

- 10.1 MoJ Policy updated the Committee on progress made on the forced marriage and female genital mutilation protection order (FMPO and FGMPO) mailbox to notify the police when such orders are made.

- 10.2** MoJ Policy said that a solution put forward by the NPCC, involving the court emailing orders to an automated NPCC-owned mailbox, is still in development but they hope to make progress in the coming weeks. The President of the Family Division was supportive of the project.

ACTION:

MoJ Policy to provide an update in June under matters arising

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

- 11.1** 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.
- 11.2** It was agreed that the Civil Justice Council Report on vulnerable witnesses should be considered as it makes recommendations for CPR provision along the lines of FPR PD3AA and possible revision of the CPR overriding objective. The legal secretary to the President of the Family Division indicated that it was hoped that this matter could be on the June agenda.

ACTION

Civil Justice Council Report on vulnerable witnesses to be an agenda item for June

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 12.1** MoJ Policy updated the Committee to draw their attention that a number of the completed items have now been withdrawn from the table and that the top tier reflects the current position. The Committee proposed that the item on Unified Financial Remedy should be removed from the table

ACTION

FPRC Secretariat to update table to reflect comments

JUNE 2020 AGENDA

- 13.1** June agenda to be amended to reflect comments and additions from the May meeting.

ANY OTHER BUSINESS

a) Proposed amendment to the Family Court (Composition and Distribution of Business) Rules 2014

- 14.1** An issue relating to three proposed amendments to the 2014 Distribution of Business Rules was raised. MoJ Policy advised that the proposals would be considered.

ACTION

MoJ Officials to consider and revert to the Committee

b) FPRC Membership

14.2 The Acting Chair confirmed that the DJ and DJ(MC) recruitment campaigns are making good progress.

c) Online Twitter reaction

14.3 The recent Twitter coverage concerning the Adoption and Children Regulations in relation to the Covid 19 pandemic were raised and it was highlighted that these will be discussed further at the Family Liaison Judges meeting this week.

d) Microsoft Teams platform

14.4 The Committee agreed that in general holding the meeting on this platform this worked well although there were still some issues on sound and accessibility. These will be followed up on outside of Committee.

ACTION

FPRC Secretariat to seek Members views on the quality of the platform and see whether improvements can be made before the June meeting.

DATE OF NEXT MEETING

15.1 The next meeting will be held on Monday 8 June at 11.00am via Microsoft Teams.

Simon Qasim – Secretariat

May 2020

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