



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 8 June 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
District Judge Gareth Branston	District Judge
District Judge Anna Williams	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** The Acting Chair announced that District Judge (MC) Gareth Branston and District Judge Anna Williams have filled the vacant District Judge (Magistrates' Court and County Court) roles and are joining today's meeting.

MINUTES OF THE LAST MEETING: 4 MAY 2020

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

ACTIONS LOG

- 3.1** The Acting Chair updated the Committee on Item 7 concerning the Child Protection Blog and that this is in hand but has been delayed due to more urgent pandemic related issues taking over. It is hoped that a further update will be provided at the July meeting.

- 3.2** The Acting Chair said that Item 8 concerning Consideration of Private Law Working Group's interim report should now be marked as complete following an update with the President of the Family Division in the Autumn. However, it was agreed that this remain on the agenda for the next meeting to reflect any issues that may read across from the anticipated Harm Panel report.

ACTION

Agenda item related to the Harm Panel report in July but removed as an action point on the log

- 3.3** The Acting Chair said that Item 9 on the eligibility to form opposite sex civil partnerships is to be discussed at this meeting under item 6c.

Action

Remove from actions log

MATTERS ARISING

H Forms

- 4.1** MoJ Policy updated the Committee on the costs forms. Welsh language versions have been completed and these were issued with a message sent out to stakeholders in the week ending 5 June 2020 for the coming into force date of 6 July 2020. The Committee recorded its thanks for completing the exercise in good time.

D81 Forms

- 4.2** MoJ Policy said that changes have been considered but the team dealing with this work have been diverted to dealing with progress on the Divorce Bill and Covid 19 and a revised draft form is not yet available. The Committee reflected that the current form can be unhelpfully ambiguous about the net effect of draft consent orders, and would wish to see this addressed in the revised form. MoJ Policy said that the intention is for an updated draft to be shared with the FPRC Forms Working Group by mid-July 2020.

ACTION

Progress update to be provided to the Committee in July

Allocations

- 4.3** The President of the Family Division has agreed two sets of amendments to his guidance on allocations, which had been published on the judiciary website. The amendments in relation to determining local gatekeeping arrangements are temporary, supporting flexible arrangements during the pandemic. Officials noted an intention to bring to the October meeting a paper relating to all of the temporary rule and Practice Direction provisions that have been put in place as a result of coronavirus. The Committee agreed that this should return for an update in October and that they should be sent information relating to all the final changes to the guidance on allocation.

ACTION

- 1. President's office to send the Committee a link on all the final changes to the allocation guidance.**

2. **MoJ officials to return with an update in October in relation to all temporary changes to rules/ PDs/ allocation guidance that have been made as a result of coronavirus.**

Contempt of Court Reform

- 4.4 The Civil Procedure Rules Committee discussed proposed contempt reforms on Friday 5 June 2020 and agreed to bring the reforms in this Summer. MoJ Policy said that in order to meet the Committee's preference to mirror the CPRC proposals, that work will now need to progress at pace and will require some agreement outside of Committee through the FPRC Contempt working group with the aim of returning in July with the final rule for the Committee's authorisation.

ACTION

MoJ Policy to work outside of committee and return with the proposed final rule for the July FPRC meeting.

Protection Order Mailbox Update

- 4.5 MoJ Policy said that work is ongoing and that Ministers have agreed in principle to a proposed way forward. They hope to give a substantive update to the July Committee meeting.

ACTION

Agenda item in July

Deed Poll Name Changes

- 4.6 MoJ Policy said that work had been affected by resource being allocated elsewhere as a result of Covid 19 but a meeting of the Working Group has now been arranged for Friday 12 June and it is hoped that a more substantive update can be provided in July.

ACTION

Agenda item in July

Legal Bloggers

- 4.7 FPRC members were referred to the link which accompanied the agenda. This provided a report on the Transparency Project website in which a blogger gave her experience of remotely attending a family court hearing. The Committee noted that the blogger had found the experience of joining a remote hearing relatively smooth, and the observations made about the Judge's management of the hearing.
- 4.8 MoJ Policy said that only eight replies had been received to the recent consultation on the impact of the current legal bloggers pilot. The feedback received had been broadly favourable. Steps are being taken to confirm the Committee's previous decision to extend the pilot deadline to 31 December 2020, to allow further experience of bloggers attending hearings to be gathered. A substantive agenda item will be scheduled for the autumn to discuss the way forward.
- 4.9 A concern was raised about bloggers not being regulated. The Acting Chair confirmed that this issue was considered in detail before the pilot PD was put in place. Bloggers who are lawyers will be regulated by their profession's regulatory framework. Others have to

register with the President of the Family Division's office and to be accredited by an academic body. The Acting Chair asked the President of the Family Division's office to recirculate the guidance on this to all Committee Members.

- 4.10** The Committee were informed that Reading CC as part of their open justice principles, carried information on court lists for potential bloggers who wish to remotely attend family court hearings. The Committee asked if HMCTS could confirm whether this is something that could be rolled out or considered nationwide.

ACTION

- 1. The President of the Family Division's office to recirculate the original guidance**
- 2. HMCTS to confirm at the July meeting whether all courts are considering guidance for bloggers.**

UPDATE ON POSITION IN RESPONDING TO CORONAVIRUS:

a) PROVISION FOR EMERGENCY MODIFICATIONS TO THE FPR

- 5.1** MoJ officials spoke to the issue of whether there should be a new rule which will allow for provision to be made in a practice direction to modify existing rules and practice directions, where necessary, for emergency purposes. The Civil Procedure Rule Committee had discussed this issue at their recent meeting, and had determined that they would consider this issue in more detail in the autumn, for possible inclusion of a new rule in their December/January SI. The Committee agreed with this approach and suggested that this matter be put back on its agenda in October.

ACTION

Agenda item in October

b) PRACTICE DIRECTION 12K and 10A: ANNOUNCING CERTAIN ORDERS IN OPEN COURT

- 5.2** The FPRC raised a concern that due to the current lack of open court sessions during the coronavirus crisis, it is not possible to comply with the requirements in PD12K and PD10A to announce certain orders in open court. Options for dealing with this point were put to the Committee. The Committee agreed that, following feedback from courts and their own experiences, the provisions were not widely used during normal times. It was decided that the requirements in paragraph (1) of PD12K and paragraphs 3.1 and 3.2 of PD10A should be temporarily suspended, for 9 months. The Committee should undertake a consultation in the early autumn and a review at the end of the year.
- 5.3** The Committee also discussed the need to personally serve non-molestation orders and discussed the issue raised by a District Judge who highlighted that this created a number of limitations. Discussion as to the appropriate form of service ranged from a refusal to waive the requirement to personally serve, to decisions allowing for service by way of email or 'whatsapp'. The Committee asked MoJ Policy to consider and return in future meetings.

ACTION

1. **MoJ Policy to draft pilot PD to temporarily suspend the PD10A paragraph 3.1 and 3.2 and PD12K paragraph (1) requirements for announcements in open court.**
2. **MoJ Policy to draft a consultation document for consideration at the October meeting and will agenda for detailed discussion post-consultation.**
3. **MoJ Policy to return to the Committee in July on electronic service of non-molestation orders and other similar provisions.**

ITEMS RELATING TO BILLS

a) Divorce Bill

- 6.1** The Bill was due a second reading in Parliament on 8 June and is then due to go before a Committee of the whole House but no date has been given for this. The remaining timetable has not been set but the team are working with HMCTS staff to work through the associated issues and as Government are keen to push on, the timetable will be quite progressive.
- 6.2** The team will return to the Committee once they are clearer on implementation timelines, which they hope to be the next Committee meeting.

b) Domestic Abuse Bill

- 6.3** This Bill began Committee stage on 4 June. Committee stage will continue in the week commencing 8 June and it is expected that the Bill will complete this part of the process by the end of June. It is hoped that Royal Assent will be granted by the end of the year, for implementation in 2021.

c) Opposite-Sex Civil Partnerships

- 6.4** MoJ Policy reported on behalf of the Government Equalities Office who confirmed that policy agreement on the issue of conversion of marriages to civil partnerships has been delayed by Coronavirus related issues but it is hoped that Regulations on conversion rights will be issued later in the year. The Acting Chair proposed that this should return to the Committee in October.

ACTION

Agenda item in October.

CIVIL JUSTICE COUNCIL REPORT – CONSIDERATION OF THE GENERAL PRINCIPLES IN RELATION TO VULNERABLE PARTIES AND THE EXTENT TO HOW THESE ARE REFLECTED IN THE FPR

- 7.1** The Civil Procedure Rule Committee has convened a subcommittee to review the report produced by the Civil Justice Council on vulnerable witnesses and parties in civil proceedings. At present, the CPRC sub-group is considering what rule changes will be required and in the first instance is considering developing a similar provision to that which was added to the Family Procedure Rules in 2017 through the insertion of FPR Part 3A (Vulnerable persons: participation in proceedings and giving evidence) and the supplementary Practice Direction 3AA. The CPRC subcommittee are using these as a primary reference for their work.

- 7.2** At this stage it is unclear whether there will be direct implications or work for the FPR emerging from the CPRC's consideration of this issue. The committee therefore agreed that the FPRC secretariat would keep the CPRC's work under review and update the FPRC when they have come to further conclusions.

ACTION

FPRC Secretariat to set up liaison with the CPRC Secretariat and to ensure that regular updates are provided in relation to this item

CALDERBANK OFFERS ANALYSIS

- 8.1** MoJ Policy introduced the item and referred the Committee to the consultation which closed in October 2019 and which was part of a wider costs exercise. Over 280 responses were received with 137 via the FPRC's online portal; 135 via Resolution's online portal and the remainder via the FPRC mailbox. These were primarily from solicitors and barristers.
- 8.2** MoJ Policy said that of those that responded, a high proportion were supportive of reintroducing some form of Calderbank offers, citing a need to reduce unnecessary litigation and keep use of courts' time to a minimum. Of those who were not fully supportive, concerns about smaller money cases, needs cases and domestic abuse, as well as the higher proportion of litigants in person, were raised.
- 8.3** The majority of the Costs Working Group was of the view that provision for consideration of Calderbank offers when deciding whether to make orders for costs should be made in the FPR, to give more incentive for parties to settle early and avoid unnecessary litigation. Some working group members noted that the majority of cases they saw were lower money cases. They expressed some concern that making costs orders in light of Calderbank offers may not be appropriate in these cases as it could throw out the balance of a carefully considered financial remedy order.
- 8.4** Some members were of the view that a decision should not be made either way on making rule provision on Calderbank offers without further data around the impact of the recent amendment to PD28A and of the costs estimate reforms coming into force on 6 July. They would also like more research on any balance between there being fewer cases reaching final hearing as opposed to final hearings having to be longer because of the need to hear arguments about costs orders, although some members were not sure that such information would be ascertainable.
- 8.5** The Committee agreed that it needed to understand more about how lower money cases might be affected and asked that MoJ policy, in consultation with the Working Group, seek to gain more information on this.

ACTIONS

MoJ Policy to undertake information collection and to report back in July

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

- 9.1** The Committee agreed that the links between the Civil Procedure Rule Committee and the Family Procedure Rule Committee have been covered fully within other parts of this meeting.
- 9.2** The Acting Chair confirmed that the CPRC held their open meeting on Friday 15 May remotely and that this resulted in their largest number of public observers and where they received over 50 stakeholder questions. The FPRC open meeting is due to be held on 16 November and the FPRC Secretariat were asked to consider working arrangements if this will be required to be undertaken remotely.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 10.1** The priorities table has been updated to reflect a number of forthcoming practice directions and the section for Bills has been included at the top as these will be substantial pieces of work for the Committee when they are required to be implemented.
- 10.2** An issue was raised in relation to PD17A and whether an over conservative approach has been taken in only providing expressly for electronic signatures on a statement of truth where a standard form allows for this. MoJ Legal said that this position had been adopted as the changes made to the statements of truth would, if applied to all forms, require substantial numbers of amendments and would be restricted by work on other priorities. It was noted too that further consideration needs to be given to the Electronic Communications Act and whether, in fact, there needs to be rule provision to enable the use of electronic signatures.
- 10.3** The Committee agreed that this issue should be listed as a matter arising for the July meeting, to see what steps could be taken to try and pull together various strands on this subject.

ACTION

MoJ to put a paper to the October meeting.

- 10.4** MoJ Legal provided an update on a number of pending PD amendments which it will seek approval for in the forthcoming weeks. These include PD36J relating to the pilot scheme for bloggers; PD36K which is the pilot PD making provision for C100 applications to be sent to a bulk scanning company, Quadient; PD36O which is the pilot PD making provision for documents to be sent to a bulk scanning company, Exela; PD41A on the online system for divorce; and PD41B on online consent financial remedy applications.
- 10.5** An issue was raised in relation to the online divorce system which moves from online to requiring a hard copy if the process starts off being filled in by a litigant but moves to being completed by a solicitor. HMCTS said that functionality testing will be built in by the Autumn but the PD41A has been enabled so that there is no divergence from the digital journey.

- 10.6** The Committee welcomed the proposal to make use of the online consent financial remedy procedure mandatory for legally represented applicants but recommended that this receive greater publicity when it is brought in.
- 10.7** Given the discussion at the meeting, and given the plan to put these PD amendments to the President before the end of June, the President agreed that he would be content to sign them off without the detail of the drafting first being cleared with the Committee.

ACTION

MoJ Legal to include the PD amendments presented in one PD amending document for the President to make and the Minister invited to approve, before the end of June 2020.

JUNE 2020 AGENDA

- 11.1** July agenda to be amended to reflect comments and additions from the June meeting.

ANY OTHER BUSINESS

a) Re NY Supreme Court Case

- 12.1** The Committee noted the Supreme Court decision in Re NY and its reference to some incorrect wording in FPR 12D para 1.1. The Committee agreed that this could be returned to after the summer recess after further work had been done to consider whether any other PD amendments were required.

ACTION

To return as an agenda item in October.

b) Live broadcasting in the Court of Appeal

- 12.2** MoJ Policy updated the Committee on the forthcoming SI which will allow the broadcasting of judgments and advocates' arguments in family cases in the Court of Appeal through a dedicated YouTube channel, with a link on the judiciary website. MoJ Policy reported that the Court of Appeal Livestreaming SI debate will be going ahead in the Lords later today (Monday 8 June 2020), with debate in the Commons scheduled for 10 June 2020

c) Proposed amendments to the 2014 Distribution of Business Rules

- 12.3** Pressures on the team dealing with this matter has meant that there has not been capacity to address this item in the past month and it will now be scheduled for consideration by the Committee at the July meeting.

ACTION

To return as an agenda item in July

d) FPRC Committee Membership

- 12.4** The Committee welcomed the two new members and asked whether progress has been made on the Solicitor member of the Committee. MoJ Policy confirmed that the matter is in hand and that advice has gone forward for approval.

DATE OF NEXT MEETING

13.1 The next meeting will be held on Monday 6 July at 11.00am via Microsoft Teams.

Simon Qasim – Secretariat

June 2020

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