

Approved Minutes of the Civil Procedure Rule Committee

Friday 3rd July 2020 (via video conference due to the Covid-19 Pandemic)

Members attending

Lord Justice Coulson (Chair)
Mr Justice Birss
Mr Justice Kerr
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Parker
District Judge Cohen
Brett Dixon
Masood Ahmed
Richard Viney
John McQuater
Lizzie Iron
Dr Anja Lansbergen-Mills
David Marshall

Item 1 Apologies, Minutes, Action Log and Matters Arising

1. No apologies were recorded.
2. The minutes were agreed subject to a typographical error at paragraph 13 with the word, 'measurers' being changed to read, 'measures' and the need to clarify the position regarding consultation at paragraph 11, to read, 'given the nature of the Lord Chancellor's s.3A Notice and the exceptional time constraints involved, consultation was not required.'
3. The request by and the MoJ's draft response to, the Joint Committee on Statutory Instruments (JCSI) in relation to the Civil Procedure (Amendment No.2) (Coronavirus) Rules 2020 SI 2020/582 (regarding the stay of possession proceedings) was aired and **NOTED**. The questions focused on the basis for and degree of consultation. Alasdair Wallace set out the MoJ's response.
4. The Action Log was duly noted, along with updates in relation to the following:
 - **AL(19)65 New CPR Part 90 Administration Orders (former CCR Order 39)**: John McQuater explained that the proposed provisions were now being considered by drafting lawyers and policy officials, before returning to the CPRC in readiness of inclusion in the next mainstream SI/Update.
 - **AL(20)43 DJ Parker's paper re PD51ZA Extensions of Time**: The Chair advised that from a policy perspective there is no strong impetus to make further changes at this stage and more generally the direction of travel is to return to business as usual as soon as possible. DJ Parker explained that his initial concerns of an influx of applications had not been realised and acknowledged that there were more pressing matters requiring committee time; although he urged officials to keep the matter under review.
 - **AL(20)54 Webinar for Contempt reforms**: Arrangements to hold a webinar event on the changes to CPR Part 81 are progressing well. It was agreed that the event should take place as close to the reforms coming in as possible and an indicative format was discussed. It was also noted that Mr Justice Kerr is planning on holding a separate event for High Court Judges in early October. **Action**: Secretary to liaise with Brett Dixon to finalise arrangements.

Item 2 Covid-19, Recovery and related matters: Housing Sub-Committee CPR(20)28

5. The Chair opened the item by thanking the Sub-Committee for the considerable speed at which they have worked; he noted with thanks the attendance of officials from the Ministry of Housing, Communities and Local Government (MHCLG) and welcomed Mr Justice Robin Knowles to the meeting. Robin Knowles J chairs the MR's related Working Group (which comprises the judiciary, MoJ, HMCTS and MHCLG officials, legal professionals and the advice sector) and with whom the CPRC Sub-Committee have been working in close liaison.
6. The Chair continued by recognising the impact of the stay on possession proceedings and the need to carefully manage the resumption of possession work when the stay (imposed by CPR 55.29, pursuant to the Civil Procedure (Amendment No 2) Rules 2020) is lifted on 23 August.
7. His Honour Judge Lethem reiterated the Chair's comments that the proposals represent a collaborative process, and recorded express praise for the work and speed of Alasdair Wallace, senior drafting lawyer. HHJ Lethem, explained that the recommendations of the MR's Working Group have implications for the rules and thus, intense work has been ongoing to consider these issues and the need to be fair to litigants on all sides, court users and HMCTS, to ensure an orderly return for housing possession cases.
8. The proposed changes consist of a new short rule (CPR 55.A1) which provides the basis for a new PD (PD55C) to run temporarily from 23 August 2020 until 28 March 2021.
9. However, some provisions may need to go beyond March 2021 and the Working Group felt that the proposed timescale was too conservative. The Sub-Committee view was that, although there are different types of possession claim which each require slightly different consideration, there are also some common issues and thus the provision of a PD makes it easier to review (and extend) the expiry date if the need arose. The expectation is that the position will become much clearer by the autumn as to what is required to remain in place and for how long.
10. The policy intent was explained and can be summarised as provisions which relate, in part, to the resumption of possession proceedings and partly to new cases issued after the stay has ceased. They include:
 - a provision requiring a claimant who wishes to continue the proceedings after the expiry of the stay to provide a "reactivation notice" informing the court (and defendant) in writing of this (without which the case will remain dormant).
 - where the claim includes non-payment of rent, that the particulars of claim set out any relevant information about the defendant's circumstances so that there is a continuing duty of candour throughout the proceedings and information regarding the effect of the pandemic on the defendant and any dependents (including on vulnerability, disability, social security position, and with specific reference to those who are "shielding") be provided, if known. It was acknowledged that such information might be relevant to a consideration of hardship under s.21 or s.89 of the Housing Act and s.36 Administration of Justice Act. This provision is designed to extend the scope to all cases including a paper consideration of Accelerated Possession cases. It was recognised that this was not signposted in the N5B claim form, but it was not considered realistic to temporarily change the prescribed form in the time available.

- to allow the court to fix a date either on or after issue (relaxing the present rule requiring a date to be fixed on issue, so that hearing dates can be appropriately spread out).
 - to suspend the standard period between issue of a claim form and hearing which would usually be not more than eight weeks.
 - to permit a claimant to produce the full arrears history in advance rather than at the hearing.
11. The proposals were discussed in detail, with active contributions from across the membership, and from Robin Knowles J.
12. In working through the drafting, it was **RESOLVED** to:
- change the text, 'certificate' to, 'notice'
 - re-draft the PD to clarify that the requirement for a reactivation notice does not apply to stayed claims brought on or after 3 August 2020 or stayed claims in which a final possession order has been made (but all cases need information on the impact of the pandemic – health and economic) on the defendant and their dependants
 - the timescale for service on the defendant at paragraph 6.1(b) is changed from 21 days to 14 days
 - paragraph 6.2 to commence in the same terms as 6.1, for consistency purposes
 - at paragraph 6.2, incorporate the requirement for service (by the court, with the claim form) of the notice detailing the Coronavirus information.
13. A discussion ensued in relation to any form changes and whether any new forms needed to be created (for example a, 'reactivation notice') was discussed and it was **RESOLVED** that, given the temporary and urgent nature of the changes, no existing possession proceedings forms are being modified, nor any new forms being introduced, as a result of the new PD55C.
14. Accordingly, it was **AGREED, subject to final drafting**, to introduce a new rule at CPR 55.A1, together with a new PD55C to run temporarily from 23 August 2020 until 28 March 2021. No new or revised forms are being introduced. **Post meeting note:** *The MR's Working Group has designed a template Reactivation Notice, which HMCTS are hosting for parties to use if desired. However, as it is not an officially prescribed CPR form it is not listed in the PD under CPR Part 4 - Forms.*
15. **Action:** (i) Drafting lawyers and Secretariat to include an urgent, standalone, SI and supporting PD Update to commence on 23 August 2020 (ii) Working Party and officials to produce communications plan to explain the changes before coming into force (iii) HMCTS to advise court staff of the changes and specifically the need to serve the notice (referred to in PD55C, paragraph 6.2) when serving the claim form.

Item 3 Enforcement of Possession Orders and Alignment of Procedures in the county court and High Court Sub-Committee CPR(20)29

16. The Chair made some introductory comments, noting that although this was linked to the above item, as a consequence of the Pandemic, it was a piece of work which the CPRC had started some time ago and on which a public consultation had taken place last year.

Nonetheless, because of the Covid-19 crisis, a huge amount of urgent work has been carried out by the Sub-Committee and officials and in collaboration with the MR's Working Group, in order to present this item as part of the Covid-19 response. Thanks were noted to all involved.

17. Master Dagnall reiterated that Covid-19 created a very substantial degree of urgency because it may well result in a large number of attempts to execute existing, but stayed, warrants and writs, as well as attempts to obtain, and then execute, warrants and writs. Additionally, litigants may be seeking to transfer from the county court to the High Court in order to obtain writs.
18. The public consultation closed in May 2019. 17 responses were received. Overall, the respondents approved of the proposals and generally, but not exclusively, accepted the Sub-Committee's interim views that there should be alignment with the N54 notice process being put on a statutory basis and introduced in the High Court in place of the present requirement for judicial permission.
19. The committee were taken through the consultation responses and proposals, which were discussed in detail. Robin Knowles J contributed to provide the Working Group's perspective.
20. The proposed reforms provide for:
 - a general mandatory requirement, but with certain exceptions, for a Notice of Eviction to be served at the premises 14 days prior to evictions.
 - the removal (with limited exceptions) of the requirement in the High Court for judicial permission for a writ of possession to be obtained, and thus:
 - to align the High Court and county court processes, and
 - as a general rule, cases transferred to the High Court from the county court for enforcement should go to, and have applications for stays or suspensions made to and dealt with at, the local District Registry for the land (if there is one). It was noted that this is of particular importance to QBD Central Office in the RCJ. The provision would add clarity and ensure that judges of the county court did not inadvertently transfer proceedings to the RCJ when they almost certainly intended to transfer to the local District Registry.
21. Master Dagnall expanded on the transfer point, to record feedback from Chief Master Marsh who was consulted informally and had pointed out that, in relation to specialist work in the county court (covered in the general list with list of exceptions in PD57AA paragraph 4.2) there may be possession orders made (e.g. in a partnership dispute or insolvency or where there are "conveyancing issues") and that if they are to be transferred to a District Registry for enforcement, then they should go to a Business & Property (B&P) Court District Registry (as per PD 57AA paragraph 1.2). However, the concluding view was that the proposed "unless the court otherwise directs" is sufficient to cover this, bearing in mind that it is specialist judges who are expected to deal with County Court, Business & Property Court work (as per PD 57AA paragraph 4.3) and it only applies to cases in county courts located at B&P court centres (PD 57AA paragraph 4.1).
22. Robin Knowles J explained there were some reservations from the Working Group towards the proposed reforms to the transfer process at this time and the perception which may follow. This was discussed. HHJ Lethem explained the process at the county court level when considering whether to transfer enforcement to the High Court, reiterating that it is, of itself, a judicial act. This provided reassurance that judicial scrutiny was maintained within the reforms.

23. Master Dagnall added that, the Sub-Committee's work had touched on whether the scope of these proposals should extend to the transfer from the county court to the High Court for the purposes of enforcement in various other ways. However, it had been concluded that while that may be desirable, they were not urgent. Moreover, the statutory provisions, and the need to give proper consideration, meant that only limited reforms should be achieved at this point and this was **AGREED**.

24. The drafting set out:

- a transitional provision.
- an amended r30.4 (re transfer from county court to High Court).
- a new r83.8A making mandatory the delivery of a Notice of Eviction (Form N54) in advance of an eviction, not less than 14 days prior (unless ordered otherwise). Broadly, this includes private and commercial premises; trespass being excluded and a discretion for the judge to dispense with service, if appropriate, in the interest of justice.
- an amended r83.13 (re High Court enforcement).
- a new Form 54 ("Notice of Eviction"). It was explained that the initial view was that the notice period should be 7 days but this has changed to 14 days, given the present public health circumstances and the Working Group's strong recommendation for 14 days. A reduction to 7 days can be considered at an appropriate point in the future, once the pressures ahead have been cleared. The operational and practical mechanics of introducing the form were discussed. A manual, interim process (if an IT solution is not deliverable in time) was canvassed and HMCTS undertook to introduce it and MoJ will update the HCEO Association.

25. Richard Viney raised whether the provision concerning permission to issue a writ of possession to enforce a notice under s.33D Immigration Act 2014 was sufficiently clear and the view was that it was.

26. The discussion also highlighted the following points, which were **AGREED**:

- a desire to retain the court's permission to issue a writ of restitution
- recast r83.13(1)(b) to read, 'proceedings for contempt of court under Part 81'
- recast r83.13(1)(c) to clarify the retention of the provision for a writ of sequestration

27. Accordingly, the proposed amendments to CPR 30.4, CPR Part 83, PD83, any transitional provision and Form N54 (Notice of Eviction) were **AGREED subject to final drafting** and to come into force on 23 August 2020 as part of the mainstream SI.

28. **Actions:** (i) Drafting lawyers and Secretariat to include in the mainstream (common Commencement date SI) and supporting PD Update, but with a commencement date of 23 August 2020 (ii) Secretariat, HMCTS & MoJ Design to produce the revised form N54 (iii) HMCTS & MoJ, in consultation with the Sub-Committee and Working Group to agree a plan for communications to stakeholders and staff to explain the changes before coming into force.

Item 4 Boundary Disputes CPR(20)30

29. This item was deferred to a future occasion due to lack of committee time. **Action:** Secretary to relist the matter as soon as practicable.

Item 5 Contempt of Court Sub-Committee CPR(20)31

30. Mr Justice Kerr explained that following the last meeting, sub-committee members, drafting lawyers and officials had worked under considerable time pressure to ensure the new suite of proposed forms were drafted for committee consideration today and thanked everyone for their collective efforts. The final agreed text for the reformed CPR Part 81 was also provided; which was duly **NOTED** and it was **AGREED** that it represented the resolution of the last meeting and was, therefore, ready for inclusion in the next SI with an in-force date of 01 October 2020. However, several consequential amendments required consideration.
31. His Honour Judge Bird set out various consequential amendments arising out of the changes to CPR Part 81. Some are of a standard nature, which drafting lawyers are handling. Others require committee consideration. The overriding view, endorsed by the Chair, was that the coming into force date of 01 October 2020 for the substantive changes, should not be delayed or compromised by any non-critical consequential amendments. As such, it was **AGREED to defer a decision on the consequential amendments relating to sequestration, but to introduce the necessary saving provision.** This would also allow time for consultation with, for example, Chief Master Marsh on any related changes.
32. The consequential amendments relating to fines imposed under the County Courts Act 1984 (formerly set out in Part IX of CPR Part 81, at CPR 81.36 to 81.38) were discussed in detail. Specifically, the rules relating to Attachment of Earnings and the need to preserve the former rules which apply generally to fines imposed under the 1984 Act.
33. For the proposals in relation to CPR 89.16(2) and CPR 34.7A, the alternative drafting suggestions were, respectively, preferred, whereupon it was **AGREED:**
- CPR 89.16(2) shall be, 'If a person has failed to comply with an order under section 14(1) Attachment of Earnings Act but can demonstrate any reason why they should not be (or should not have been) fined for failure to comply with the order, the court may direct that any information required by the order be provided by witness statement, affidavit or otherwise.'
 - CPR 34.7A shall be, 'If a person has failed to comply with an order under section 55 of the County Court Act 1984 but can demonstrate any reason why they should not be (or should not have been) fined for failure to comply with the order, the court may direct that that person give evidence by witness statement, affidavit or otherwise.'
- (Part 70 contains general rules about fines imposed under the County Courts Act 1984)
34. The drafting proposals to amend CPR 89.17(4) and CPR 70.1A were, respectively, **AGREED without modification.**
35. The five new forms were discussed in detail, which resulted in various stylistic and language changes being made. The following was **AGREED:**

- The five new forms are:

N600 Contempt Application
N601 Summons under rule 81.6(3)
N602 Warrant to Secure Attendance at Court under rule 81.7(2)
N603 Order under rule 81.9
N604 Warrant of Committal under rule 81.9

- Practice Direction 4 (the PD which deals with court forms) will be updated, as drafted, to replace the references to the existing 25 forms associated with the old Part 81 with the five new, bespoke, forms.
- The new forms and the update to PD4 should be in place for/on 01 October 2020 (along with the reformed CPR Part 81). However, if due to administrative reasons, the new forms are not in place by 01 October, the legacy forms – or a varied version - can be used in the interim and this is provided for by CPR 4(1) & (2).

36. **Action:** Sub-Committee & Drafting Lawyers - Outstanding consequentials relating to the reformed CPR Part 81 Contempt of Court changes, to include Sequestration and rules 89.8 (Failure by Debtor) & 89.9 (Suspended Committal Order) under CPR Part 89 Attachment of Earnings, are to return to the CPRC no later than December 2020, for consideration in readiness of inclusion (if necessary) in the next mainstream SI/Update.

Item 6 Any Other Business:

Costs Sub-Committee

37. Mr Justice Birss gave a brief update to advise that the Costs Sub-Committee has recently met to plan their work programme, following receipt of various topics from recent CPRC meetings and the Lacuna Sub-Committee referrals. One specific action that is being timetabled in for the Autumn/Winter CPRC is a review of PD51X Costs for Summary Assessment Pilot and the spreadsheets for summary assessment ie forms N260A/B.

Renting Homes (Wales) Act Sub-Committee

38. Richard Viney gave an update to explain that this matter had been in abeyance for some time, but the Welsh Government is now pressing ahead with plans to implement in 2021 and as such, it is expected to form a reasonably substantial element of the Winter CPR SI. Much of the drafting is cast, but needs to be reviewed by the Sub-Committee before returning to the CPRC, along with related changes to court forms.

39. One aspect of drafting requiring a steer, is whether to use, 'will' or, 'must' and this was discussed. It was **AGREED** to use, 'must' for the new provisions and although that may present some inconsistencies across the rules more broadly, this was considered reasonable in these circumstances, given that these new provisions comprise a self-contained change and time was not available to conduct a wholesale review and redraft of other parts of the rules.

40. **Action:** Secretariat/officials/sub-committee – matter to return in October/November 2020.

Breathing Space

41. Andrew Currans provided a brief overview of the, 'Breathing Space' initiative, explaining that it was essentially a Debt Respite Scheme, accessed via a professional Debt Adviser. The intention was that it would be in place from May 2021. The policy is being led by HM Treasury and the Regulations are only currently in draft form, so it was not yet clear how it would sit within the CPR.

42. The Chair observed that the critical question for consideration is whether a standalone PD can be drafted or whether a potentially significant and wide-ranging suite of changes will be necessary across the CPR.
43. **Action:** (i) Secretariat to timetable item in for future discussion (October) (ii) Drafting lawyers to enquire with HM Treasury as to whether the draft regulations can be shared in advance.

Insolvency Proceedings PD Update

44. The Secretary advised that an Insolvency PD Update (drafted by the Insolvency Rules Committee and approved by the Chancellor of the High Court) has been made to primarily deal with a range of measures for insolvency practice under the Corporate Insolvency and Governance Act 2020 and others in response to the immediate Covid-19 emergency. Provisions include a process by which a winding up petition will remain private unless and until a judge has decided that inability to pay the debt on which the statutory demand is based is not as a result of the current pandemic, including a pre-trial review and preliminary hearing. The PD also contains a range of reforms to corporate governance and insolvency following a major consultation in 2017; the response to which was published in August 2018. **Action:** Secretariat to email members link to the PD.

RTA (Whiplash) Portal Reforms

45. HHJ Bird gave a brief update which reiterated the expectation for this item to be back before the committee from October and through to December, in order to meet the Ministerial implementation timetable of April 2021. **Action:** Secretariat to allocate time to the October, November and December CPRC meetings.

Next Meeting

46. The Chair raised the matter of venue for the ensuing cycle of meetings. With Covid-19 lockdown restrictions easing, it was considered preferable for the CPRC to return to holding physical meetings (at the Rolls Building courthouse) where it is safe and practicable to do so. A hybrid approach whereby some members met in person and others attended remotely, may also be an option for a transitional period. The position would be kept under review and confirmation provided in advance of the next meeting on 09 October 2020. **Action:** Secretariat and Judicial Office to investigate, arrange and advise.

Closing Remarks

47. The Chair noted that this was Richard Viney's last meeting as a substantive member of the CPRC, because he will reach his maximum term of office in August. Tribute was paid to Mr Viney for his fantastic work over the last six years as a barrister member of the CPRC; he had made a real contribution and would be very much missed. It was, however, pleasing to note that his Sub-Committee involvement would continue until those important matters had been concluded. Mr Viney replied to express his thanks for what he felt had been a truly enjoyable and productive period on the committee.

C B POOLE
July 2020

Attendees:

Nicola Critchley, Civil Justice Council
Carl Poole, Rule Committee Secretary
Amrita Dhaliwal, Ministry of Justice

Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Alana Evans, HM Courts & Tribunals Service
His Honour Judge Lethem
Master Dagnall
Mr Justice Robin Knowles CBE (for Items 2 & 3)
Marcia Williams, Ministry of Justice (for Items 2 & 3)
Mark Lambert, Ministry of Housing, Communities & Local Government (for Items 2 & 3)
Mark Nicholas, Ministry of Housing, Communities & Local Government (for Items 2 & 3)