



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 6 July 2020

Present:

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
Dylan Jones	Solicitor
Fiona James	Lay Magistrate
Melanie Carew	Cafcass
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from the President of the Family Division and Rob Edwards.

MINUTES OF THE LAST MEETING: 8 JUNE 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 the Actions Log had been streamlined and that only issues not scheduled for discussion during each meeting would be reflected.

MATTERS ARISING

Legal Bloggers (guidance during coronavirus)

- 4.1** HMCTS reported that operational staff have already been asked to record the type of hearing on the court list, (e.g phone, video link) and to provide a contact for media or legal blogger enquiries. The Open Justice Team has been asked to approve a variation of the wording adopted by the court in Reading.
- 4.2** The Committee were concerned about the additional pressure this could introduce for court staff during a period when resources are already challenged.

ACTION

To return to the Committee under matters arising for an update in October

Pension Sharing Orders

- 4.3** MoJ Policy referred to an item discussed at the March FPRC where one of the parties failed to serve a pension sharing order (PSO) on the pension scheme Trustees, the scheme member withdrew the funds and the MoJ had to compensate the disappointed beneficiary. A paper detailing this issue was sent to the Pension Advisory Group and a response has now been received. MoJ Policy said that a number of other related issues will need to be unpicked and this work will need to be taken forward in conjunction with the Department of Work and Pensions. While DWP confirmed that they are content for the FPRC to make changes as necessary in the interim MoJ policy proposed that there should be a broader discussion about these issues and committed to provide a further paper for discussion at the December meeting.

ACTION

A joint MoJ/DWP paper to be brought back for the December FPRC meeting

Live broadcasting in the Court of Appeal

- 4.4** MoJ Policy said that the Court of Appeal Livestreaming SI has been signed and the pilot arrangements were now in place, but no family matters have yet been livestreamed. The Judicial Digital Group agreed that they would update the Committee if they know of any family cases that will fall under this matter.

ACTION

The Committee agreed that this issue can now be closed.

D81 Form

- 4.5** MoJ. MoJ Policy said that other commitments meant that they had not been available to progress this issue while the Divorce Bill concluded its passage through Parliament. However, they have now been able to look at some of the issues involved. There were two issues: information needed by the court in scrutinising consent orders and in particular being clear about the net impact of the proposed order if made, and a second related issue of how to collect data on financial settlements ordered by the court. Simply amending the D81 form would address the first issue but not the second. MoJ Policy said that the data collection issue was important as retrospective collecting of data from court files was time consuming, expensive and would not necessarily produce the range of data desired. Given the potential inter-relationship between the D81 form and the online financial remedy system (including the future operation of HMCTS bulk scanning processes) there were a

number of issues that need careful consideration. MoJ Policy asked the Committee to therefore consider whether they would like the D81 form amended now in isolation or to wait for the other issues to be further explored and built into the process. If the former, MoJ Policy suggested returning to this item in October.

- 4.6** Committee Members said that they were concerned that the D81 form currently does not assist the court easily and clearly to understand the net effect of making the consent order(s) in the form proposed by the applicant and respondent parties. Some concerns had been expressed previously at the Committee that the current form was not compliant with the law. Committee Members said that there was a backstop where they would highlight any ambiguities with Solicitors or Parties but this was seen to be an unsatisfactory use of time and an amended D81 would be a much better solution. MoJ Policy offered to set up a meeting with judicial colleagues to consider the concerns around compliance with the law and to take this forward over the summer months to ensure that this work could progress out of Committee for review in October.

ACTION

MoJ Policy to work with a small working group of Committee Members with a view to amending the form outside of committee.

STANDING ITEM: CORONAVIRUS RELATED ITEMS

a) CHILD ARRANGEMENT ORDER APPLICATION FEE REFUND SCHEME

- 5.1** MoJ Policy reported that there have been no identified refunds in the period 8 to 25 June. They said that the first official data run is due on 10 July but because of practice around data processing, it is possible that the first applications would not be reported until the following month.

ACTION

Update in October

PARLIAMENTARY BUSINESS

a) Divorce Bill

- 6.1** MoJ Policy said that the Divorce, Dissolution and Separation Bill completed its remaining Parliamentary stages on 18 June and received Royal Assent on 25 June. The intention is for MoJ to work towards autumn 2021 for commencement of the Bill's main provisions and although a full timetable still needs to be formulated, they said that they are confident of achieving this deadline.
- 6.2** MoJ policy said that they envisage that the bulk of FPR and PD amendments will be purely consequential on the provisions in primary legislation. However, they said that the Committee will need to consider how certain key elements of the revised procedure will work in practice and strands such as the revised online divorce service and opposite sex civil partnerships will also need to be considered.

- 6.3** MoJ Policy proposed that the Committee considers forming a working group to begin scoping the work necessary to take this forward. MoJ Policy invited the Committee's recommendations on the potential membership of this working group and committed to issue invitations to join following the meeting. MoJ Policy committed to return to the Committee with a full update on the working group in October and update on wider implementation planning in November.

ACTION

- 1. MoJ Policy to arrange for the working group to meet over the summer with a brief update to be provided in October**
- 2. To return as a full agenda item in November**

b) Domestic Abuse Bill

- 6.4** MoJ Policy reported that the Domestic Abuse Bill has now completed committee stage in the Commons, and as of today (Monday 6th) is entering Commons report stage.
- 6.5** In committee stage a new measure to the Bill was introduced to provide that all eligible homeless victims of domestic abuse will automatically have 'priority need' for homelessness assistance. The government amendments tabled for report stage seek to address four further issues:
- Extending the statutory definition of domestic abuse to include children who see, hear, or experience the effects of domestic abuse;
 - Providing for automatic eligibility for special measures for victims in civil and family proceedings;
 - Providing for a prohibition on cross-examination in person in civil proceedings; and
 - Provisions to address the so-called 'rough sex' defence by making clear that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim's death.
- 6.6** MoJ Policy reported that the primary provisions in the Bill which will require FPR and PD changes will be: provisions for the new domestic abuse protection order (DAPO); provisions prohibiting cross-examination in person in the family courts, and the amendment tabled to extend these provisions to the civil courts; and provisions providing for automatic eligibility for special measures to victims of domestic abuse. The Committee may also have an interest in some other provisions in the Bill, including the new statutory definition of domestic abuse, and the newly created role of the Domestic Abuse Commissioner.
- 6.7** MoJ Policy reported that the provisions in the Bill requiring FPR changes will not be coming into force on Royal Assent but will be brought into effect through commencement regulations made by the Lord Chancellor. The Bill team will continue to update the Committee on expected timings as the Bill moves through the House of Lords to allow the Committee to draw up a plan for prioritising their workload.

ENFORCEMENT OF FINANCIAL REMEDY AWARDS CONSULTATION UPDATE

- 7.1** MoJ Policy said that the consultation was sent out on 28 June and is due to close on 28 August and that two responses have already been received. MoJ Policy thought these to be a strong set of proposals and thanked the working group for all their help to date. They also said that they intend to use the working group to review the consultation responses and intend to return to the Committee in November with proposals from the consultation and a draft set of rules.
- 7.2** MoJ Policy raised the issue of court forms and the associated guidance and said that they envisage that these will form a large part of the project.

ACTION

To return as a full agenda item in November

DEED POLL NAME CHANGES

- 8.1** MoJ Policy spoke to the issue introduced to the Committee at the March FPRC meeting and following concerns regarding the continuing suitability of the enrolment of deeds poll arising from child name changes being enrolled by the Queen's Bench Division. The working group established by the CPRC to look at this issue have proposed that the existing (1994) regulations be amended to (among other things) enable applications for enrolment of deeds poll involving children's name changes to be referred to the family court and Family Division to enable relevant issues to be considered and to align with processes for name change applications heard by the family court under the Children Act 1989.
- 8.2** MoJ Policy said that the working group asked for the Committee to consider two options for amendment of the regulations. One option would be to require a family court order/decision before an application for enrolment of a deed poll to change a child's name could be made and would be subject to gatekeeping. This could apply in all cases involving a child or be limited to those in which there was disagreement between those with parental responsibility. The second option was that this should apply in a more limited category of case, namely cases where there is disagreement between those with parental responsibility. The Committee agreed in general that those cases which fell under option one should not go to court although the specific level of scrutiny required was still to be agreed on if there appears to be consent and where not.
- 8.3** The Committee also discussed who would be required to make an order and what form this would take. It was agreed that this could be along the same lines as consent orders in financial cases and would need to be issued according to resource and complexity of case. The Committee considered whether this could be identified through the safeguarding pathway although it was accepted that some level of streamlining of the system was required as there is no safeguarding letter included within the current process.
- 8.4** The Committee recognised that further work is still required and thought it would be helpful to have a summary to determine the types of cases involved to help inform decisions and this data could also help pinpoint whether there were any unintended consequences. MoJ Policy said that they would go back to QB Masters with the issues raised. It was pointed out that the QB Masters did not feel equipped to provide unequivocal data but would be able to

respond with some anecdotal information, however concerns that cases could slip through the net if action wasn't progressed quite quickly were accepted by the Committee.

- 8.5** The Committee agreed with the proposal that the responsibility for the work on the enrolment of deeds poll arising from child name changes should belong in the family court but were concerned that this be delayed recognising the views expressed previously by the President of the Family Division and the Master of the Rolls that some pace needs to be associated with this exercise. However, the Committee still felt that further data collection is required and a substantive timetable would need to be drawn up.

ACTIONS

MoJ Policy to work with the Civil working group to provide a timetable and further paper for presentation at the October FPRC meeting

STATUTORY INSTRUMENT: Contempt of Court Rules CPRC Reform Project

- 9.1** MoJ Policy said that following full discussion on this item at the June FPRC meeting, work had been undertaken by the FPRC Contempt working group to unpick some of the areas which the working group propose should be reflected in the Family Procedure Rules and therefore considered further by the Civil Procedure Rules Committee. Two versions of the draft rules were presented for the Committee's consideration. The first was a version of the Civil Procedure Rules Part 81 with only the necessary amendments to numbering and for the difference in structure between civil and family courts; and the second incorporated three additional changes from the CPR version (mainly reproducing provisions presently in FPR PD 37A). The Committee asked whether any reference to cross referencing jurisdictional issues could be amended accordingly.
- 9.2** MoJ Legal asked the Committee to consider three options – to adopt the modest additional changes now; to proceed with only the bare minimum of changes necessary for alignment with family structures; or to proceed with the “bare minimum” approach but have the additional provision in a practice direction. All of these options could be carried through in accordance with the timetable for a July SI coming into force in October. The Committee expressed some disappointment that the Civil Procedure Rule Committee had not taken these changes on board and the Acting Chair said that she would speak to her opposite number in the Civil Procedure Rule Committee for a definitive stand-point. The Committee also asked for confirmation that the matter on the level of Judge had been considered and finalised.
- 9.3** The Committee agreed that consistency across the civil and family Rules would be preferable and said that this would make matters easier when judges are sitting in courts under different jurisdictions. The Committee therefore supported adopting the CPR Contempt Rule in full, with necessary structural changes to apply in the family court. The Committee also agreed that the three areas raised – (a) the principle that whilst the court may not compel the respondent to give evidence, the court can require the defendant to give advance warning if they will be submitting evidence, and ask the defendant to give information on what that will contain; (b) that on directions for hearing of contempt

proceedings it should be made clear that the court can waive any procedural defect if satisfied that no injustice has been caused; and (c) on hearings and judgments, that provision will need to be made for when cases will be struck out or amended – were all worthy of inclusion.

- 9.4** MoJ Policy said that there is a further option which the Committee may wish to consider. That would be to mirror and introduce the Civil Rule drafted to include the changes necessary to reflect the difference in structure between the Family and Civil Courts and to review how these are managed in six months. The Committee considered this but said that a Practice Direction would help to improve clarity and opted to follow that route.

ACTION

- 1. The Acting Chair to contact the Civil Procedure Rule Committee for confirmation on the three additional points for inclusion in the rules**
- 2. MoJ Policy to produce final version of the rules for a July SI and practice direction**
- 3. Return to Committee in November for an update**

HARM PANEL REPORT

- 10.1** The Deputy Director of Family Justice Policy spoke to this issue and said that the Harm Panel Report which was published on 25 June made a series of recommendations which ranged from fundamental overhaul of the family courts to further research. These included an investigative approach as part of its pilot of Integrated Domestic Abuse Courts (IDACs); special measures to amend the Domestic Abuse Bill to provide automatic eligibility for victims of domestic abuse in the family courts; a review of parental contact to ensure that the right balance between the child's right to a relationship with both parents, and the welfare of the child and any vulnerable parents is sought although scoping of this work is still to be determined; and Independent Domestic Violence Advisors (IDVAs) accompanying parties in the courtroom. He also raised the issue of s91(14) Children Act 1989 and the use of CA 1989 applications as a means of coercive control and that this being worked on with DfE colleagues and will come back to the FPRC if there are any implications for the FPR/PDs. The Deputy Director of Family Justice Policy said that the FPRC work on the 'voice of the child' will be incorporated into thinking moving forward.
- 10.2** The Deputy Director of Family Justice Policy said that work to prioritise and oversee implementation of the report recommendations will be led by a steering group under the auspices of the Family Justice Board. A further update will be provided for the Committee at the next meeting.

ACTION

Return to the Committee at the October meeting.

ARRANGEMENTS FOR SERVICE OF SPECIFIED ORDERS

- 11.1** MoJ Policy spoke to this issue and referred to the interplay between Part 6 (Service) of the Family Procedure Rules 2010 (FPR), which determines how applications and orders made in family proceedings may be served, and Part 10 (Applications under Part IV FLA 1996), which

makes specific provision for the personal service of non-molestation orders and occupation orders, and to the MoJ conclusion that the Part 10 provisions on personal service could not be overridden by Part 6. MoJ Policy also referred to contrasting analysis which concluded that the terms of r.10.6(1) FPR are not insulated from the effect of r.6.19, and that where courts have good reason to do so, service of non-molestation or occupation orders may be ordered to be made by alternative means. This lack of clarity will need consideration and MoJ Policy asked the Committee to consider amending the provisions to put the intended position beyond doubt.

- 11.2** MoJ Policy noted that some courts are directing means of service other than personal service, such as service by email or text. The CPS have advised that prosecution decisions for breach of a non-molestation order do not hinge on there having been personal service, but decisions on means of service could undermine enforcement if there is any resulting doubt that the respondent knew about the order.
- 11.3** HMCTS reported that personal service by court bailiffs was expected to resume on 10 July. The Committee said that the burden on bailiffs should be acknowledged and were concerned that they would meet a backlog on their return. HMCTS said that Bailiffs will not be undertaking wider duties (including execution of warrants) until 24 August and would have the capacity to prioritise service of Part 4 FLA 1996 applications and orders until then.
- 11.4** The Committee agreed that current circumstances demanded that alternatives to personal service for Part 4 FLA 1996 applications and orders needed to be provided for, and the impact tested. MoJ Legal suggested that rather than make changes by a Rule change that consideration be given to introducing a solution via a Pilot Practice Direction (to apply only to Part 10 FPR), noting that the exact wording for this would need to be developed following close consultation with the Crown Prosecution Service. The Committee agreed with this action and asked whether an early introduction would be possible.

ACTION

- 1. MoJ Policy and Legal to work with members out of Committee to produce a pilot Practice Direction as soon as possible. The pilot is to expressly state that the court may direct a means of service other than personal service for Part 4 FLA 1996 orders. The pilot is to run for 9 months.**
- 2. To return to the October meeting as an update**

CALDERBANK OFFERS UPDATE

- 12.1** MoJ Policy confirmed there is a meeting with Resolution in the week commencing 6 July 2020 with a view to encouraging data collection from their members regarding the possible impact on lower money cases of introducing provision for Calderbank offers to be taken into account at costs stage. But it is recognised that Resolution's members' resource has been stretched recently so it is not clear how soon responses could be received.
- 12.2** The Committee reminded everyone that the new costs rules came into force on 6 July

ACTION

Back to the Committee as a full item in November

DISTRIBUTION OF BUSINESS RULES: AMENDMENTS

- 13.1** The Committee asked whether fuller consideration of this issue could be taken forward at a later date after MoJ Policy have the opportunity to consider the guidance drafted by Sir James Munby (28.02.18).

ACTION

Back to the Committee as a full item in November with a revised paper considering 28 February 2018 guidance

JUNE PRACTICE DIRECTION AMENDING DOCUMENT

- 14.1** MoJ Policy confirmed sign off of the June PD document which contained provisions to modify existing PD36J to extend the expiry date for a pilot project allowing legal bloggers to attend family hearings held in private; to amend existing PD36K to allow for the third-party scanning of further types of private family law applications; to modify existing PD36O to allow courts to send documents received at court to a third-party scanning provider; to insert new pilot PD36S which will temporarily suspend the requirement for announcing certain orders in open court; to insert new pilot PD36T to test the mandatory use of an online system for financial remedy consent orders in divorce cases, where applicants are legally represented; and to modify existing PD41A allowing online divorce applications to continue to progress online, even where a respondent/co-respondent files a paper acknowledgement of service.

a) Draft consultation questions - Announcing certain orders in open court

- 14.2** MoJ Policy sought the Committee's view on the proposed consultation questions relating to the Committee's decision to suspend the requirement to announce certain matters in open court (as contained in PD12K paragraph (1) and PD10A paragraphs 3.1 and 3.2). The consultation will run for four weeks and will be sent to all those on the FPRC stakeholder list.
- 14.3** The Committee were content with the proposed way forward but asked whether an additional question could be added to ask if there were any other safeguarding steps that might be more useful than an announcement in open court.

ACTION

To return to the Committee in October for final sign off of the consultation

CIVIL PROCEDURE RULE COMMITTEE AND FAMILY PROCEDURE RULE COMMITTEE LINK CPRC Vulnerable Parties and Witnesses Working Group

- 15.1** MoJ Policy spoke to the issue where the CPRC has established a working group to consider the recommendations arising from the CJC report into Vulnerable Parties and Witnesses Working Group. Initial analysis by the CPRC subcommittee has identified the need to consider the merits of amending the overriding objective in the CPR to place an increased emphasis on the inclusion of vulnerable people, and also the potential insertion of new Rules and Practice Directions to this effect. The CPRC subcommittee is referring to FPR Part 3A and PD3AA as primary resources for this work.
- 15.2** MoJ reported that the CPRC working group had not progressed significantly to provide a substantive update but FPRC secretariat would continue to liaise closely with their CPRC counterparts over the Summer and provide a further update in October 2020.

ACTION

Update at the October Committee meeting

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

Upcoming PD Amendments

- 16.1** MoJ Policy asked the Committee to consider the updated priorities table. The Committee were then updated on a number of PD amendments which they envisage inviting the President to make, and the Minister to approve, in two PD amending documents anticipated for submission in (a) mid-July and (b) early September. The Committee were content with the proposals.

Protection Order Pilot Mailbox

- 16.2** MoJ Policy reported that the proposed new email system to notify police forces of FGMPOs and FMPOs is not ready to go live and so the Committee's view is sought as to whether the current pilot could be extended until 26 October. The Committee agreed with this proposal

ACTION

MoJ Policy to take steps to ensure that the PD is extended as agreed

OCTOBER 2020 AGENDA

- 17.1** October agenda to be amended to reflect comments and additions from the July meeting.

ANY OTHER BUSINESS

a) FPRC Open Meeting

- 18.1** The Committee were reminded that the next open meeting will take place on 16 November 2020. The arrangements for coordinating and managing attendance at this meeting will be

developed over the summer. It was anticipated that this meeting would be conducted virtually via MS Teams.

b) Dates and timings for future FPRC meetings

18.2 The Committee asked whether meetings could start at 10:30am while they are being carried out remotely as travelling arrangements do not need to be built into the timetable

DATE OF NEXT MEETING

19.1 The next meeting will be held on Monday 5 October at 11.00am via Microsoft Teams.

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July 2020
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