



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**Via Microsoft Teams**  
**At 11.00 a.m. on Monday 5 October 2020**

**Present:**

<b>Mrs Justice Theis</b>	Acting Chair
<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>District Judge Suh</b>	District Judge
<b>District Judge Gareth Branston</b>	District Judge
<b>District Judge Anna Williams</b>	District 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>Melanie Carew</b>	Cafcass
<b>Bill Turner</b>	Lay Member

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1** The Acting Chair welcomed the Committee back from the Summer recess.
- 1.2** Apologies were received from the President of the Family Division, Lord Justice Baker, Dylan Jones and Rob Edwards.
- 1.3** The Acting Chair announced that the President of the Family Division is back at work and making a phased return to full duties.

## **MINUTES OF THE LAST MEETING: 6 JULY 2020**

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

## **ACTIONS LOG**

- 3.1** The Acting Chair said that the Actions Log has been streamlined as discussed in July and that immediate agenda items are detailed for later discussion at agenda item 15.

## **MATTERS ARISING**

## **Minutes** – Family Procedure Rule Committee 5 October 2020

## **Legal Bloggers (guidance during coronavirus)**

- 4.1** MoJ Policy said that in reference to the point raised in July, all courts have been asked to add information to court lists about how the media and legal bloggers can contact the court.
- 4.2** MoJ Policy noted that the issue will come back as a full agenda item in November but in the meantime, informed the Committee that a question for the open meeting has already been submitted by the Transparency Project.

### **ACTION**

**To return as a substantive issue in November**

## **Child Arrangement Order Application Refund Scheme**

- 4.3** MoJ Policy said that four orders permitting withdrawal of applications were made over July/August, which will result in fee refunds. The intention is to undertake a light touch review but with a recommendation that the profile be raised to overcome the issue of low numbers which could be attributed to local lock-downs and the Coronavirus pandemic. It is also envisaged that there will be lower uptake in the Christmas run-in.
- 4.4** The Acting Chair thought that some progress could be made by plugging into the work being undertaken by Mr Justice Cobb's smaller implementation group.

### **ACTION**

**MoJ Policy to contact Mr Justice Cobb to see whether his group's work will help to bolster the low figures.**

## **Deed Poll name changes**

- 4.5** MoJ Policy said that no progress has been made as the Civil Procedure Rule working group have been unable to find a time to meet. The Civil Procedure Rule Committee Secretariat are looking to set up a date for the working group to meet and will update the Committee accordingly.

## **PARLIAMENTARY BUSINESS**

### **Domestic Abuse Bill update**

- 4.6** MoJ Policy reported that the DA Bill has now completed all Bill stages in the Commons and was introduced into the Lords shortly before summer recess. The date for second reading is not yet known.
- 4.7** MoJ Policy said the provisions in the Bill that are most likely to require FPR and PD changes will be: provisions for the new domestic abuse protection order (DAPO); provisions prohibiting cross-examination in person; and provisions providing for automatic eligibility for special measures to victims of domestic abuse. The provisions for the new DAPO and

around the prohibition against cross-examination in person are likely to be significant pieces of work, as these will require new rules to be drafted. New rules relating to provisions around special measures are not expected but some minor amendments to existing rules may be required. The Committee asked for clarification and thought be given to hybrid hearings that take different forms when looking at the work on the implementation of special measures.

- 4.8** MoJ Policy said that they intend to return to Committee when a clearer view of the expected legislative timetable and the subsequent implementation timetable is known. In any event, Committee work will be implemented around that being taken forward by the divorce team to assist the Committee.
- 4.9** MoJ Policy said that a further update will be provided for the Committee once a clearer view of the expected time-frames for the remaining parliamentary stages of the bill is known.

#### **ACTION**

**MoJ Policy to consider a point raised on the use of special measures where there are hybrid hearings**

#### **Divorce, Dissolution and Separation Act 2020**

- 5.1** The Acting Chair thanked MoJ Policy for the work undertaken and for confirming that the FPRC Divorce Working Group would consist of a number of members from the judiciary, as well as a barrister member, solicitor member and policy and legal colleagues from MoJ and HMCTS. The working group will consider the detail and report back to the FPRC as appropriate. The first meeting of the working group has been arranged for 15 October 2020.
- 5.2** The Committee recognised that the Working Group would provide wide experience. On invitation, it gave some initial steers in relation to the structure of procedure rules relating to divorce in Part 7. It was suggested consideration also be given to inviting an academic to join the Working Group.
- 5.3** MoJ Policy further asked the Committee whether there were any points it wished the Working Group to note in respect of two issues. The first was in relation to service and the operation of the new 20-week minimum period between the start of proceedings and application for the conditional order. The second concerned procedure for joint applications. MoJ policy outlined to the Committee the substantive issues in respect of service and joint applications.
- 5.4** The Committee asked that the Working Group note a number of points in respect of service and joint applications. MoJ policy confirmed it would pass these points onto the Working Group for its consideration.

- 5.5** MoJ Policy thanked the Committee for their comments and said that the intention is to now convene a first meeting of the Working Group followed by a number of further meetings prior to the Committee's November meeting. Following these meetings of the Working Group, it is anticipated that amended proposed rule changes and an amended draft consultation paper will be brought to the Committee for consideration before the end of the year. The Committee agreed to these next steps.

## **ACTION**

**MoJ Policy to return with an update at the November meeting.**

## **STANDING ITEM: CORONAVIRUS RELATED ITEMS**

### **a) Review of pilot PDs made to respond to Coronavirus**

- 6.1** MoJ Policy asked the Committee to consider whether to recommend that the President and Minister extend the expiry date of two existing pilot Practice Directions (PD36Q and PD36R) made in response to coronavirus. The extension of these Practice Directions was recommended by MoJ to enable ongoing flexibility to assist the family courts in facing the severe pressures created by the pandemic over the coming months. PD36Q modified PD12B to provide temporary local flexibility over procedures for progressing applications for Child Arrangements Orders. PD36R modified three existing Practice Directions - PD2C, PD5B and PD12C
- 6.2** MoJ Policy put forward two options. The first was to allow the Committee to keep the impact of these measures under regular review by extending the current expiry dates of pilot PDs 36Q and 36R from 30 October 2020 to 31 March 2021. The second option was with an aim of offering longer-term flexibility over the application of these measures by extending the current expiry dates of pilot PDs 36Q and 36R to mirror the duration of the Coronavirus Act 2020, with the option of bringing them to an earlier conclusion if necessary, by withdrawal of the PD(s). The basis for this extension recommendation relies both upon feedback and data from courts, but also notes that the factors necessitating the original pilots have not changed markedly since the pilots were initially agreed.
- 6.3** The Committee favoured option one. The view was that it was important to keep a handle on the situation and this could be managed by improved evaluation methods. The Committee said that it could consider this evaluation in March and consider if any further extension were needed.
- 6.4** The Committee asked whether some work could be undertaken by the advisory group that sits under the Family Justice Board to look at the issue of transparency and publication of local practices developed under the pilot PDs and measuring their impact. It was also noted

that Mr Justice Cobb's Private Law Working Group are looking at emergency measures and it was recommended that contact be made with that Group too.

#### **ACTION**

- 1. The Acting Chair to contact Mr Justice Cobb and report back to the Committee - MoJ to feed the Committee's views to the FJB Advisory Sub-Group.**
- 2. Impact of pilot PDs to be evaluated with a report back to the Committee at the March 2021 meeting.**

#### **PD36S – CONSULTATION ON REQUIREMENTS IN PD10A and PD12K FOR ANNOUNCEMENTS IN OPEN COURT**

- 7.1** MoJ Policy noted that earlier this year it was raised as a concern with the Committee that, because of the lack of open court sessions during the coronavirus crisis, it was not possible in many areas to comply with the requirements in Practice Direction 10A and Practice Direction 12K to announce certain orders in open court. To resolve this issue, the Committee had recommended to suspend, on a pilot basis, certain requirement to announce in open court. The Committee determined to undertake a consultation in autumn 2020 to gather stakeholder views on whether the suspended provisions within PD10A and PD12K should be retained, which will later inform a decision about whether to make longer term amendments to these requirements.
- 7.2** MoJ Policy put a draft consultation document to the Committee. The Committee agreed with the consultation and additional question as drafted and approved the action of sending it out to all those on the FPRC stakeholder list

#### **ACTION**

- 1. Consultation to be issued to FPRC stakeholders.**
- 2. To return to the Committee for an update in November and then as a full agenda item in December**

#### **CONTEMPT OF COURT REFORMS UPDATE**

- 8.1** MoJ Policy reported that the SI is now in force which led to discussion on whether new FPR requires a penal notice to be attached to an undertaking (as opposed to an order) or not. The Committee noted that the template standard orders will retain a penal notice on both undertakings and orders; and whether there are to be any new standard forms to accompany new Part 37 FPR, with concerns being expressed that the standard (Part 18) application notice would need a lot of information added to it to comply with new r37.4. MoJ said that they would look into this with the CPRC Secretariat.
- 8.2** MoJ Policy reported that at the July FPRC meeting members of the Committee were keen that the FPRC address the question of whether changes should be made to the level of

judge presiding over contempt cases in family proceedings. This followed concerns raised by Committee members on dealing with challenging cases.

- 8.3** MoJ Policy said that the Family Court (Composition and Distribution of Business) Rules 2014, (Rule 17.5) governs the level of judge that can hear contempt (or committal) proceedings. The Rules are made by the President of the Family Division and agreed by the Lord Chancellor. Matrimonial Family Proceedings Act 1984 section 31D requires the Committee to be consulted before any amendments are made to those Rules. The Committee were informed that this consultation will be undertaken with the Contempt Working Group and will be brought back to the Committee in either November or December.

#### **ACTION**

- 1. Secretariat to discuss forms to support the new rule with the contempt working group.**
- 2. Further update to be provided in November pending progress.**

#### **UPDATE ON CALDERBANK OFFERS (ENGAGEMENT WITH ADDITIONAL FIRMS)**

- 9.1** MoJ Policy reported that, following Committee and Working Group discussions relating to a possible reintroduction of rule provision relating to Calderbank Offers, Resolution agreed to consult with its members on whether such rules might have an adverse effect on litigants in person, cases involving domestic abuse and lower-value cases. Resolution members were sent a further consultation with questions on those areas which the Committee felt needed further investigation.
- 9.2** The Committee agreed that, once the views of Resolution members were received, the Working Group should be asked to consider the responses, then provide the committee with a recommendation. The Committee also agreed that the updating paragraphs from Financial Remedies Practice on the amended PD28A para 4.4 should be sent to the Working Group for their consideration.

#### **ACTION**

**The FPRC Secretariat to send the response from Resolution and the updating paragraphs of Financial Remedies Practice to the FPRC Costs Working Group and update the Committee in November.**

#### **FGM AND FORCED MARRIAGE PROTECTION ORDERS UPDATE**

- 10.1** MoJ Policy noted that progress has been made on developing a new police automated mailbox to gather and disseminate FMPOs and FGMPOs to relevant local police forces. Key elements of the new progress for court staff will include the use of a template form that court staff will fill out and send to the centralised mailbox. MoJ Policy said that it is hoped to have the system up and running soon but as an interim, discussion is continuing as to whether the current pilot should be extended if the new system isn't in place by 31 October.
- 10.2** MoJ Policy said that they will keep updating the Committee as progress is made.

## **OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

### **a) Justice Report into the accessibility of Procedure Rules**

- 11.1** MoJ Policy said that the Criminal Procedure Rule Committee has raised a set of recommendations which came out of a JUSTICE report 'Understanding courts', published in January 2019. It proposed that Procedure rules should be made more accessible for non-lawyers and that a review should be undertaken accordingly. The Committee were asked to consider whether they should also engage in a review of the rules, and the relative priority and timing of this work, noting current resource pressures and the future impact of legislation on the current Rules.
- 11.2** The Committee agreed that the task of undertaking a wholesale review was too great especially bearing in mind the number of issues the Committee are dealing with. Some members supported the idea of having "summaries" of each Part, as the Criminal Procedure Rules are to have, but others questioned the need for this when there are already other sources of such information, such as that already published by the Transparency Project.
- 11.3** MoJ Policy reported that the Civil Procedure Rule Committee were not considering undertaking this exercise of adding summaries. It was agreed that officials should look into the possibility of providing links to information already available online, but it was noted that this may not be appropriate. The matter will be considered further at the December meeting.

**ACTION: MoJ to look into the FPR website including links to existing information online.**

### **b) Information sharing between Criminal and Family Courts**

- 11.4** MoJ Policy reported that the Criminal Procedure Rule Committee had recently discussed revising the protocol and rules for information sharing between family and criminal courts following the case of Re H. MoJ are to consider the issue further but sought any initial views from the Committee about making mirroring provision in the FPR. The Committee did not express any initial views but noted that this was also an issue discussed with Mr Justice Cobb's advisory group.

## **ACTION**

**To return for an update in December**

## **PENDING AMENDMENTS TO PRACTICE DIRECTIONS AND NEW PRACTICE DIRECTIONS**

- 12.1** MoJ Legal spoke to the table setting out all pending amendments to, or new, Practice Directions. The Committee agreed with the practice adopted to date which would mean that the detail on pilot PDs would not come to the Committee, although the Committee would be kept informed of developments. It was agreed that the detail of a planned new (non-pilot) PD on e-filing in appeals in the High Court need not come to the full Committee,

given the expert input being given separately by Cohen J and colleagues in the High Court appeals office. The Acting Chair thanked MoJ Legal for providing a clear path forward on PD amendments.

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

- 13.1** MoJ Policy introduced the table and explained that it had been divided into tiers to reflect priority.
- 13.2** The Acting Chair noted that as one of the items on the table related to the work of the FPRC Brexit Working Group and proposed that a meeting of that body should be convened to discuss the latest position.
- 13.3** The Committee also raised the matter of the Voice of the Child Working Group and suggested that progress on this matter be reflected to dovetail with the recent release of the Harm Panel report and the work being undertaken by the Private Law Working Group. The Committee agreed that an update should be provided in November with a further agenda slot to be tabled for February 2021.

## **ACTION**

- 1. FPRC Secretariat to arrange a meeting of the FPRC Brexit Working Group**
- 2. 'Voice of the Child' update to be provided in November**

## **FORMS**

- 14.1** MoJ Policy updated the Committee that this will be part of an ongoing agenda item giving a short update on the forms work continuing out of Committee. A meeting of the FPRC Forms Working Group will be convened to discuss the issues raised in greater detail.

## **NOVEMBER 2020 AGENDA**

- 15.1** The November agenda will be amended to reflect comments and additions from the October meeting.

## **ANY OTHER BUSINESS**

### **a) Update on current applications for attendance for the FPRC Open Meeting**

- 16.1** MoJ Policy said that thirteen applications had been received with a closing date for applications of 6 October. The meeting will be undertaken via MS Teams.

### **b) FPRC recruitment**

- 16.2** MoJ Policy said that the successful candidate for the Solicitor member of the Committee will attend the next meeting in November and that induction measures have been put in place.



- 16.3** The process for the recruitment of three new practitioner members of the Committee is in progress and it is expected that appointments for these posts will be made early in 2021 with the expectation that they will attend the February 2021 FPRC meeting.
- 16.4** The President of the Family Division sent his thanks to Michael Horton, Will Tyler and Dylan Jones for extending their tenure on the Committee while the recruitment campaign is in progress.

#### **DATE OF NEXT MEETING**

- 17.1** The next meeting will be held on Monday 16 November with an earlier start time of 10.30am via Microsoft Teams.

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October 2020  
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