



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 14 December 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
Fiona James	Lay Magistrate
Michael Horton	Barrister
Michael Seath	Justices Clerk
Dylan Jones	Solicitor
Rob Edwards	Cafcass Cymru

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from Will Tyler QC, Melanie Carew, Tony McGovern and Bill Turner.
- 1.2** The Acting Chair announced that HHJ Roberts and Philip Waller have been invited to join the meeting for the discussion on the Divorce, Dissolution and Separation Act 2020
- 1.3** The Acting Chair said that this will be the final Committee meeting for Michael Horton, Dylan Jones and Will Tyler having all served two terms of office.
- 1.4** The Acting Chair said that Michael Horton's knowledgeable and reasoned approach applied to areas such as his input on the Costs Working Group and on the High Court powers to set aside have been most appreciated.
- 1.5** The Acting Chair said that Dylan Jones has worked hard on the Committee to ensure that progress has been achieved by both the Forms and Children's Working Groups and for the invaluable contribution he has made in ensuring that the Welsh perspective is fully covered. She added that Dylan was also the first to trial the remote working regime and has been directly involved in the

efforts to recruit the replacement practitioner members and was thanked for his significant contribution into this exercise.

- 1.6** The Acting Chair said Will Tyler has made valuable contributions to the work of the Committee, most notably on his membership of the working groups representing Closed Material Proceedings, EU Exit and the Voice of the Child. The Acting Chair added that Will Tyler's knowledge on specialist family law has enabled him to contribute greatly to the work of the Committee.
- 1.7** The Acting Chair thanked all three members for their hard work over the last six years on behalf of the President and the Committee.

MINUTES OF THE LAST MEETING: 14 NOVEMBER 2020

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

ACTIONS LOG

- 3.1** The Acting Chair referred to the latest version of the Actions Log.

MATTERS ARISING

Wash up from open meeting

- 4.1** The Committee were informed that a feedback questionnaire was sent out to those invited guests who attended the open meeting on 20 November, but we are yet to receive any replies. The Committee will be updated in February if any significant issues are raised from that exercise.

FGM and Forced Marriage Protection Orders Update

- 4.2** MoJ Policy reported that final arrangements remain to be made for the underlying data protection documentation. The December Practice Direction Update was sent to the President on 11 December inviting his approval and this will extend the current pilot for a further 6 months to 30 June, with a view to it being superseded as soon as the new arrangements can be put in place. The Committee will be updated further under matters arising in February.

Member recruitment update

- 4.3** MoJ Policy updated the Committee on the recent interviews for the new practitioner member. The interview panel has provided a report to the Lord Chancellor and if he is happy to proceed, he will consult with the President (on behalf of the Lord Chief Justice) at which point the appointments can be confirmed. The proposed timetable will mean that new appointees will be identified ahead of the February 2021 FPRC meeting.

Legal bloggers – context to 2018 PD

- 4.4** MoJ Policy reported that following discussion at the November meeting, concerning the safeguards necessary for the Legal Bloggers pilot, the Committee asked for extracts from the minutes relating to when the pilot was discussed in 2018. A paper detailing this information has been provided. MoJ Policy said that small working group who considered this issue in 2018 will be contacted and a

meeting arranged for them to report back to the Committee in May 2021 as stated in the draft November minutes.

- 4.5** The Committee were informed that the main safeguard built into the programme was that there should be registration with the President's office.
- 4.6** It was noted that the current pilot Practice Direction will be extended for a further year, as agreed at the November meeting, with the intention to include permanent rule provision in the autumn FPR amending Rules.

ACTION

MoJ Policy to arrange a meeting of the 2018 working group in the new year.

Inherent jurisdiction for cases relating to adults plans for timetabling

- 4.7** MoJ Policy reported that the plan is to bring this forward for the first substantive discussion at the April 2021 meeting.

December Practice Direction Update

- 4.8** MoJ Legal advised that a Practice Direction update had been sent to the President on 11 December. This contains amendments to various existing Practice Directions, including to PD36N (contested financial remedy online) which is amended to allow for legal representatives of respondents to access the online system. The Update also inserts a new Practice Direction (41C) to underpin new systems for e-filing in family appeals heard in the High Court. It also includes amendments to various Practice Directions to clarify when an application is lodged, or a document filed when it is submitted by email or via an online system. The Practice Direction Update also amends the transitional arrangements within the EU Exit Practice Direction Update from March 2020.

Mediation Vouchers

- 4.9** MoJ Policy reported that Ministers are interested in implementing a scheme to encourage court users to engage in mediation – there is a proposal for a temporary offer of a £500 contribution to mediation costs, to divert suitable private law cases from court.
- 4.10** MoJ Policy said that the current intention is to revert out of Committee to the President to invite him to approve a pilot Practice Direction in January. that a Paper will be circulated out of Committee for comment pending discussion at February Committee meeting, including on the impact on court forms and digital applications. The Committee were informed that Ministers are keen to implement the scheme by the end of February although timetable remains under review.

ACTION

[Scheduling Item] To return to the Committee for consideration in February

Deed Poll name changes

- 4.11** MoJ Policy reported that work on the drafting of new regulations and Practice Directions has begun but is not sufficiently advanced yet to share with the Committee. The plan remains to have necessary arrangements in place in April 2021 and a further update will be provided at the February Committee meeting.

EU settlement scheme update

- 4.12** MoJ Policy noted that MacDonald J had met with MoJ Officials concerning the disclosure of care orders to the Home Office by local authorities when assisting EU children in care/leaving care to apply for settled status under the EU Settled Status Scheme. Good progress had been made and the Home Office has confirmed that it is not necessary for care orders to be disclosed. A letter from the local authority will suffice. That being the case, amendment to PD12G will not be necessary.

PARLIAMENTARY ITEMS

Brexit Update

- 5.1** MoJ Legal reported on the status of the outstanding EU Exit statutory instruments. The first SI – the draft Jurisdiction, Judgments and Applicable Law (Amendment) (EU Exit) Regulations 2020, or ‘fixing SI’ – was approved in the Lords on 8 December having previously been approved in the Commons. The second is the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020 which was signed on 10 December. This is a negative statutory instrument, so no Parliamentary debates are needed
- 5.2** MoJ Legal reported that there is no definite report back on the UK’s request to join the Lugano convention although the provisions from Lugano to be placed back into the Family Procedure Rules was largely complete and a further update may be delivered in February.

DIVORCE, DISSOLUTION AND SEPARATION ACT 2020

- 6.1** MoJ Policy outlined that the Committee’s dedicated Working Group had met five times between October and November and had approved draft amendments to Part 6 and Part 7 as well as a draft consultation paper, with a view to these being endorsed by the Committee. MoJ Policy outlined that, if approved by the Committee, the consultation paper would be sent out by 18 December at the latest. MoJ Policy proposed that the consultation should last 11-weeks and would therefore close in March 2021. Subject to the consultation responses, it is envisaged the Committee will further consider any further revisions in April and May 2021.
- 6.2** The Committee was content with the proposed consultation timetable.
- 6.3** The Committee then considered in turn and in detail the Working Group’s key proposed changes to Part 6 (service of applications for matrimonial and civil partnership orders) and the relevant paragraphs of the draft consultation paper. The Committee endorsed the Working Group’s proposed amendments and draft new rules in Part 6, as well as the relevant paragraphs of the draft consultation paper.
- 6.4** MoJ Policy then outlined the Working Group’s proposed provision in procedure rules in relation to joint applications for divorce, dissolution and separation. The Committee then considered in turn and in detail the Working Group’s proposed rule changes in relation to joint applications and the relevant paragraphs of the draft consultation paper. The Committee endorsed the relevant draft new rules in Part 7 and the relevant paragraphs of the draft consultation paper.

- 6.5** MoJ Policy further highlighted that Part 7 has been re-structured into seven chapters with a view to providing a more logical flow and to make it clear which rules apply to standard and disputed cases prior to the making of the Conditional Order.
- 6.6** The Committee was content to endorse the re-structure of Part 7.
- 6.7** MoJ Policy reported that the Working Group considered the issue of costs in respect of divorce, dissolution and separation proceedings very carefully. However, the Working Group proposed that no costs rule changes be introduced now but was of the view that a further consultation on this specific issue may need to be considered after assessment of the operation of current costs rules on implementation of the reforms under the Divorce, Dissolution and Separation Act 2020.
- 6.8** The Committee confirmed the desirability of issuing interim Guidance on costs should be further considered as part of the implementation plans.
- 6.9** The Committee was content to endorse the relevant paragraphs in relation to costs as set out in the draft consultation paper.
- 6.10** MoJ Policy outlined all other key changes to Part 7 proposed by the Working Group which the Committee endorsed, alongside the relevant paragraphs of the draft consultation paper.
- 6.11** The Committee agreed to the proposed questions as set out in the draft consultation paper, the draft consultation paper as a whole and draft amended Part 6 and draft amended Part 7 (attached to the draft consultation paper as Annex A and Annex B respectively).
- 6.12** The Committee also considered an additional point raised by the Working Group arising from s.10(2) MCA 1973 applications generally, which asked whether an automatic consequence of issuing a s.10(2) application (using Form B) should be that there be an obligation to file a Form A. The Committee were of the view that this matter should be considered further.
- 6.13** The Committee thanked the Working Group for all their hard work and commended those involved: Her Honour Judge Lynn Roberts (Chair), District Judge Anna Williams, District Judge Elisabeth Todd, Philip Waller, Gavin Smith (barrister member), Oliver Gravell (solicitor member), Professor Liz Trinder (academic member), and Policy and Legal colleagues from MoJ and HMCTS.

THE CIVIL PARTNERSHIP (OPPOSITE-SEX COUPLES) REGULATIONS 2019

- 7.1** Government Equalities Office (GEO) officials presented a paper in respect of changes to the Family Procedure Rules arising from the introduction of conversion rights from opposite-sex marriages to opposite-sex civil partnerships. GEO are co-ordinating work across government to implement conversion rights for opposite-sex couples in England and Wales as per the proposals consulted on in 2019. The GEO plans to lay draft regulations before Parliament in spring 2021.
- 7.2** GEO said that if the Committee are content the next steps will involve speaking to MoJ Legal to provide further detail with a view to making the necessary consequential amendments to the FPR in regulations made under the 2019 Act, together with consequential amendments to a wide range of other primary and secondary legislation. It is expected that the FPR changes will be made in an instrument in Spring 2021.

STANDING ITEM: CORONAVIRUS RELATED ITEMS

- 8.1** No updates at present.

EMERGENCY RULE PROVISION

- 9.1** MoJ Legal reported that, further to discussion at the November meeting, the Civil Procedure Rule Committee had agreed (at their meeting on 4 December) to adopt the same wording for a new rule as the Committee had agreed in November. The intention is that the Rules will be laid before Parliament on 15 February 2021 and come into force on the common commencement date of 6 April 2021.
- 9.2** The Committee welcomed this news. The Committee asked if the reference in the draft new rule to “specified courts” would enable a PD to specify all courts and/or specific court locations. MoJ Legal confirmed that it would.
- 9.3** The Committee raised some detailed points on the drafting which MoJ Legal agreed to consider and revert to the Committee on before finalising the drafting of the rule.
- 9.4** The Committee agreed to proceed with amending the FPR to include a new rule for emergency situations (subject to clarification on points of detail raised) and agreed that this should be included in the next FPR amending statutory instrument, which on current plans will be laid before Parliament early in 2021.

ACTION

MoJ Legal to confirm wording in relation to the points made and prepare a draft ahead of the February FPRC meeting

ReNY: INHERENT JURISDICTION

- 10.1** MoJ Legal spoke to the issues which came out of the judgment of the UK Supreme Court (UKSC) in the matter of NY (A Child) [2019] UKSC 49 (Re NY). The UKSC considered paragraph 1.1 of PD12D, which states that the inherent jurisdiction should only be invoked where the issues “cannot be resolved under the Children Act 1989.” The UKSC indicated that this sentence was not an accurate reflection of the legal position. MoJ Legal said that in light of this view, it is obvious that paragraph 1.1 of PD12D requires attention and presented two options for the Committee’s consideration. The first was to consider a proposed amendment put by a Committee member, subject to changes to clarify that the position as stated has its origins in case law. The second option would be to remove the last sentence of paragraph 1.1 of PD12D which the UKSC found to be wrong in law.
- 10.2** The Committee agreed to adopt the first option. It was noted that para 8.5 of PD12D may also need amending and MoJ Legal agreed to consider this further and revert to the February meeting with draft amendments to PD12D. MoJ Legal noted the UKSC’s comments in relation to the legal force of Practice Directions. MoJ’s view is that FPR Practice Directions do have legal force, to the extent that their content is within that specified in the Courts Act 2003.
- 10.3** MoJ Legal also set out a further four issues relating to Re NY to PD12F and under which Committee consideration is required. The Committee were invited to consider a preferred way to proceed with

these matters and to put forward views on their relative priority within the Committee's work schedule. MoJ Legal said that if the Committee were minded to make progress on the points in relation to PD12F then resource implications will need to be considered in the new year.

ACTION

MoJ Legal to revert to the February meeting with draft amendments to PD12D.

COSTS IN FINANCIAL REMEDY PROCEEDINGS

- 11.1** MoJ Policy asked the Committee for views on proceeding with plans to amend FPR 2010 so that offers made "without prejudice" would be admissible in considering "conduct" of a party for the purposes of FPR 2010 r.28.3. These would need to be considered alongside those of the Costs Working Group's views. The Costs Working Group did not come to a unanimous conclusion as to whether the proposed changes in relation to without prejudice offers and costs should be adopted although the majority of Costs Working Group members did support reforms.
- 11.2** The Committee was invited to set out its views. In speaking against the introduction of new costs provisions in relation to without prejudice offers, the Committee referred to the "law of unintended consequences". It was discussed how new provision about 'Calderbanks' could generate satellite consultation. Views were expressed that further time should be allocated to see how other recent reforms settle in before making any changes around without prejudice offers.
- 11.3** When speaking in favour of introducing new costs provision about without prejudice offers, the Committee suggested that the consultation receipt of 280 responses was an indication that this subject garnered much interest. It was proposed that the Committee should go ahead while the issue is topical rather than wait any longer, as interest could wain or the strength of feeling diminish. The Committee also considered two further points in favour which were that lawyers advising on offers should become more accountable for that advice, and that the majority of the Costs Working Group members were of the mind to press ahead with reform at this time.
- 11.4** The President of the Family Division thanked Committee members for their diverse range of opinions. Committee Members voted mostly in favour of postponing any final decision to consider whether any developments following the 2019 PD28A amendments and the 2020 rule and PD amendments might provide a clearer forecast of potential impacts. The Acting Chair suggested that this should be discussed again at the July Committee meeting.

ACTION

FPRC Costs Working Group to consider how this can be taken further. Update at the July FPRC meeting.

ELECTRONIC SIGNATURES ON STATEMENTS OF TRUTH

- 12.1** MoJ Policy spoke to the issue of the proposed approach to make amendments to family forms to enable the use of electronic signatures on any form; and Practice Direction changes to clarify that statements of truth on documents generated by parties can be signed electronically, and options for timings following discussion at the April 2020 Committee meeting. On the second point, the recommendation is that additional wording is inserted into PD17A that will act as further confirmation that any document requiring a statement a truth that is not a standard form can bear an electronic signature.

- 12.2** MoJ Policy recommended instigating a triaged process of amending family forms to allow for all forms to be signed electronically. MoJ Policy identified the forms which are deemed most urgent and commonly used and suggested to amend these forms as a priority. The Committee welcomed this proposal in line with the of the Civil Procedure Rule Committee but suggested that the C8 Form (currently in Tier 2) should also be moved into Tier 1. HMCTS have confirmed that work to add the electronic signature function can begin as soon as possible but it will take at least until February 2021 to allow for electronic signatures on all forms.
- 12.3** The Acting Chair agreed with the recommendation to keep the current provisions in PD17A (in particular the recently added paragraph 4A.1), but to add additional wording to confirm that any document requiring a statement a truth that is not a standard form can bear an electronic signature, should be progressed and suggested that this be circulated outside of Committee in January. At the February 2021 meeting the Committee will reconsider the wording of the FPR statement of truth in light of amendments made to the CPR statement of truth wording earlier in 2020.

ACTION

MoJ Policy to circulate amended PD17A outside of Committee

PROPOSALS FOR AMENDMENTS TO FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014

Contempt of Court – Consultation with the FPRC Level of Judge

- 13.1** MoJ Policy referred to discussion on this issue in November and to the proposal that amendments to the Family Court (Composition and Distribution of Business) Rules 2014 (DoB Rules) be made to change the provision about the level of judge who should hear contempt of court cases in family proceedings. The DoB Rules are made by the President, with the agreement of the Lord Chancellor, after consulting the Committee.
- 13.2** This issue was raised by the FPRC Contempt Working Group at the time of their consideration of the new Part 37 FPR. The Contempt Working Group had since considered this matter further. Their view was that the DoB Rules did not require amendment. They noted that if a contempt application is considered to be particularly complex, it can at the directions stage be listed for final determination before a judge of a higher level.
- 13.3** The Committee were asked to consider whether any additional benefits could be gained by requiring that committal proceedings be considered by a more senior level of judge than currently prescribed: this could provide an additional layer of seriousness and could avoid a judge who heard the original case also hearing the contempt case.
- 13.4** The Committee were also asked to consider whether there were any additional pitfalls over those raised such as the unavailability of senior judiciary; the divergence from the position in Civil cases and the impact on lay-justices.
- 13.5** The Committee uniformly agreed that the situation should stay as it is. The flexibility within local areas; the current position in civil cases and the low number of contempt applications when looked at by the justice's clerks' senior team were all cited as reasons for keeping the status quo.

- 13.6** The President of the Family Division welcomed these views and said that although sharper end cases may need further consideration for senior judge involvement, he felt that there was no need to change the rules but would need to consider following up this point with guidance.

Previously agreed amendments

- 13.7** MoJ Legal said that a slot with the Parliamentary Business and Legislation Committee is being sought to include the various amendments agreed by the President at the November meeting with a view to laying sometime in the Spring 2021.

PENSION SHARING ORDERS

- 14.1** MoJ Policy updated the Committee following discussion at the FPRC March meeting in relation to issues highlighted in a paper by District Judge Suh and District Judge Harrison in relation to r.9.36(5) regarding the timing of service of a pension sharing order and the risk a pension holder could withdraw funds after a pension sharing order is made but before decree absolute is granted.
- 14.2** MoJ Policy outlined that the issues highlighted in the paper had been considered by the Pension Advisory Group as discussed at the July FPRC meeting. There has been subsequent discussion between MoJ policy and the Department for Work and Pensions (who have the lead responsibility for pensions legislation) about the issues highlighted and other pensions issues identified by MoJ Policy, although this work has been superseded by work on the implementation of the Divorce, Dissolution and Separation Act. MoJ Policy said that further discussions with Department for Work and Pensions are needed, with a view to MoJ coming back to the Committee with a substantive paper at its March 2021 meeting
- 14.3** The Committee thanked MoJ Policy for progressing this issue. Michael Horton gave a heads-up that he has co-written a piece with Rhys Taylor which MoJ Policy may wish to consider.

ACTION

MoJ Policy to come back to the March FPRC meeting with a paper

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

Amendments to the Overriding Objective

- 15.1** MoJ Policy provided a paper setting out the Committee's previous consideration of amending the overriding objective during the "voice of the child" project. The paper also noted that the CPRC had agreed at its December meeting to amend the CPR overriding objective. The Committee agreed that the discussion points raised now by the Family Justice Council were very different to the issues considered during the "voice of the child" project. They agreed that the Committee should consider the FJC proposal.

ACTION

To return as an agenda item in March 2021

PRIORITIES TABLE

- 16.1** MoJ Policy said that any additional items received have been reflected on the updated table

PROGRAMME OF PRACTICE DIRECTIONS AMENDMENTS

- 17.1** MoJ Legal noted that there was a heavy programme of PD amendments, as set out in the paper provided for the meeting.

FORMS

Forms Working Group update

- 18.1** MoJ Policy noted that the Forms working group met in late November and agreed a plan of form amendments. The Contempt forms are making good progress and MoJ are hoping to send workable drafts to the Forms Design team shortly with a view to presenting these forms to the Working Group at their next meeting.

D81 Form

- 18.2** MoJ Policy said by way of update that the data collection working group had suggested a number of amendments to the revised form and that arrangements had also been made for policy colleagues to complete some 'destruction testing' to consider the working elements of the revised form. Following further work on the D81, MoJ Policy will seek for the revised form to be considered by the Committee's Forms Working Group.

FEBRUARY 2021 AGENDA

- 19.1** The Committee recognised that the agenda for February has a number of items for discussion and suggested that the meeting starts earlier to accommodate the full programme.

ANY OTHER BUSINESS

Items rescheduled to February 2021 due to length of meeting

- 20.1** MoJ Policy referred to a paper detailing the issues that have needed to be re-scheduled (with the agreement of the President and the Acting Chair) to February 2021 or later due to the heavy schedule detailed on the December agenda.

DATE OF NEXT MEETING

- 21.1** The next meeting will be held on Monday 8 February 2021.

Simon Qasim – Secretariat
December 2020
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