

## Approved

### Minutes of the Civil Procedure Rule Committee

Friday 5<sup>th</sup> March 2021 (via video conference due to the Covid-19 Pandemic)

#### Members attending

The Master of the Rolls and Head of Civil Justice (Chaired jointly with Lord Justice Birss)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

Master Cook

District Judge Parker

District Judge Cohen

Brett Dixon

Masood Ahmed

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

#### Apologies

No apologies were recorded.

#### Item 1 Welcome, Minutes, Action Log and Matters Arising

1. Lord Justice Birss welcomed everyone to the meeting; the Master of the Rolls held the Chair for Item 2.
2. The minutes of the meeting of 05 February 2021 were **AGREED**.
3. The Action Log was duly **NOTED**, along with the following updates:

- **AL(20)03** – Part Transfer of Deeds Poll:

It was confirmed that work is progressing well and in liaison with the Family Procedure Rule Committee. The plan is to include the reforms as part of the mainstream summer update/Sl.

**Action:** matter to return to CPRC at the 11 June meeting.

- **AL(20)29** – Boundary Disputes PAP:

It was **AGREED** to await the outcome of the Civil Justice Council's review of PAPs generally before considering this further.

- **AL(21)10** – CPRC Strategy and Vision:

The Chair advised that with thanks, Mr Justice Kerr is framing a paper for consideration at the next meeting. It was also **NOTED** that the current Strategy document would need to be updated, not least because it refers to a now outdated EU legislative framework.

Members were also put on notice of the expectation that two additional (half day) meetings, in January and September, were likely to be included in the calendar for any urgent business to be conducted; these meetings would be held remotely

(even when in-person meetings return). It was stressed that these additional meetings are not to be seen by officials as part of the normal rhythm of meetings for work-planning purposes, because they will be held on an exception basis i.e. cancelled unless there is sufficiently urgent business to transact. To distinguish them from routine meetings, they will be known as, Chairman's meetings – Only Urgent Business ("OUB's").

**Actions:** Secretariat (i) allocate time in the 16 April agenda for Kerr J's paper (ii) propose a *placeholder* date for the September 2021 OUB meeting and incorporate January and September OUB dates in future programmes.

## Item 2 RTA Portal (Whiplash) CPR(21)13 & CPR(21)15

4. The MR introduced the matter, recording thanks for the extensive work undertaken since the last meeting and acknowledged the scale of the material before the committee. Especial thanks were expressed to the District Judges for their time in drafting the proposed Standard Directions at such pace and DJ Hennessy (County Court at Birkenhead) was welcomed to the meeting.
5. It was **NOTED** that the Civil Procedure (Amendment No. 2) Rules 2021 (published online here: <http://www.legislation.gov.uk/id/ukSI/2021/196>) which enter into force on 31 May 2021 was laid before Parliament on 25 February 2021 (as were the Whiplash Injury ("Tariff") Regulations). The related 129<sup>th</sup> PD Update and PAP Update were also published online and viewable here: <https://www.justice.gov.uk/courts/procedure-rules/civil>.
6. The remaining material seeks to provide stakeholders with all the information they will require once the Official Injury Claim Service goes live on 31 May 2021.
7. His Honour Judge Bird summarised the material for consideration: four new Claim forms and supporting guidance; four new Acknowledgment of Service forms, new Notice of Issue, the guide to making a claim and the guide to PD27B; draft proposed Standard Directions to accompany PD27B and a draft proposed governance framework. Each was discussed in detail.
8. His Honour Judge Lethem presented the draft Standard Directions, with input from DJs Parker, Cohen and Hennessy. It was explained that the draft standard directions only cover the mandatory directions, namely sections 2, 4, 5 and 6 of the PD. However, the court may make directions concerning other sections falling outside the standard directions, or it may be that no directions are required. Clarification was sought on the consistency of language between the rule/PD and standard directions in relation to the use of the word, 'must' in place of, 'may' and this would be checked before the final drafting is cast. HHJ Bird added that the impecuniosity point may require more discussion out-of-committee in order to settle the drafting, but essentially the position is that these are default directions, so where there are differing local court practices, discretion remains. Andrew Underwood provided some background context by reference to the 2017/18 consultation regarding standard directions in credit hire cases, which highlighted the variances and lack of general consensus between parties at that time. DJ Cohen highlighted that in order to encourage usage and assist the administration, it would be consistent with current practices for standard directions to be presented in a tick box format. Lizzie Iron offered to review the text, out-of-committee, with the aim of simplifying the language. This was welcomed.
9. Brett Dixon explained the proposed governance arrangements, which had been framed from experience with the online civil money claims process. An Advisory Board will also be established, which will have CPRC representation and for which volunteers, by MoJ, will be sought in due course.

10. The MoJ's report was duly **NOTED**. Jayne Bowman thanked members for their generous time and extensive assistance. Ms Bowman advised that stakeholder engagement sessions have commenced and that the MoJ delivery partners (Motor Insurers' Bureau) are finalising the build and will be undertaking final testing before making it available to professionals in April. The guides remain in draft form because the intention is to incorporate feedback received as part of the user testing. The guides and all other material will also be published well ahead of the May 2021 implementation date. MoJ and HMCTS are also working closely together to ensure that all guidance and job cards for court staff are ready in good time before the reforms come into effect.
11. HHJ Bird observed that the guide to CPR Part 26 was also being prepared by the MoJ, as requested by the committee, but in any event the Civil Procedure (Amendment No. 2) Rules 2021 contains a full explanatory note and accompanying explanatory memorandum.
12. In reviewing the draft forms, it was confirmed that they do require CPRC approval. HHJ Bird observed that the claim forms will almost entirely be populated by information entered into the portal and that the forms may appear to be long and complex, but explained that this was necessary because they needed to be used by judges when considering what directions to make. The following drafting points were also aired and **AGREED**: (i) in the interests of "decluttering" court forms, the provisions for, 'Fax number' is to be removed (ii) an erroneous, 'should' near the end of the sentence at 1.1 in the AoS forms is to be removed.
13. The following was **APPROVED subject to final drafting**:
- Suite of new court forms:
    - i. Form RTASC L for claims under PD27B section 2 (Liability)
    - ii. Form RTASC Q for claims under PD27B section 3 (Quantum)
    - iii. Form RTASC D for claims under PD27B section 4,5,6 (Directions)
    - iv. Form RTASC O for claims under PD27B sections 7 to 11 (Other)
    - v. Claim Form Guidance
  - Suite of new Acknowledgment of Service (AoS) forms:
    - i. AoS RTAAS L for section 2 claims
    - ii. AoS RTAAS Q for section 3 claims
    - iii. AoS RTAAS D for claims under sections 4, 5 and 6
    - iv. AoS RTAAS O for all other claims (except s.9 where no AoS is required)
  - Notice of Issue; Standard Directions and Governance arrangements
  - The draft Guide to Making a Claim and draft Guide to PD27B were duly **NOTED**
14. **Actions:** (i) MoJ/HMCTS/drafting lawyers to finalise and release the above at the earliest opportunity in advance of the May 2021 implementation date, returning to the CPRC (in consultation with the Chair/Secretary) if needed (ii) drafting lawyers to confirm whether an additional PD Update will be required to promulgate the Standard Directions and if so to agree a timetable to do so with the Secretary.
15. The MR withdrew from the meeting and Lord Justice Birss took the Chair.

### **Item 3 Judicial Review CPR Part 54 CPR(21)11**

16. The Chair opened the item by reiterating the background. In several cases, most recently, R(Dolan and others) v Secretary of State for Health and Social Care [2020] EWCA Civ 1605, the Court of Appeal (the constitution of which included the Lord Chief Justice) expressed concern that pleadings and Skeleton Arguments in public law cases have

become too lengthy and too complex. The Court made it clear that a lack of “procedural rigour” more generally puts the fairness of judicial review proceedings at risk. In *Dolan*, paragraphs 116 – 121 are of particular note and the comments therein have prompted this work and proposals.

17. Mr Justice Swift, Judge in charge of the Administrative Court, was welcomed to the meeting to present the matter. Mr Justice Kerr and His Honour Judge Jarman QC have been consulted in advance, as have others. The proposals have been devised following views of various judges who regularly sit in the Administrative Court; Lord Justice Dingemans and Lord Justice Lewis (the Court of Appeal judges with particular responsibility for appeals in public law cases). The Lord Chief Justice and the President of the Queen’s Bench Division have also been consulted; both of whom strongly support the revision of the existing Practice Directions as one important way of addressing the problems that were re-stated in the *Dolan* judgment. Views have also been obtained from members of the Administrative Court Users’ Committee. Feedback was generally supportive, although some points of dissent were raised on specific matters, which were highlighted as part of the presentation. The CPRC was pleased to **NOTE** the range of views taken into account before presenting the proposals and it considered this level of consultation to be appropriate.
18. Swift J took the committee through the proposed drafting which consisted of a suite of revised PDs (A - E) under CPR Part 54; which included an entirely new PD54B. The proposed new PD54B is designed to cover urgent applications and other applications for interim relief. It will replace the statement of practice by Scott Baker J (01 February 2002, reported at [2002] 1 WLR 810) which, perhaps because it is separate from the CPR Practice Directions, is largely overlooked by practitioners.
19. Swift J explained that urgent applications have become a significant proportion of the work of the Court (a notable change from the position in 2002). Practice is variable; experience is that litigants do not approach urgent applications in the Administrative Court with the same degree of rigour as in general Queen’s Bench practice. The proposed new PD aims, as briefly as possible, to identify the key points of practice. Having these points in a single source, readily accessible will assist practitioners and reinforce the Court’s *Hamid* jurisdiction (i.e. the court’s power to govern its own procedure and to ensure that legal practitioners abide by their duties to the court and otherwise conduct themselves according to proper standards of behaviour.
20. A detailed discussion ensued, a summary of which is as follows:
21. Page Limits: whether the various page limit provisions should be expanded to include references to font size and/or spacing etc. The conclusion was not to incorporate express provision, conscious that any abuse can be addressed if/when it arises. A further point was made regarding applications for a page limit extension being made in advance. On balance, this was not considered necessary. The possibility of including a page limit provision in PD54B for the grounds in support of any application for interim relief was raised, but based on experience in practice, it was decided not to add it in at this stage.
22. Wales and the Welsh Language: a point was raised concerning the first sentence in paragraph 1.2 of PD54D namely whether the statement, “the administration of the Administrative Court is organised regionally” best described the situation in Wales. This led to the suggestion of using the phrase, “geographical area” so that 1.2(1) read, “The administration of the Administrative Court is organised regionally by geographical area” and this found support, but was left to be settled out-of-committee as part of the final drafting. HHJ Jarman QC questioned whether, given the significance of Judicial Review proceedings, whether a Welsh language version of the reformed PDs and court forms should be made available. **Action:** Secretariat to make enquires with a view to facilitate Welsh translations.

23. Northern & North-Western Circuits: the accuracy of where claims in the Northern & North-Western Circuits are respectively administered needs to be reflected in the final drafting of PD54D paragraph 1.2 and this was **AGREED**.
24. Presiding Judges: It was **AGREED** to add "or their delegate" after the reference to Presiding Judges in paragraph 2.4 of PD54D.
25. Commencement Date: Given the significance of these reforms, the earliest possible in-force date was sought. **Action:** Secretariat to investigate and report back to the Chair regarding the possibility of a standalone PD Update in advance of the next mainstream Update, due to be settled in June, published in July and in-force in line with the October common-commencement date.
26. Publicity: Swift J confirmed that he was minded to provide early notice to practitioner bodies so that the new provisions can be well advertised and this was welcomed. The CPRC also observed as a benefit of advance notice, the need for these reforms to encourage a change in culture. A reiteration of available sanctions may further assist.
27. Planning Appeals & PD8C: A further matter was raised concerning certain planning appeals which affects paragraph 4 of PD8C on requirements for service of proceedings in some statutory appeals. Swift J explained the proposal to modify PD8C so that (i) in planning appeals, there is a requirement to serve interested parties (for example, assuming the claimant is challenging a grant of permission, the interested parties would be the local planning authority, the developer, and persons interested in the site which is the subject of the planning appeal) and (ii) in the case of development plan challenges (where the class of persons affected could be wide) the claimant and the defendant should be required to identify any potential interested parties in their pleadings so that the court can consider whether any other party should be served (albeit that might be after the permission decision has been taken).
28. The Independent Review of Administrative Law (IRAL) "The Faulks' Review": As yet, a timetable for the consultation and any resulting Government legislation and referral to the CPRC is not yet known. **Action:** Secretariat to relay the outcome of this item to IRAL officials for information.
29. The following was **RESOLVED:**
- Proposed reforms to the PDs supplementing CPR Part 54:
    - i. PD54A – Judicial Review
    - ii. PD54B – Urgent Applications and other Applications for Interim Relief
    - iii. PD54C – References by the Legal Services Commission
    - iv. PD54D – Administrative Court (Venue)
    - v. PD54E – Planning Court Claims

were **AGREED subject to final drafting** and consideration/incorporation of the above points. The commencement date would be established, out-of-committee, once the Secretariat had confirmed the feasibility for a standalone PD Update to come into force in advance of the October common-commencement date.

**Post meeting note:** (i) PD54C is to be revoked because the PD provided for reviews of a decision under the Criminal Defence Service (Financial Eligibility) Regulations 2006 (regulation 14(6)). The Legal Services Commission was abolished and replaced by the Legal Aid Agency as part of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 reforms. The Legal Aid Agency, confirmed that the 2006 Regulations were replaced in 2013 (by the

Criminal Legal Aid (Financial Resources) Regulations 2013), and the 2013 regulations contain no equivalent provision for such a referral procedure. The PD is, therefore, no longer required. (ii) The subsequent PDs under Part 54 are to be re-labelled sequentially i.e. PD54D becomes PD54C and PD54E becomes PD54D.

- Various changes to the standard forms: N461 (Claim form), N462 (Acknowledgement of Service) and N463 (Urgent Application form), as well as consequential changes to the equivalent Planning Court forms: N461PC, N462PC, N463PC were **AGREED in principle and REFERRED to the Forms Sub-Committee to approve out-of-committee.**

**Action:** MoJ Design/HMCTS to produce draft revised forms and refer (via the Secretariat) to the Forms Sub-Committee for approval in time to be published (with the Welsh translations) in line with the commencement date.

- The points concerning Planning Appeals & PD8C be **REFERRED to the Lacuna Sub-Committee** for consideration and to report back to the CPRC in due course.

#### **Item 4 PD5B CPR(21)14**

30. David Hamilton presented the item on behalf of HMCTS. It was explained that the aim of the proposal is to comply with the Payment Card Industry Data Security Standards and HMCTS' internal Security of Payment Card Data regulations.
31. The proposal to amend PD5B at paragraph 2.3 (i) and (ii) and 2.4 (b) to remove the obligation for parties to include a debit/credit card number when filing an application by email where a fee is payable, was **AGREED as drafted.**
32. **Actions:** (i) HMCTS to notify court staff et al in the usual way. (ii) Secretariat/drafting lawyers to include it in the summer PD Update as part of the October common-commencement date cycle.

#### **Item 5 Lacuna Sub-Committee CPR(21)12**

33. Master Dagnall introduced the item explaining there were seven topics for consideration:
34. **LSC2019/28** concerns access to court documents by non-parties (CPR 5.4C and r32.5, r32.14, r39.2 and r39.9). Tom Montagu-Smith QC presented the matter. In doing so, he referred to the Supreme Court judgment in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38 and the more recent case of HRH The Duchess of Sussex v Associated Newspapers Limited [2020] EWHC 2160 (Ch).
35. In *Cape*, the Supreme Court considered an application after trial by a non-party for access to documents under (a) r.5.4C and (b) the Court's inherent powers. The Court noted that the rules do not explain what documents should be kept by Courts, nor was there any statutory definition of the term 'records of the court', nor was there any real guidance from any other source, aside from PD5A, paragraph 4.2A. The documents listed there do not include, for example, witness statements, trial bundles or written submissions. Court records contain documents retained by the Court for its own purposes. Those purposes are not the same as the purpose for which non-parties may properly be given access to court documents, which is to promote the principle of open justice. In modern litigation, where much that was previously read out in court is now submitted in writing, it will be necessary to have access to some documents, such as written submissions and witness statements, to make sense of the proceedings. Rules are not exhaustive of the circumstances in which non-parties should be permitted access to court documents. They are "a minimum". The court retains a broad, inherent jurisdiction to allow non-parties

access to documents which have been placed before the Court if there is a good reason to do so, subject to considerations of practicality and proportionality.

36. At paragraph 51 of *Cape*, Lady Hale said: “*We would urge the bodies responsible for framing the court rules in each part of the United Kingdom to give consideration to the questions of principle and practice raised by this case. About the importance and universality of the principles of open justice there can be no argument. But we are conscious that these issues were raised in unusual circumstances, after the end of the trial, but where clean copies of the documents were still available. We have heard no argument on the extent of any continuing obligation of the parties to co-operate with the court in furthering the open justice principle once the proceedings are over. This and the other practical questions touched on above are more suitable for resolution through a consultative process in which all interests are represented, than through the prism of an individual case.*”
37. An offer from Freshfields to assist the committee in this was duly **NOTED** with thanks.
38. In *The Duchess of Sussex* case, an issue arose at the pre-trial stage as to whether a schedule to a Part 19 Response to a Request for Further Information fell within CPR 5.4B(1)(a). This turned on whether the schedule was part of the Response or was instead a document filed with it or attached to it. The judge found that it was the latter. He noted that there no clear reason why the rules distinguish between the statements of case and documents attached to them. He suggested that this might be a relic from times when the practice was to append evidence, such as contract terms, to pleadings.
39. The sub-committee considers that *Cape* raises a range of issues which are likely to require a comprehensive review of the rules governing access to Court documents. It also has a cross-jurisdictional interest. *The Duchess of Sussex* case raises a more discrete issue but may merit consideration at the same time.
40. The discussion acknowledged the importance of this issue and ventilated views observing that the relevant rules are distributed in a number of places; some may be outdated and in need of clarification to take account of modern practices. It may also be appropriate to address the specific issues of document retention by the Court and parties. Improvements may also be possible so that rules better align with the open justice principle and take advantage of the increasing use of electronic documents.
41. It was **RESOLVED** to form a sub-committee to consider further, liaise with other rule committees (IRC, CrimPRC, FPRC, TPC), MoJ/HMCTS Policy and report back in due course.
42. It was also **NOTED** that a public consultation on any proposed changes would be likely; as Lady Hale suggested.
43. **Actions:** Nominations for sub-committee membership to be sent to the Chair/Secretary for consideration.
44. **LSC2020/26** concerns Skeleton Arguments on Appeals (CPR 52) Mr Montagu-Smith QC presented the matter. The issue had been raised by Chief Master Marsh following correspondence from the Pensions Litigation Court Users Committee.
45. The Pensions Litigation Court Users Committee raised five issues relating to the timing and replacement of skeleton arguments for appeals. On three of the issues, they proposed rule changes. The sub-committee have concluded that none of the issues raised require amendment and this was explained and discussed. However, in looking at these issues, Master Dagnall has raised a further, related point, on which the sub-committee do recommend a change. It was observed that an apparent mismatch exists between CPR

52.3(2) (permission to appeal applications) and CPR 52.12(2)(a) (extension of time for permission applications). CPR 52.3(2) states that permission may be sought from the lower court “at the hearing at which the decision to be appealed was made”; r.52.12(2)(a) does not contain those words. Therefore, an amendment may be appropriate so as to harmonise the rules and thereby providing that applications to extend time for appealing be made to the lower court at the judgment hearing.

46. The same issue arises in principle with respect to CPR 52.13(4)(a) (the time when the Respondent’s Notice must be filed). Although in practice, it seems less likely to arise, it may be worth making a similar amendment, for the same reasons.
47. A discussion ensued which demonstrated broad support for harmonising the rules on this point, but caution was expressed as to potential unintended consequences; it may also be necessary to consider a wider package of reforms to include a review of PD40E (Reserved Judgments) and/or CPR Part 40.
48. It was **RESOLVED** to form a sub-committee to consider the position and frame any drafting proposals for CPRC consideration. Membership: Trower J, HHJ Bird, Tom Montagu-Smith QC.
49. **Action:** Sub-Committee to consider and advise Secretariat when ready to return to the CPRC.
50. **LSC2021/02** concerns PD3E (Costs Management) and whether there should be express provision to specify that the trial fee is part of the Pre-trial Review (PTR) phase and not the Trial Preparation phase. This was presented by Masood Ahmed. Overall, it was not considered to be a problem in practice and as PD3E, paragraph D does not mention other court fees which are incurred at the various stages of the litigation process prior to the PTR, it was not considered necessary for the trial fee to be specifically mentioned; particularly given that the issue is covered in Precedent H. It was **AGREED to take no further action**.
51. **LSC2021/07** concerns PD25B on Interim Payments. Master Dagnall presented the matter. It is recommended to correct the errors in references, which refer to CPR 36.15 but should be CPR 36.[22\(1\)](#) and this was **AGREED**.
52. **Action:** Drafting lawyers/Secretariat to incorporate into the next mainstream Update.
53. **LSC2021/04** concerns PD74A Merchant Shipping Liner Conferences. Master Dagnall explained that this has been raised by the Admiralty Judge, Mr Justice Andrew Baker and Senior Master Fontaine. The Judge in charge of the Commercial Court has also been consulted.
54. Part II of the PD74 deals with Merchant Shipping Liner Conferences. The Admiralty Judge and the Judge in charge of the Commercial Court advise that this is now moribund and does not happen, so questions whether it needs to remain in the CPR. The sub-committee acknowledges the point, but suggests that where a subsisting Act of Parliament provides for there to be court rules, then the CPR should contain such rules unless and until the relevant Act (which supports an International Convention which is still in force and binding) is repealed. The Senior Master also queries whether the Register (if it still exists) should now be kept by the Admiralty Registrar which is a distinct office under statute and the CPR. The sub-committee supports the Senior Master’s proposal that this Admiralty issue should be the responsibility of the Admiralty Registrar. In discussing the matter, one option considered was to move the section in PD74A elsewhere, but that was seen as an over-complex solution to deal with a page of a discrete PD. The CPRC took the view that the Admiralty Court will be able to deal with any application to register or enforce an award



etc. under the Convention, and that the provisions of the statute were merely permissive rather than mandatory with regard to the existence of rules of court.

55. It was **AGREED** to:

- Delete Section II of PD 74A from the CPR
- Suggest that a passage be included in the next revision of the relevant (Admiralty) Court Guide(s) to refer to this having occurred.

56. **Actions:** (i) Drafting lawyers/Secretariat to incorporate into the next mainstream Update (ii) Master Dagnall to update Andrew Baker, Cockerill JJ and Senior Master Fontaine.

57. **LSC2021/03** concerns CPR45.43 Aarhus Convention capped costs and VAT. Master Dagnall presented the matter; explaining that the sub-committee recommended consideration of whether Aarhus Convention capped costs should be VAT inclusive.

58. The relevant rules were last amended in 2018 following the Government's response to a consultation and reports from a CPRC Sub-Committee. CPR 45.43 provides for costs orders against claimants to be capped at £5,000 or £10,000 and costs orders against defendants to be capped at £35,000. However, it is silent as to whether they are inclusive or exclusive of VAT. This may be contrasted with CPR 45.31 dealing with Intellectual Property Enterprise Court (IPEC) costs where capped costs for phases are said to be net of VAT (CPR45.31(5)) but overall costs were not. That provision has itself resulted in case-law (Response v Edinburgh 2020 EWHC 721) as to its application which led to another LSC item (LSC2020/8) raising general questions over fairness regarding capped costs between those registered and those not registered for VAT which was referred to the Costs Sub-Committee. In view of the IPEC aspect, it may be desirable to consider consistency between the eventual IPEC outcome and the Aarhus position.

59. R (Friends of the Earth) v SoS 2021 EWCA Civ 13, was also referred to, which held that because CPR 45.43 is silent on the point, it means that the costs are inclusive of VAT.

60. However, the sub-committee raise whether the rules require any further review and this was discussed. Kerr J, who chaired the Open Justice Sub-Committee within which Aarhus claims was aired, explained that this specific point was not something that the sub-committee were expressly tasked to considered at that time. The Chair further observed that the origins of Aarhus was driven by Government and accordingly, before the CPRC considers this any further, the matter should be referred to MoJ officials for clarification (and liaison with HMRC/other Government Departments) on the current policy position and this was **AGREED**.

61. **Action:** MoJ Policy to report back in due course.

62. **LSC2021/06** concerns CPR 3.3(6) and 23.9 and the test for applying to set aside or to vary an order. Master Dagnall explained that this was raise following an article in Civil Procedure News and the judgment in Kuznetsov v Camden [2019] EWHC 3910 (Admin) which acknowledged the absence of a prescribed test and thus formulated a test to be applied in that case. Following discussion, the CPRC took the view that this was not a problem in practice and ,therefore, did not consider any rule changes to be necessary. The matter was duly **NOTED**.

63. Master Dagnall raised a concluding point regarding transparent housekeeping for if/when reporting on multiple LSC items under one template. **Action:** Secretariat to agree with Master Dagnall out-of-committee.

## Item 6 Any Other Business

## Migration of online rules

64. The Chair reiterated that the central directive to move all jurisdictional rules of court from the Justice webpages to GOV.UK was in order to comply with security and accessibility regulations. The move started in the latter part of 2020, with the CrimPR successfully migrating after which the FPR and CPR followed on a phased basis. The CPR content started to move to GOV.UK in the week of 15 February 2021, but it rapidly became apparent that there were quite significant navigation and other issues, because the rules were not displayed on GOV.UK in a way that replicated *Justice*, due to the apparent limitations within GOV.UK. Thanks were expressed to the Secretariat for their efforts in escalating the concerns. As a result, the automatic re-directs to GOV.UK have now been removed and the *Justice* website remains operational for the time being.
65. MoJ Digital are analysing the feedback and a small working group is being formed to oversee the work and to ensure that the transition to GOV.UK is effective. The group will include legal and non-legal stakeholders as well as the judiciary.
66. Master Cook commented that the Standard Directions web pages had not migrated to GOV.UK successfully and would need to be remedied as part of the review and this was duly **NOTED**. **Action:** Secretary to relay to MoJ Digital.

## Alternative Dispute Resolution Committee

67. The Chair announced with thanks, that Mr Justice Trower has been appointed as the CPRC representative on the MR's Judicial ADR Liaison Committee, chaired by Lady Justice Asplin.
68. The Committee is intended to provide the judiciary, the ADR community and the professions with a dedicated forum for the discussion and exchange of information regarding ADR in the civil justice system. Part of its function is to consider the CPR and the encouragement of ADR at all levels of the civil justice system and whether ADR should be mandatory.
69. Members were invited to email Trower J with any ADR related rule issues or views on the use/application of greater levels of compulsion.

## Electronic Statements of Truth

70. The Chair advised that Lord Justice Baker (FPRC) has raised the possibility of aligning the CPR & FPR as regards the introduction of provisions for electronic signing of statements of truth and as such, officials and lawyers from both civil and family were engaged. As yet, there is no specific timetable for action (due to other work pressures) but a more substantive update should be forthcoming in due course.
71. A wider point concerns the electronic execution of documents, for which the Law Commission have set up an industry working group, to be chaired by Birss LJ. It was **NOTED** that Master Dagnall was considering an LSC report on the case of *Investohills - v- Petergrow 2021 EWHC 124* ([www.bailii.org/ew/cases/EWHC/Ch/2021/124.html](http://www.bailii.org/ew/cases/EWHC/Ch/2021/124.html)) where at paragraphs 25-26 it is suggested that consideration might be given to the rules providing for affidavits to be capable of being sworn by video-link, especially during the pandemic. However, the Chair undertook to consider that as part of the Law Commission's working group and accordingly, no LSC report was required at this time.

## LSC Report LSC2019/25

72. Master Dagnall referred to the above item of outstanding business concerning appeals and Part 36 Offers. It was **RESOLVED** to refer the matter to the newly formed Appeals Sub-Committee (under item 5 above) but that their first priority was consideration of the substantive matters relating to Part 52 as set out in LSC2020/26 above.

C B POOLE  
March 2021

**Attendees:**

Carl Poole, Rule Committee Secretary  
Nicola Critchley, Civil Justice Council  
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  
Faye Whates, HM Courts & Tribunals Service  
His Honour Judge Lethem  
Master Dagnall  
Peter Farr, Ministry of Justice Policy (Item 1)  
District Judge Hennessy (Item 2)  
David Parkin, Ministry of Justice Policy (Item 2)  
Jayne Bowman, Ministry of Justice Policy (Item 2)  
Andrew Parker (Item 2)  
Jonathan Scarsbrook (Item 2)  
Andrew Underwood (Item 2)  
The Hon. Mr Justice Swift (Item 3)