



Ministry
of Justice

Civil Procedure Rule Committee

Annual Report 2020

This information is also available at

<https://www.gov.uk/government/organisations/civil-procedure-rules-committee>

This annual report of the Civil Procedure Rule Committee includes references to rules and Practice Directions made, sub-committee work and consultations conducted during the period of the report; the Committee's terms of reference, membership and dates of meetings.

Contents

FOREWORD.....3

1.TERMS OF REFERENCE.....5

2.BACKGROUND & COMMITTEE STRATEGY.....5

3.MEMBERSHIP.....6

4.REMUNERATION & MEMBER INTERESTS.....7

5.MEETINGS.....7

6.SUB-COMMITTEES & WORKING PARTIES.....7

7.COVID-19 PANDEMIC RESPONSE.....8

8.CIVIL PROCEDURE RULES (CPR) 1998.....8

9.CPR UPDATES.....8

10.CONSULTATIONS.....9

11.CONTACT.....9

Foreword



I am very pleased to introduce the 2020 Annual Report of the Civil Procedure Rule Committee, my first as Deputy Head of Civil Justice but also as a longstanding member of the Committee in my former role.

The Committee does not always have a high profile, but is crucial to the efficient functioning of the civil justice system across England and Wales. Its work ensures that procedure in the civil jurisdiction is kept up to date and relevant. This year has been one of unprecedented milestones.

At the start of the year, the Spring was set to provide an opportunity to mark the 21st Anniversary of the Civil Procedure Rules, but by March the Pandemic was rapidly encroaching on all aspects of life and began to dominate committee business.

Nonetheless, officials and members responded with dispatch and great care. The unprecedented times brought many challenges which saw more updates to the rules and supporting Practice Directions (PD) than ever before, a seamless transition to hold meetings via digital technology, our first ever virtual annual public meeting (in May) and an equally successful webinar regarding the contempt of court reforms (in October), in addition to an important package of more routine, but nonetheless, essential activity. Taken as a whole, this demonstrates the Committee's adaptability, diversity and versatility. I pay tribute to all concerned, both to members of the Committee itself and the officials who support the Committee with characteristic focus and skill.

This report places in clear perspective the remarkably wide range of issues that the Committee has worked on in order to improve existing procedures, address identified problems and enable the introduction of novel ways of conducting civil business in the courts.

As well as the rapid and important changes provided in response to the coronavirus Pandemic, the Committee also undertook its usual significant work. Of particular note is the revised Part 81, reforming the procedures on contempt of court. Following a public consultation, extensive revisions were undertaken to condense the previous rules and to set out a uniform procedure, reducing the number of rules from 38 to 10 and dispensing with two PDs and a Practice Guidance Note. A set of new, bespoke, court forms were also introduced. This work was conducted in close liaison with the Family Procedure Rule Committee, so that parallel changes to the FPR could be made.

Modifications concerning the impact of EU Exit, Costs, Statements of Truth, Default Judgments, Housing and Possession Enforcement, Welsh Judicial Reviews and Online Civil Money Claims

have also been introduced, as well as a wide suite of other mainstream amendments to ensure the rules remain up to date and fit for purpose.

Some esteemed members came to the end of their term on the Committee. Our thanks go to Richard Viney, Andrew Underwood and John (now Master) Dagnall, although I am very pleased that Master Dagnall remains involved, ex-officio, as the Chair of our important Lacuna Sub-Committee.

New members were also welcomed this year: David Marshall, Isabel Hitching QC, Tom Montagu-Smith QC and Mr Justice Trower. Each member of the Committee brings different perspectives to the issues, whether as Judges, practising lawyers or persons operating in the lay advice or consumer sectors. This provides the benefit of a pooled knowledge and experience, providing wide intellectual rigour when considering an increasingly diverse set of issues. The willingness of members to give up so much of their time (without separate remuneration) and particularly in response to this year's unprecedented demands, has been particularly impressive.

By doing so, it ensures the Committee discharges its statutory functions and responds to the issues at hand.

The Committee also welcomes the appointment of Sir Geoffrey Vos as the new Master of the Rolls in 2021. The new MR brings his characteristic energy to the leadership of civil justice in general and the work of the Committee in particular.

Especial thanks go to Lord Justice Coulson, whom I succeeded as Deputy Head of Civil Justice; he has served the Committee for over 10 years. His contributions are significant, and I am joined by all members – past and present – in recognising that. At the same time, Sir Terence Etherton, MR (now Lord Etherton) retired on 11 January 2021 after a lifetime of service to the justice system. We shall miss them both greatly.

The pace of reform, nationally, is set to continue. The ensuing year promises to be another very busy period.

Lord Justice Birss

Deputy Head of Civil Justice

1. Terms of Reference

The Civil Procedure Rule Committee (“the Committee”) is an advisory non-departmental public body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in:

- the Civil Division of the Court of Appeal;
- the High Court; and
- the County Court.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Procedure Act 1997 (as amended by the Courts Act 2003, the Constitutional Reform Act 2005, the Crime and Courts Act 2013, the Anti-Social Behaviour, and the Crime and Police Act 2014).

2. Background & Committee’s Strategy

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The Committee’s aim is to provide rules of court in line with the aims stated in Lord Woolf’s 1996 report “Access to Justice”.

Before making any rules, the Committee is

- (i) obliged to consult such persons as it considers appropriate and
- (ii) to meet (unless it is inexpedient to do so).

Rules are made into legislation by way of a Statutory Instrument. The Committee aims to sign Statutory Instruments in June and December each year, to come into force in October and April respectively. The Civil Procedure Rules (CPR) are supplemented by Practice Directions (PD), and whilst these are not the direct responsibility of the Committee, the Committee is involved in their drafting because of their close relationship with the rules. However, both Statutory Instruments & Practice Direction Updates may be made throughout the year.

The Committee’s strategy serves to achieve its statutory function and the overriding objective that the rules should be ‘simple, and simply expressed’.

Both the Committee, and the team of officials and lawyers which support them, are a limited resource, and often overstretched. It is, therefore, necessary to be able to prioritise the work which the Committee is asked to undertake. The following priorities apply:

- **Legislation (where necessary)**

Amendments to the rules driven by legislation are often required on a timetable outside the Committee's control. It was, therefore, decided that these items should take precedence wherever necessary. However, this is subject to the caveat that amendments are required. Often, legislation which impacts civil justice will not require an amendment. The default position is that no amendment be made in response to new legislation unless absolutely necessary.

- **Modernisation**

This refers mainly to the incorporation of the scheduled rules into the main body of the Civil Procedure Rules. When the Civil Procedure Rules were made in 1998, not all of the Rules of the Supreme Court (RSC) and County Court Rules (CCR) had been transformed into Civil Procedure Rules. The remaining RSC and CCR were placed in 'schedules' to the Civil Procedure Rules to be incorporated at a later date, and thus became known as the Scheduled Rules. The incorporation of these remaining rules is now a regular feature of the Committee's work.

- **Comprehensive Reviews**

These will be led by the Ministry of Justice, but topics will be agreed with the Committee and preferably focused around issues of concern to judiciary, practitioners and litigants. They will focus on a particular part or topic, and will include a full review of the drafting of that part, seeking to simplify language and procedure, and eliminate duplication (between the rule and the Practice Direction, for example).

Suggestions for amendments to be considered outside these three priority areas will either need to be held back for incorporation into an appropriate review, or pass a reasonably rigorous test for consideration based on urgency, scale of (potential) injustice, political imperative and scale of difficulties being encountered in practice.

3. Membership

During the period covered by this report, the Committee comprised of the following members:

- The Head of Civil Justice, Master of the Rolls, Sir Terence Etherton (Ex Officio)
- The Deputy Head of Civil Justice, The Rt Hon Lord Justice Coulson (Ex Officio)
- The Hon Mr Justice Birss (High Court Judge Member)
- The Hon Mr Justice Trower (High Court Judge Member) succeeding Mr Justice Birss with effect from October 2020
- The Hon Mr Justice Kerr (High Court Judge Member)
- Master Cook (High Court Master Member)
- His Honour Judge Bird (Circuit Judge Member)
- His Honour Judge Jarman QC (Welsh Judge Member)
- District Judge Cohen (District Judge Member)
- District Judge Parker (District Judge Member)
- Mr Richard Viney (Barrister Member)
- Dr Anja Lansbergen-Mills (Barrister Member)
- Mr John Dagnall (Barrister Member)
- Ms Isabel Hitching QC (Barrister Member) succeeding Mr Dagnall with effect from October 2020
- Mr Tom Montagu-Smith QC (Barrister Member) succeeding Mr Viney with effect from October 2020
- Mr Brett Dixon (Solicitor Member)

- Mr Andrew Underwood (Solicitor Member)
- Mr David Marshall (Solicitor Member) succeeding Mr Underwood with effect from May 2020
- Mr Masood Ahmed (Solicitor Member)
- Mrs Lizzie Iron (Lay Advice/Consumer Affairs Member)
- Mr John McQuater (Lay Advice/Consumer Affairs Member)

4. Remuneration & Member Interests

The Chair and members are not remunerated for their service on the Committee.

Members of the Committee are permitted to submit reasonable claims to travel and subsistence expenses which are paid by the Ministry of Justice.

A register of member interest for the period of this report is held by the Secretariat; should you wish to view it, please contact the Secretary via the means at the end of this report.

5. Meetings

In addition to its usual calendar of nine meetings per year, the Committee also held an extraordinary meeting in August (to conduct urgent business in relation to the Covid-19 Pandemic), meaning the Committee met 10 times in 2020. All meetings from April were conducted via remote technology due to the public health restrictions in response to the Pandemic. The May meeting was the annual “open” meeting when the public and other interested parties observe the Committee in session and have the opportunity to ask questions. Minutes of Committee meetings are publicly available online here: <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#minutes>

6. Sub-Committees and Working Parties

The Committee establishes sub-committees and working parties to consider the detail of the rules relating to specific projects and/or proposals and much of the initial work is conducted in this way. Generally, there are around 15 such committees operating at any one time. They include:

- **Court Forms** – to consider changes to or new court forms.
- **Costs** - to consider cost related matters.
- **Lacuna** - to consider possible gaps in the CPR as alerted by the judiciary / judgments and to review requests received from any interested party, including general enquiries received via the secretariat, to determine suitability as to whether it merits full committee consideration.
- **Online Civil Money Claims (OCMC)** - creation of rules to support the pilot under PD51R.
- **Housing & Possession Enforcement** - to maintain a general watching brief on Housing & Possession related matters.

- **Legal Advisers** - to consider whether the current list of tasks delegated to Legal Advisers should have restrictions removed or modified, and to consider the role of legal advisers within the civil justice system.
- **Open Justice** - maintain a general watching brief on open justice related issues.
- **Vulnerable Parties** - to consider the Civil Justice Council's report and recommendations, 'Vulnerable Witnesses and Parties within Civil Proceedings' (<https://www.judiciary.uk/announcements/civil-justice-council-proposes-better-assistance-for-vulnerable-witnesses/>)
- **Welsh Housing** – to draft the rules consequent upon implementation of the Renting Homes (Wales) Act.
- **BREXIT: No deal planning & transitional period consequentials** - to act in an advisory role to the Lord Chancellor on CPR related implications.
- **Civil Liability Act: Whiplash & the RTA Portal (increasing small claims track limit for RTA Injury)** - to work with officials to draft related rules, PD & PAP amendments.
- **Contempt of Court** - to review and implement a reformed CPR Part 81.
- **Part Transfer of Deeds Poll to the Family Division** - to draft related rule changes.
- **Anti-Social Behaviour Injunctions (ASBI)** - to consider and make recommendations in response to the Civil Justice Council's Report on ASBIs. (<https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/anti-social-behaviour-injunction-asbi-working-group/>)

7. Covid-19 Response

The outbreak of the Covid-19 Pandemic had an unprecedented impact on the courts and the administration of justice generally. The civil jurisdiction was no exception. Consequently, a suite of urgent pilot measures were introduced as an immediate response to the crisis. The temporary reforms have been kept under review and modified where necessary. A myriad of other topics were considered and working groups engaged.

Measures were put in place for possession proceedings (PD51Z and PD55C), video/audio hearings (PD51Y) and extensions of time (PD51ZA). Collaborative work continues between members, the judiciary, users and officials from across government on these and other issues.

8. Civil Procedure Rules (CPR) 1998

The Civil Procedure Rules, which were made by the Committee on 10 December 1998, came into force on 26 April 1999. The rules are contained in 89 Parts covering different areas of procedure and different types of proceedings. Much of the detail of the procedure is contained in Practice Directions supplementing the Parts of the Rules.

9. New Rules, Statutory Instruments and Practice Direction Updates

This has been an exceptionally busy year. During the year, six Statutory Instruments and thirteen Practice Direction Updates (the 113th – 126th) have been made; these bring about a hugely diverse suite of changes across the Civil Procedure Rules and can be read online via this link:

<http://www.justice.gov.uk/courts/procedure-rules/civil>

More details can also be found on the CPR and legislation websites at the following links:

<https://www.justice.gov.uk/courts/procedure-rules/civil>

<https://www.legislation.gov.uk/>

10. Consultations

The Committee has the power to run consultations when evidence/opinions are sought during their consideration of the rules of court governing the practice and procedure in civil proceedings. During the period of this report, the Committee ran one public consultation, entitled “Proposed rule changes relating to contempt of court: redraft of CPR Part 81”. The results of which were considered in detail by the sub-committee. A reformed Part 81 was framed which condensed the previous rules from 38 to 10 and dispensed with two Practice Directions and a Practice Guidance Note. By doing so, a new uniform procedure was introduced, together with a set of new, bespoke, court forms. The changes were introduced by way of the Civil Procedure (Amendment No. 3) Rules 2020: <https://www.legislation.gov.uk/uksi/2020/747/contents> & the 122nd Practice Direction Update: <https://www.justice.gov.uk/courts/procedure-rules/civil>

This work was conducted in close liaison with the Family Procedure Rule Committee, so that parallel changes to the FPR could be made.

11. Contact

Any enquiries concerning the work of the Civil Procedure Rule Committee may be addressed to

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