

Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting

Friday 14th May 2021 (via video conference due to the Covid-19 Pandemic)

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)

Lord Justice Birss, Deputy Head of Civil Justice

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Jarman QC

His Honour Judge Bird

District Judge Cohen

Brett Dixon

John McQuater

Lizzie Iron

Dr Anja Lansbergen-Mills

David Marshall

Apologies

Master Cook, District Judge Parker, Isabel Hitching QC, Tom Montagu-Smith QC, Masood Ahmed, His Honour Judge Lethem and Katie Fowkes. His Honour Judge Bird had to leave at 12:30 as he was sitting.

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls (MR), opened the annual public meeting by extending a warm welcome to members, officials and observers. This was his first year as MR and the first open meeting he had attended, but acknowledged that the open meetings had been a regular fixture for around 17 years. Speaking of the value he placed in public accountability and scrutiny of the work of this important Committee, he valued the opportunity to answer questions during the open forum at the end of the meeting. In providing an overview of his future vision, Sir Geoffrey spoke of an integrated Civil, Family and Tribunals justice system operating through a “funnel” concept and in which Alternative Dispute Resolution was mainstream, not merely, “alternative”. It was explained that, whilst these are longer term ambitions in the context of Rule Committee business, a good start has been made with reform projects such as the Online Civil Money Claims pilot scheme and the soon to be launched Damages Claims Portal pilot scheme. Access to Justice was a central priority and it was clear that the pandemic had shown how technology can be used which merits further consideration.
2. Sir Geoffrey continued by emphasising that the CPRC is part of the process to improve the system and its work over the last year has been extensive. Tribute was paid to all concerned, with especial thanks conveyed to His Honour Judge Bird for his work with the online PI (Whiplash) reforms; Isabel Hitching QC and Tom Montagu-Smith QC, both of whom are new members and have been enthusiastic and active on various topics; Master Dagnall and His Honour Judge Lethem who have remained involved on a co-opted basis in critical CPRC activities and to Carl Poole, the Committee’s secretary, for exceptional service during a very difficult year.
3. It was hoped that it will be possible for the 2022 open meeting to return to its usual in-person format.

Item 2 Minutes, Action Log and Matters Arising

4. The Minutes of the meeting of 16 April 2021 were **AGREED**. The Action Log was duly **NOTED**, along with the following updates:

- **AL(20)100 Vulnerable Parties Sub-Committee.** District Judge Cohen provided a general update on progress and timing, paying tribute to sub-committee members, Lizzie Iron and Brett Dixon and expressing thanks for the tremendous assistance of Amrita Dhaliwal and Helen LeMottee of MoJ Policy and Legal, respectively. Last year, the full committee agreed to a change to the CPR's overriding objective to ensure that vulnerable parties can participate fully in proceedings, so that they can give their best evidence. At the same time, a new Practice Direction, PD1A was created to provide guidance as to the factors which may cause vulnerability in a party or witness. The PD obliged the court to identify vulnerability of a party or witness and to consider whether to make directions as a result. Part of these directions could be "ground rules" directions. Since then and as known last year, the Domestic Abuse Act, has very recently received Royal Assent. This has generated some further work for the sub-committee to draft rule amendments in consequence of the civil related clauses regarding special measures, prohibiting cross examination by a litigant in person in certain circumstances and in relation to Domestic Abuse Protection Notices. Changes to CPR Rule 1.6 and PD 1A are expected. The amendments to r.1.6 are expected to paraphrase the obligations to comply with section 64(1) and 64(2) of the 2021 Act and the anticipated amendment to PD 1A will incorporate and set out special measures which the court can make pursuant to section 64(2)(b) of the Act and thereafter to section 66. The matter will return to the CPRC in due course, possibly July, to be settled by/at the December meeting, so as to be included in the "winter" CPR Update for implementation in April 2022. **Action:** Secretariat, in liaison with the sub-committee, to schedule in time for the matter to return as a substantive item at the July CPRC.
- **AL(21)07 Criminal Appeals r.52.8 (LSC2019/5).** The initial response from those consulted was positive. Some further issues have also been raised by the senior judiciary which require consideration. **Action:** (i) Officials to arrange for the MR to discuss the matter with Dr Lansbergen-Mills before it returns to the CPRC (ii) Secretariat to provisionally schedule time at the June CPRC meeting.
- **AL(21)27 Section 2(7) Sub-Committee.** Mr Justice Kerr provided a brief oral update on the proposed new sub-committee. Although not yet formally established, it is being constituted as part of the CPRC's recent discussion on formulating an outline strategy of ensuing business. The aim of the sub-committee is to review the CPR, improve clarity, reduce length and to simplify the rules, particularly for litigants in person. The name of the sub-committee derives from the CPRC's statutory function (at S.2(7) of the Civil Procedure Act 1997) to, '...try to make rules which are both simple and simply expressed.' Lord Justice Birss observed that this was, of course, an endless task and he was very grateful for the willingness to progress it. **Action:** Matter to return as a substantive item at the June CPRC.

Item 3 Damages Claims Online Pilot PD Update (CPR(21)21)

5. Mr Justice Johnson, Chair of the Damages Sub-Committee, was welcomed to the meeting. A comprehensive overview of the online Damages Claims Pilot (DCP) was provided. Thanks were recorded for the work of HMCTS officials and for Andrew Currans' expertise as drafting lawyer.
6. It was explained that this was part of the HMCTS Reform Programme and will deliver a digitally reformed service for damages claims in the County Court through the new online portal. It will operate under a new Practice Direction, PD51ZB. The pilot scheme will test a procedure for legal professionals to digitally issue a claim, to respond to that claim and provide hearing information. Thereafter, the claim will be transferred out of the portal and be managed as if it has been issued under the existing provisions of CPR Part 7.

7. At this stage, it may only be used by legal representatives, and then by invitation only. It will, once approved and made, initially operate for three years, from 28th May 2021 to 30th April 2024.
8. It is a complimentary process to the Online Civil Money Claims (OCMC) pilot, for specified money claims, operating under PD51R.
9. Johnson J reiterated the challenges of producing on paper the necessary drafting to regulate an online process. The sub-committee have taken a balanced approach to present a, “new style” of drafting, to be supported by published guidance, a technical specification for the DCP, and a set of “mock” screens which demonstrate how the system works. In doing so, it allows for a slightly shorter and simpler PD than would otherwise have been necessary.
10. Birss LJ recognised the weight of the work undertaken by the sub-committee and acknowledged that the collaboration with HMCTS has been excellent. He agreed with the challenges of framing rules for digital reforms and commended the work of the drafters. Lizzie Iron said the use of plain language was very refreshing and offered to provide further input out-of-committee. In response to a question on the plan for digitally excluded users, Johnson J explained that as the first release was for represented parties, the off-line processes and support are still available in the usual way.
11. It was **NOTED** that, the approval process is the same delegated approach which has been used for the OCMC PD Updates and the screens for the portal are approved in consultation between the project and the sub-committee. The PD Update is then signed by the MR and Minister prior to coming into force.
12. **Post Meeting Note:** PD51ZB came into force on 28th May 2021, pursuant to the 132nd PD Update.

Item 4 Costs Sub-Committee Reports

Aldred -v- Cham [2019] EWCA Civ 1780 (CPR(21)22)

13. Mr Justice Trower reiterated the background, explaining that it followed a Lacuna Sub-Committee referral and the Supreme Court’s finding that the operation of the rules needed further consideration.
14. The sub-committee have concluded that the form of wording in the rules is not wide enough and amendments should be made. The main issues identified are whether to amend r.45.29I(2)(h) to permit the payment of some disbursements even where they are not a feature of the dispute; whether to expand r.45.29I(2) to specifically address the two anomalies addressed in *Aldred* and aligning the amount of counsel’s fee, thus providing certainty in that respect; amendments to 45.29C(3) and 45.29E(3) to clarify that VAT can be added to the disbursement where appropriate. The proposals were discussed which ventilated various points concerning the drafting options for a new sub-paragraph (d) to r.45.29I(2) with regard to express provision, ‘in the sum of £150.00’. His Honour Judge Jarman QC also raised a point in relation to whether telephone conference fee/s should be allowed and it was **RESOLVED** not to incorporate any changes at this stage due to potential unintended consequences, but to consider it further if necessary, out-of-committee as a separate point.
15. Subject to further consideration of any policy related implications, it was **AGREED IN PRINCIPLE** to:
 - amend r.45.29I(2)(h) as drafted

- amend r. 45.29I(2) as drafted, subject to out-of-committee consideration of whether to include, ‘...in the sum of £150.’ at the end of r. 45.29I(2)(d), before the final drafting is cast.

Actions: (i) Drafting Lawyers & Secretariat to provisionally timetable into the next available Update cycle. (ii) MoJ Policy to consider in first instance and thereafter revert to the CPRC for further determination as necessary.

Summary Assessment of Costs Pilot PD51X (CPR(21)23)

16. David Marshall presented the matter explaining that the topic was last before the CPRC, substantively, on 4th December 2020 when it was agreed to extend PD51X in its current form until 31st March 2022.
17. Given the apparent lack of take up by practitioners, and a collection of linked issues, such as the Civil Justice Council’s (CJC) work on Guideline Hourly Rates and the wider work by the Ministry of Justice (MoJ) on the Jackson Fixed Recoverable Costs reforms, it was felt desirable, if possible, to consider these points as part of the PD51X review.
18. It was, therefore, proposed that an informal consultation be conducted with a focused audience including the judiciary (via the Association of District Judges, the Association of High Court Masters and Insolvency Judges and possibly the Council of HM Circuit Judges) and the profession (via the Association of Costs Lawyers, the Law Society and the London Solicitors Litigation Association). The sub-committee was keen to receive further views on the proposed list of consultees and on whether any more general comment could be sought, for example, via the CPRC website.
19. The Secretary advised that his preliminary enquiries indicated that an online survey was possible. **Action:** Secretariat to provide details & named contacts to the sub-committee by 21st May 2021.
20. Birss LJ invited the public observers to submit any suggestions via the secretariat. **Action:** Consultee suggestions to the Secretariat by 21st May 2021 for onward referral to the sub-committee.
21. The sub-committee’s view is that Form N260 should become a self-calculating form, rather than a Word document; the main issue for discussion was whether the level of detail provided for in the pilot N260 was necessary. This and other points on whether to extend the pilot and/or provide for amendments and/or form changes can be included in the consultation.
22. The proposed plan is to conclude the consultation in time for the matter to return to the CPRC in the Autumn, conscious that, to avoid the need for a standalone Update, it would need to be determined at/by the December 2021 CPRC meeting for inclusion in the “winter” Update.
23. It was **AGREED** that the Costs Sub-Committee:
 - conduct a focused consultation, to be concluded by 31st July 2021.
 - reviews Form N260 in the light of the changes proposed in the pilot forms, the response to the consultation, recommendations received from the CJC’s Guideline Hourly Rates Working Group and any update from the MoJ on implementation of the Jackson Fixed Recoverable Costs proposals.

- reports back to the CPRC on or before the 5th November 2021.
24. **Action:** Secretariat, in liaison with the sub-committee, to allocate time at the 5th November 2021 CPRC meeting.

Item 5 Deeds Poll (CPR(21)24)

25. Peter Farr was welcomed to the meeting and set out the background. Master Cook is the CPRC member on the Working Group, but is unable to attend today. The matter originates from a request by the then MR in January 2020 to (i) update and amend the Regulations for the enrolled court process for people to change their name by executing a deed and (ii) transfer applications for name changes for children to the family jurisdiction in the interests of maximising the safeguarding and scrutiny of often sensitive applications; in particular where there had been family breakdowns or involving transgender children.
26. The CPRC has received various updates as the work with drafting lawyers and the Family Procedure Rule Committee (FPRC) has progressed. Thanks were conveyed to Alasdair Wallace, senior drafting lawyer for his assistance to the Working Group.
27. The issue is more complex than first anticipated, due to an issue of vires, because the Family Court is not part of the Senior Courts. However, a solution has been proposed whereby the Family Court consider the application and the High Court make an order if requested.
28. The Working Group is also drafting training material and new form/s for the FPRC to approve in due course. The implementation timetable is anticipated to be Autumn 2021.
29. Birss LJ observed that the draft Regulations before the committee did not highlight all the proposed changes; this was due to the lengthy iterative process undertaken thus far, but officials will provide a copy which shows all the changes before a final determination is made. The draft Regulations and proposed draft extract of PD5A were reviewed and discussed. In response to a question from Lizzie Iron regarding the difference between the age thresholds in the respective drafting, Peter Farr understood the drafting was accurate because of the difference between unenrolled and enrolled name changes. However, the position will be checked before the final drafting is cast.
30. Overall, the committee viewed the gender-neutral drafting to be very suitable in these circumstances and commended all involved in the work thus far.
31. The draft Regulations and draft extract of PD5A (Enrolment of deeds and other documents, paragraphs 6.1 – 6.3) were **AGREED IN PRINCIPLE**, final drafting to return to the CPRC following further consultation with the FPRC, if possible, in June. **Actions:** (i) MoJ officials/drafting lawyers to check the drafting, vis-à-vis age thresholds (ii) MoJ to advise secretariat when ready to be scheduled in for CPRC consideration.

Item 6 Lacuna Sub-Committee (LSC) (CPR(21)25)

32. Master Dagnall provided an overview of the sub-committee's role and function before introducing each report, which was discussed in turn:
33. **LSC2021/15** concerns CPR16 Pleading Foreign Law, which has been raised following the judgment in FS Cairo -v- Brownlie [2020] EWCA Civ 996 para 178 where Lord Justice Underhill remarked (at paragraph [178]) that, where a party accepts that foreign law applies, but does not say that it differs materially from English law (or is content to rely on the default rule, that English law be applied), they are not obliged to plead the content of the foreign law.

34. It was explained that issues of foreign law are treated as issues of fact. Where an issue of foreign law arises, it must generally be pleaded and proved by expert evidence. Where foreign law is not adequately proved, there is a presumption – or default rule – that English law will be applied.
35. The sub-committee have considered the suggestion to modify paragraph 8.2 of PD16 (Statements of Case), but do not regard that to be the right place for a requirement of the sort contemplated, noting that Underhill LJ's observation related to the situation where a party accepts that foreign law applies but does not rely on its content. Underhill LJ's view was that it would nevertheless be helpful to know that position. In the circumstances, the sub-committee's view is that it may be more appropriate to add a new paragraph to PD16. The sub-committee is also conscious that issues of foreign law arise with increasing frequency and that PD16 is specifically intended to provide detailed guidance on the contents of Particulars of Claim. However, they are mindful of the CPRC's desire not to overload the CPR with excessive detail. That principle garnered support, which led to the possibility of whether this issue should be included in the Court Guides (rather than the CPR) with the aim of encouraging best practice. The discussion also noted that references to, "English Law" should include, "Welsh Law". It was **RESOLVED** to consult the Editors of the relevant Guides before any further CPRC resolution on the matter.
36. **Action:** Master Dagnall to liaise with the Guide Editors and report back as required.
37. **LSC2021/17** concerns CPR36 Accepting Part 36 Offers after the relevant period to gain a tactical advantage. The sub-committee have considered whether CPR Part 36 allows a party to wait until after the end of the 21-day period before accepting an offer so as to gain more flexibility as to costs. The respective judgments in Pallett -v- MGN Ltd [2021] EWHC 76 (Ch) and Dutton -v- Minard [2015] EWCA Civ 984 were referred to.
38. The sub-committee's view is that although the rules clearly allow for Part 36 offers to be accepted after the expiry of the relevant period, they can, as illustrated by Pallett and Dutton, be used tactically by litigating parties to deliberately seek to limit the cost consequences which would otherwise apply. This has the potential to severely undermine the policy rationale of promoting settlement which underpins the Part 36 regime. It also has the potential danger of increasing costs and complexity through the proliferation of satellite litigation. Given the importance of the issues raised, it was recommended that the matter be referred to the Costs Sub-Committee for further consideration and this was **AGREED**.
39. **Actions:** (i) Secretariat to check if there are available records of the CPRC previously considering the judgment in Dutton and update the Costs Sub-Committee (ii) Matter to return to the CPRC when ready.
40. **LSC2021/18** concerns PD52B Applications in certain Appeals. However, some further points have been raised and as it is not considered urgent, it is proposed to defer the matter to allow for consultation with the President of the Queen's Bench Division and this was **AGREED**.
41. **Actions:** (i) Master Dagnall to update the LSC report for onward referral to Trower J (ii) Trower J to liaise with the PQBD's Private Office and report back to the CPRC in June, if ready.

Item 7 Public Question Forum

42. Birss LJ chaired this item and thanked everyone for submitting their questions. Some questions have already been covered by substantive items, leaving the following to be addressed in the meeting, thus:

Question 1	<p>Trial Witness Statements</p> <p>Is there any appetite to eventually expanding Practice Direction 57AC to any of the other courts?</p>
Answer 1	<p>The MR explained that it is too early to say. The PD came in relatively recently and as such there is no material data/research on it. It was intended for the Business & Property Courts (BPC) where there are very long witness statements and that is not as frequent an issue in the County Court or other parts of civil justice; therefore very careful consideration would be needed before expanding beyond the BCP.</p>

Question 2	<p>Trial Witness Statements</p> <p>Are there plans to extend PD57AC, (1) beyond BPCs (2) beyond trial statements?</p>
Answer 2	<p>The MR answered. This relates to Question 1. It is less likely that the PD would be extended beyond trial statements and not generally to interlocutory statements.</p>

Question 3	<p>Disclosure Pilot PD51U</p> <p>Will the Disclosure Pilot Scheme be extended beyond 2021? Are there plans to extend it outside B&PCs? Are any further changes envisaged to the current pilot and if so what are they and when will they be implemented?</p>
Answer 3	<p>The MR explained that the Working Group was still considering the matter (along with user feedback) and as such, the CPRC has yet to be asked to consider it any further. The pilot is starting to bed down and achieve what was intended.</p> <p>It is probably more likely to be applied beyond the BCP than the Witness Evidence PD (above) because it is not as subject specific, however, no changes are planned at this stage and if there were to be any, consultation is likely.</p>

Question 4	<p>Alternative Dispute Resolutions (ADR)</p> <p>Are there any plans to amend the CPR rules in relation to ADR?</p>
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Answer 4	The MR explained that Lady Justice Asplin was leading a Working Group of the Judges' Council on ADR, the outcomes of which are expected to be reported to the CPRC in due course. ADR is something which the MR considers to be central to his future vision for civil justice. Some reform projects have integrated ADR mechanisms (such as the Damages Claims Portal), but there are no specific or immediate plans for the CPRC to consider. However, it is intended to establish a CPRC sub-committee on this subject.
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Question 5	COVID-19 Are any further amendments planned to cover COVID-19 requirements?
Answer 5	The Chair confirmed that none are presently being considered. Any further amendments will be in line with Government health requirements.

Question 6	E-filing What is the next step in e-filing? Are there plans to extend to County Court?
Answer 6	The Chair advised that Master Cook is on the HMCTS Project Board and has been marshalling the various revisions to PD51O Electronic Working Pilot Scheme, as the rollout into other jurisdictions continues. However, in terms of the County Court, e-filing is included in another limb of the HMCTS Reform Programme and the CPRC is unable to give any detail on that timetable. Nevertheless, OCMC does provide for e-documents, which is currently in place across 19 County Courts and undergoing a national rollout.

Question 7	Disclosure Pilot PD51U We have seen the Disclosure Pilot Scheme extended through to the end of 2021 and since, amendments to PD51U are being implemented on 6 th April. However, further revisions to the scheme are still being discussed for example, the applicability to low value claims and navigating multiparty disputes. Can the CPRC indicate whether it is likely that the Pilot will be extended beyond 2021 to accommodate further revisions or is there incentive to proceed with a formal rule change?
Answer 7	The MR reiterated the answer to Question 3 above.

<p>Question 8</p>	<p>Video Hearings</p> <p>In broad terms, video hearings have been deployed successfully across the Business and Property Courts during the Covid-19 pandemic. Will there be a comprehensive review of the use of video hearings with a view of putting in place a model which accommodates the use of them in a post pandemic landscape?</p>
<p>Answer 8</p>	<p>The MR explained that this is something which has been discussed by the senior judiciary. The pandemic has provided the opportunity to learn a lot and there is a drive to bring forward digital reforms where appropriate. Video hearings have been found to have benefits, particularly with short hearings. However, it will be necessary to look at this subject very carefully over time. It is too early to be specific, but it is not unreasonable to expect short interlocutory hearings to continue to be conducted by remote technology. As a general approach, parties should say if hearings should be in person and a judge will decide what is the best and just way to proceed.</p>
<p>Question 9</p>	<p>CPR 17.4 (Amendments to Statement of Case)</p> <p>A number of Court of Appeal judgments (<u><i>Goode v Martin</i> [2001] EWCA Civ 1899</u> (paras [46]-[47]), <u><i>Akers v Samba Financial Group</i> [2019] EWCA Civ 416</u> (para [24]) and <u><i>Libyan Investment Authority v King</i> [2020] EWCA Civ 1690</u> (para [39])) have held that the words 'are already in issue on' found in section 35(5)(a) of the Limitation Act 1980 are to be read into CPR 17.4(2) as follows:</p> <p><i>'The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.'</i></p> <p>Does the CPR Committee have any intention to amend CPR 17.4(2) in light of such judgments and in order to be consistent with the wording in section 35 of the Limitation Act?</p>
<p>Answer 9</p>	<p>Master Dagnall responded as follows. It is quite correct that:</p> <p>(1) section 35 of the Limitation Act 1980 provides that (section 35(4)) amendments to introduce a new claim, after the limitation period for it has expired, into existing proceedings (so that the new claim is having been brought at the date of the original issue of the Claim Form i.e. within the limitation period) can only be made where provided by Rules of Court where (section 35(5)(a)) "the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action" [section 35(5)(b) deals with new claims involving a new party] but "subject to any further restriction the rules impose";</p>

	<p>(2) CPR 17.4(2) applies this to permit the court to allow such amendments "only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings."</p> <p>(3) In <u>Goole v Martin 2001 EWCA Civ 1899</u> the Court of Appeal held that a combination of section 35(5)(a) and the Human Rights Act meant that there should be read into the CPR17.4(2) after "the same facts or substantially the same facts" the words "as are already in issue"; thus widening the jurisdiction to, for example, where a defendant had raised the relevant facts e.g. by way of alternative version of what had happened, but not to where relevant facts were no longer in issue e.g. because they had been struck-out (<u>Libyan v King 2020 EWCA Civ 1690</u> at paragraph 39).</p> <p>However, Rule 17.4(2) has never been amended to reflect this.</p> <p>The Lacuna Sub-Committee would be happy to look at the point, and can see the desirability of the wording of the Rule reflecting the law (thus avoiding litigants-in-person being misled) although (i) lawyers are likely to know what is the long-standing interpretation and (ii) there may always be hesitancy in considering changes to a rule which has generated much litigation in the past (and has such a substantive effect in preventing claims being brought on limitation grounds/limitation periods being avoided) for fear of unintended consequences albeit that the abundant case-law should make clear (all of) the intention behind such a rule-change.</p>
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<p>Question 10</p>	<p>Form N170 & Costs</p> <p>Form N170 (Listing Questionnaire (Pre-Trial Checklist)) states in section F that the parties must attach 'an estimate of costs' to the N170 but this reference would appear to relate to the pre-April 2013 CPR costs regime and the old costs Practice Direction. Is there any plan for this form to be updated?</p>
<p>Answer 10</p>	<p>On behalf of Master Cook, the Chair confirmed that there are indeed plans to update this form. The question raises an important issue which the Forms Sub-Committee are keen to address, which is to ensure that necessary changes to the Forms are addressed when changes are made to CPR.</p>

<p>Question 11</p>	<p>Form N510</p> <p>Will Form N510 be updated again to reflect the new rule in CPR 6.33(2B)(b) which provides that the court's permission is not required if the parties have agreed a jurisdiction agreement that provides for the courts of England and Wales to have jurisdiction.</p>
<p>Answer 11</p>	

	On behalf of Master Cook, the Chair confirmed that the form has now been updated and replaced by a revised form. The Forms Sub-Committee were able to address this point rapidly as the main CPRC have recently delegated powers to the Sub-Committee to make minor changes such as this, out of committee.
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Question 12	<p>Disclosure Pilot Scheme PD51U</p> <p>We understand that further changes to PD 51U are expected to be introduced in conjunction with the Autumn CPR Update, which will take effect in October 2021. Does this mean that the Disclosure Pilot Scheme will be extended, to allow the impact of those changes to be assessed before final decisions are made regarding the future approach?</p>
Answer 12	<p>The Chair was unable to give any precise detail, because the CPRC was yet to consider any further recommendations from the Working Group. Question 3 above also refers.</p> <p>PD51U currently runs until the end of December 2021 (this being a one-year extension pursuant to the 122nd PD Update).</p>

Question 13	<p>Disclosure Pilot Scheme PD51U</p> <p>As the Disclosure Pilot Scheme is currently scheduled to end on 31 December 2021, the CPR will need amendment to reflect whatever is to happen after that date. It would seem that this would have to be done as part of the Autumn CPR Update (which, we understand, has to be finalised at the June CPRC meeting) or as a special SI/Making Document. How is it envisaged that the timing will be managed, so as to ensure that practitioners have appropriate notice of any procedural reforms?</p>
Answer 13	<p>The Chair recognised the mechanics involved and said the Committee would try to deal with this in the most appropriate way possible. The usual practice for changes coming in as part of the October commencement date is that they will be published in July. It has been possible in the past for the Working Group to publish working drafts of proposed amendments in advance, so that may be an option.</p>

Question 14	<p>Disclosure Pilot Scheme PD51U</p> <p>Is there any expectation that the Disclosure Pilot Scheme might be extended to apply outside the Business and Property Courts?</p>
Answer 14	<p>The Chair referred the questioner to Answer 3 above.</p>

<p>Question 15</p>	<p>Trial Witness Statements PD 57AC</p> <p>Bearing in mind the requirement in PD 57AC.3.2 to "identify by list what documents, if any, the witness has referred to or been referred to for the purpose of providing the evidence set out in their trial witness statement" in the trial witness statement, is it acceptable to show the witness additional documents after the witness statements have been served (something one might want to do to minimize the risk of the witness being ambushed at trial)?</p>
<p>Answer 15</p>	<p>The Chair said that this was more an issue of interpretation of the rules, which was not the CPRC's function; that is a matter for the courts and accordingly was unable to offer a fuller response.</p>

<p>Question 16</p>	<p>Trial Witness Statements PD 57AC</p> <p>Given that paragraph 3.6 of the Appendix to PD 57AC states that a witness statement should not take the court through the documents in the case or set out a narrative based on the documents, as these are matters for argument, how should practitioners ensure that such documents are put before the court and their relevance explained?</p>
<p>Answer 16</p>	<p>This was jointly answered by the MR and Birss LJ, who said that there are lots of ways of putting documents before the court and their relevance explained, for example, via skeleton arguments, chronologies etc. It was not for the CPRC to interpret the rules, but the MR reiterated that the intention is about making sure the judge is aware of the relevant documents. If possible a chronology should be agreed, leaving only the important documents in the skeleton argument, so that the judge can focus on what is contentious.</p>

<p>Question 17</p>	<p>Judicial Review</p> <p>The MoJ recently announced that it would take forward recommendations by the Independent Review of Administrative Law on judicial review reform, including amendments to CPR 54, with the CPRC. Is there any information available regarding any forthcoming changes to CPR 54: for example, regarding the expected timing?</p>
<p>Answer 17</p>	<p>The MR responded. The reformed PDs supplementing Part 54 (in consequence of the caselaw and the judgment in <u>R(Dolan and others) v Secretary of State for Health and Social Care [2020] EWCA Civ 1605</u>, where 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) have been published as part of the 131st PD Update and are due to come into force on 31st May 2021. This work was led by Mr Justice Swift as judge in charge of the Administrative Court.</p>

	The Government's wider consultation on the outcome of the Faulks' Review (The Independent Review of Administrative Law) closed on 29 April 2021. It is clear from the consultation material that it is likely that the CPRC will be asked to consider further procedural reforms, although a timescale for this is not yet known.
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Question 18	<p>Court forms</p> <p>Is there any possibility that the CPRC could review the procedures for amending court forms? There have been ongoing issues. Sometimes form changes associated with rule changes seem not to have been considered, or not well thought through, or to have been delayed and then perhaps dropped off the agenda. Just by way of example:</p> <ul style="list-style-type: none"> • The listing questionnaire (Form N170) still needs changing to reflect the 2013 Jackson reforms (this has been raised in several editions of the White Book Costs and Funding Supplement). <p>The approved minutes of the October 2019 CPRC meeting indicated that there would be changes to the form for attachment of earnings (N56) but the revised form has not yet been released and there has been no explanation for this.</p>
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Answer 18	<p>The Chair answered in Master Cook's absence:</p> <p>As with the earlier forms related question (No.11) above. The Forms Sub-Committee have already addressed the issue of forms containing the version number and date of issue. Each new form will have the month and year of revision stated on it.</p> <p>As for form (N170), this has been added to the Sub-Committee's list of work programme.</p> <p>As for Form N56, HMCTS were reviewing the guidance on determination of means and anticipated further revisions to N56; they then advised that a wider piece of work would be undertaken to look at all forms which contain a statement of means and that they wanted to do so in conjunction with the advice sector. They proposed thereafter to report to the Forms Sub-Committee. This stalled due to Covid. The committee is, therefore, awaiting to hear from HMCTS when they have completed the related work. Clearly the current form N56 remains operational unless or until a revised form is introduced.</p>
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Question 19	<p>Court Forms and Updates</p> <p>Given how important the forms are for court users, it would be very helpful if, when CPR updates are released, explanatory notes on how forms have been amended (or not amended) could also be provided. Given the focus on compliance with court rules, it is important that practitioners have clarity regarding what forms should be used, and that they are given very clear</p>
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	<p>messages if production of new or revised forms is delayed, including clear guidance of the approach that should be adopted pending publication of the revised forms.</p> <p>It would also be helpful if all documents and forms could have a date and version number on them to easily identify when they were published. This is not the case, for example, with the revised versions of the BLR1 and BLR2 documents.</p>
Answer 19	<p>The Chair answered in Master Cook's absence:</p> <p>It is the intention of the Sub-Committee, to ensure that major revisions to the CPR such as the recent revised contempt rules are co-ordinated with changes to the relevant forms. Explanatory notes will not be required in all cases but may be considered in cases where they are helpful. The BLR 1 and 2 documents are not standard forms but rather standard directions.</p>

Question 20	<p>Devolution Issues</p> <p>There is continuing divergence between English and Welsh law and practice. How is this likely to be reflected in the CPR in future?</p>
Answer 20	<p>HHJ Jarman QC explained that he was the current Welsh Judicial Member of the CPRC, a position that was first appointed to in March 2018. Since then the overriding objective and provisions in the CPR relating to evidence and documents have been amended to confirm the right of court users in Wales to use the Welsh language. From October 2020, CPR 7.1A & B have been introduced to require claims against Welsh public bodies challenging the lawfulness of their decisions to be issued and heard in Wales, following the recommendation in the Commission for Justice in Wales Report.</p> <p>The forms under the accelerated possession procedure under CPR 55 now differ significantly depending on whether the property is in England or in Wales. At present a Sub-Committee is considering the many changes to the CPR which will be required when the Renting Homes (Wales) Act 2016 comes into force, now expected to be in the spring of 2022, with input from the Ministry of Justice and Welsh Government lawyers.</p> <p>The CPR will continue to be updated to reflect changes rendered necessary by Welsh law and practice.</p>

Question 21	<p>Future Plans</p> <p>It has been suggested that the CPRC may be turning its attention to the rules on statements of case. Is this correct, please, and if so are there any particular areas of focus?</p>
Answer 21	<p>Master Dagnall, explained that the Lacuna Sub-Committee (LSC) considers representations made to it by the judiciary or practitioners for specific changes to the provisions relating to statements of case, and also keeps a careful eye out for judicial decision or comment which might suggest that a lacuna or similar may exist in this area. This has resulted in one of the</p>

	<p>proposals made in this month's LSC Report (LSC2021/15) under Item 6 above. However, it is not within the LSC's remit to consider wider questions of approach or to review elements of court procedure generally, and therefore deferred to the Chair.</p> <p>The MR considered this to be an interesting and important question, observing that there is a need to look at pleadings generally in the online space in particular and for off-line in the medium term. But essentially there are no specific plans currently.</p>
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Item 8 Any Other Business from Committee members & Close

43. With no other business to be transacted, the 2021 Annual Open Meeting of the CPRC was duly closed with thanks.

C B POOLE
May 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Sam Allan, Judicial Office
Adelaide Adade, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
The Hon. Mr Justice Johnson (Item 3)
Emily Wickens HM Courts & Tribunals Service (Item 3)
Darren Rooke HM Courts & Tribunals Service (Item 3)
Peter Farr, Ministry of Justice Policy (Item 5)
24 Public Observers