



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 11.00 a.m. on Monday 8 March 2021

Present:

Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
His Honour Judge Godwin	Circuit Judge
District Judge Suh	District Judge
District Judge Gareth Branston	District Judge
District Judge Anna Williams	District Judge
Fiona James	Lay Magistrate
Michael Seath	Justices Clerk
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Melanie Carew	Children and Family Court Advisory Support Service
Rob Edwards	Cafcass Cymru
Tony McGovern	Solicitor
Graeme Fraser	Solicitor
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from the President of the Family Division.
- 1.2** Three new Committee Members were welcomed to fill the barrister and solicitor roles.
- 1.3** The Committee thanked the Head of the Family Justice Policy Team who is leaving the Department.

MINUTES OF THE LAST MEETING: 8 FEBRUARY 2021

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

ACTIONS LOG

- 3.1** The Committee agreed that all information on the table (bar those two actions relating to Information sharing between Criminal and Family Courts and the D81 Form) could now be removed to reflect their current position.

MATTERS ARISING

Accessibility of Procedure Rules – producing summaries of the FPR 2010

- 4.1** MoJ Policy said that they are working with the President of the Family Division's Office and the three Family Division Judicial Assistants who will be working up first drafts of the summaries of the FPR. The first set of drafts will be produced over March and the Committee will be provided with an update in April.

The Civil Partnership (Opposite Sex Couples) Regulations 2019

- 4.2** MoJ Policy reported that the Government Equalities Office (GEO) has confirmed they are now likely to be laying their SI to give effect to the various conversion rights in April. It will not come into force until later in the year. GEO confirmed that they do not need to revert to the Committee on the planned amendments to the FPR that will be made in their Regulations. However, GEO will let the Committee know of any consequential amendments required to practice directions.

Brexit update

- 4.3** MoJ Policy said that the FPRC EU Exit Working Group are provisionally due to meet on 18 March to discuss the status of the UK's position to re-join the Lugano Convention. This meeting is subject to developments in relation to the Lugano Convention taking place.
- 4.4** MoJ Legal also noted there are two small errors in SI 2019/517, which it is hoped can be remedied via a correction slip. If not, these will be dealt with in the next FPR amending SI. The Committee will be updated further at the April meeting.

ACTION: MoJ to provide updates on amendments to 2019 FPR SI in due course

FGM and Forced Marriage Protection Orders Update

- 4.5** MoJ Policy said all agreements for the pilot system for HMCTS to send orders to a centralised police email address have now been secured between MoJ, HMCTS and the National Police Chiefs Council, including the finalisation of a data sharing agreement. The draft pilot practice direction to enable the adoption of the system is also prepared and ready for sign off when the system is ready to go live.
- 4.6** MoJ Policy reported that the introduction of the system has unfortunately been delayed due to an unexpected overarching project on the Police ICT server. The mailbox pilot will be introduced as soon as possible thereafter.

Member Recruitment

- 4.07** MoJ Policy reported that announcements will be made on the three new practitioner members of the Committee following completion of the relevant security requirements.

Practice Direction Update

- 4.08** MoJ Legal said that Practice Direction Update No 1 of 2021, which amended 5 Practice Directions, was signed by the President and then the Minister in February. The PD Update includes amendments to Practice Direction 12D to reflect the decision of the Supreme Court in the case of *Re NY* relating to proceedings under the inherent jurisdiction of the High Court; an amendment to Practice Direction 17A to confirm that any document requiring a statement of truth that is not a standard form can bear an electronic signature; an amendment of the current expiry date for Practice Directions 36Q and 36R in response to the Covid 19 pandemic; amendments to Practice Direction 41B on the online system for making consent applications for a financial remedy associated with divorce proceedings; and amendments to Practice Directions 10A and 12K to make permanent the removal of requirements to make certain announcements in open court.

Migration of FPR 2010 to Gov.uk

- 4.09** MoJ Policy said that rules of court are being migrated from justice.gov.uk to Gov.uk because the maintenance contract for justice.gov.uk is coming to an end. The Criminal Procedure Rules have already successfully been migrated and the Civil Procedure Rules are currently undergoing the same process. In order to respond to some issues which have arisen during the initial stages of this exercise, the secretariat have requested that the e/links to the old justice.gov pages are to remain open during the migration process. The Committee will be updated further as this work develops.
- 4.10** MoJ Policy also reported that the MoJ Digital Team are shortly going to undertake usability testing sessions to ensure the system is accessible and asked whether the Committee would consider proposing a member to be involved in this exercise.

PARLIAMENTARY ITEMS

Divorce, Dissolution and Separation Act 2020 Implementation

- 5.1** MoJ Policy reported that 14 responses had been received to the consultation which closed on 2 March. Working Group meetings had already been arranged for consideration of these responses and the intention is to return to the Committee with a substantive report in April.

Domestic Abuse Bill Implementation

- 6.1** MoJ Policy said that the Domestic Abuse Bill is expected to receive Royal Assent by about the end of April 2021 and was due to begin report stage in the Lords on 8 March 2021. Timings for implementation work are provisional, and subject to final agreement, but reflect the Ministry of Justice and Home Office's current intentions. The Committee will be kept up to date with developments.
- 6.2** MoJ Policy reported on four provisions on the Bill with an effect on the Family Jurisdiction and set out proposed timescales for bringing these matters back to the Committee for substantive discussion. These were special measures in family proceedings; the prohibition of cross-examination in person of domestic abuse victims by the perpetrator (and vice versa); Domestic Abuse Protection

Notices and Domestic Abuse Protection Orders (DAPO) and Barring Orders, where work on implementation planning is at an early stage (due to this provision's recent inclusion in the Bill).

- 6.3** MoJ Policy also said it will also be necessary to consider further the implications for the rules and practice directions of underlying features of the Bill, such as the new statutory definition of domestic abuse, and will need further consideration by the Committee. The Committee flagged that the changes required may be quite significant. The Committee also asked MoJ policy to provide it with further information about potential cross-committee working groups aimed at ensuring a consistent approach, where appropriate, is taken between the family, civil and criminal courts. The Committee also raised the point that work on implementation will need to be considered in the context of forthcoming Court of Appeal judgments in four linked domestic abuse-related appeals.
- 6.4** The Committee said that in relation to DAPOs, consideration needs to be given to the operation of mandatory notification requirements so that the police are made aware of orders made. The Committee specifically asked for clarity about who will be listed as the person responsible for supervising compliance within an order in order to meet the requirement that a DAPO must specify this person.
- 6.5** The Committee also asked whether a DAPO made on a Friday afternoon would breach the requirement that a hearing must take place within 48 hours of the notice being given. It was confirmed that Sundays [and bank holidays etc] are excluded from this requirement.

ACTION:

- 1. MoJ to consider potential for a cross-committee working group**
- 2. MoJ to bring further papers to future meetings.**

Harm Panel Report Implementation

- 6.6** MoJ Policy said that this update is being provided separately from the report on the DA Bill as, whilst a number of issues are related, there is considerable work that is progressing outside of the DA Bill implementation. This will include commitments made in the Harm Panel Implementation plan; developing plans for reform to private law procedures as proposed by the Private Law Advisory Group; and IDACs.
- 6.7** MoJ Policy reported that the total budget for private law reform is still being established but this remains a Ministerial commitment. Planning and development of the Integrated Domestic Abuse Court pilot (IDAC) is underway and two design groups have been established, with the next Design Group meeting this week. MoJ Policy said that they are working towards commencement of the IDAC pilot in Autumn 2021 in line with wider private law reform. The Committee asked for clarification as to how this will be established in both the Criminal and family spheres especially if the intention is to have two separate working groups which would make cohesion an issue or will a joint working group be formulated.
- 6.8** The Committee recognised the ambitious nature of this piece of work but were concerned that no update had been circulated by the IDAC steering group since the Autumn. The Committee said that the Court of Appeal decisions will likely be relevant to some of these workstreams, including proposals around Domestic Violence Advocates. The Committee were also concerned that a number of key recommendations from the Harm Panel report were missing from this particular update and that it would be useful to see those recommendations which the FPRC will be engaged with. MoJ Policy confirmed they would be happy to provide an update against all commitments made in response to the Harm Panel report at a future meeting.

- 6.9** The Committee noted that a number of key recommendations from the Harm Panel report were not referred to in the papers for the meeting. MoJ Policy confirmed they would be happy to provide an update against all commitments made in response to the Harm Panel report at a future meeting.
- 6.10** MoJ Policy referred to the work being undertaken as part of the Private Law Pilot Group and advised that two pathfinder areas, Bournemouth and North Wales have been identified. Designated Family Judges from these areas have joined the pilot design group to contribute local systems knowledge and ensure detailed design is such that it can be implemented in their respective areas. MoJ policy said that they will ensure the Committee are kept updated on progress and will return to the Committee with detailed proposals once these are agreed.
- 6.11** MoJ Policy also reported that the intention is to return to Committee in either May or June with papers outlining detailed IDAC pilot design pathways and associated proposals for pilot Practice Directions and when the IDAC pilot design is finalised, the Committee will be asked to review the pilot's operation and consider what changes might be required.

ACTION

MoJ Policy to provide a paper by June which clarifies:

- 1. Timescales in relation to planning to implement via the pilot Integrated Domestic Abuse Courts and additional workstreams, including those commissioning further review.**
- 2. Update on the formation of a joint family/criminal working group**
- 3. Update on progress against Harm Panel commitments in summary form.**

STANDING ITEM: CORONAVIRUS RELATED ITEMS

- 7.1** MoJ Policy said that there is nothing to report under this item.

SUBSTANTIVE ITEMS

AMENDING THE OVERRIDING OBJECTIVE IN LINE WITH THE CPR 1998: PARTICIPATION OF PARTIES AND GIVING BEST EVIDENCE

- 8.1** MoJ Policy spoke to the issue following the November and December meetings where the Committee considered whether, in principle, they were minded to pursue the Family Justice Council recommendations as to whether the overriding objective of the FPR 2010 (Rule 1.1(2)(c)) should be amended to state that parties should be supported to fully participate and provide their best evidence. There have been long standing concerns that the overriding objective is a carefully crafted provision which provides a balance to the elements for which court must take into account and that making this (or any) amendment there is a risk that that balance may be thrown off.
- 8.2** MoJ Policy noted the background: the Civil Procedure Rule Committee, prompted by the Civil Justice Council recommendations, agreed to introduce a new Practice Direction, PD 1A, a new rule 1.6 CPR and amendments to rule 1.1 to make clearer that parties should be supported to fully participate in proceedings and provide their best evidence. These changes will come into force on 6 April 2021.
- 8.3** The Committee were asked whether they were minded to pursue similar amendments, noting that the FPR is not at the same starting point as the CPR as the FPR already includes Part 3A and PD 3AA.

It was also noted that there is a chance for unintended consequences to arise by making any change to the FPR's overriding objective.

- 8.4** Two options were discussed. The first being to do nothing given the existence of FPR Part 3 and PD3AA which were specifically designed to ensure the court considered vulnerability during proceedings. The second being to consider amending Rule 1.1 at the same time as making provision for the first tranche of DA Bill and Harm Panel implementation plans. This could be accompanied with analysis as to the possible implications of amending the overriding objective.
- 8.5** The Committee discussed, noting that the aims were laudable, but there were concerns that the drafting could be improved; that it might be "off balance" to include specific reference to witnesses, but not to children; that it would not be right to not include something in case inclusion might encourage someone to ask for something that it is already their right to ask for; that amending the overriding objective might be seen as retreating from/ watering down Part 3A; and that if the overriding objective is to be amended, then it may be best to do this in a comprehensive way, including comparing with the current CPR overriding objective.
- 8.6** The Acting Chair gathered the Committee's views and said that the overall view was that there was no appetite for fragmented changes to the made to the overriding objective. The option to consider amendments as part of the wider work on the DA Bill and other related projects was the preferred way forward. The Acting Chair requested that the Committee are provided with additional information at the next meeting to include an indicative timetable and some idea as to how this project will be linked with the DA Bill work.

ACTION

MoJ Policy to provide a paper linking this work in with other projects- update to the April meeting.

MEDIATION VOUCHERS

- 9.1** MoJ Policy updated the Committee on the development of the mediation voucher scheme and on the progress of a draft pilot Practice Direction. The Committee were informed that the mediation vouchers were to be offered in response to Covid and intended to be time-limited. The intention is to encourage more families to resolve their disputes outside of court and reduce court backlogs. The scheme will offer parties to specified types of proceedings, or prospective proceedings, a £500 per case contribution towards their mediation costs. The current plan is that information about the scheme will be provided by mediators at the Mediation Information & Assessment Meeting (MIAM) stage and that any Family Mediation Council (FMC) mediator can take part in the scheme. The FMC will make clear to mediators as to what their role entails. The mediation voucher funds will be provided to the mediator by the FMC once the mediation sessions are complete.
- 9.2** The Committee welcomed the scheme although they raised concerns around safeguarding and how take up of the scheme will be encouraged but pointed to similar exercises in place before 'lockdown' which showed signs of success.
- 9.3** MoJ Policy said that work is currently in operation to introduce a pilot Practice Direction which will refer to the parameters of the scheme and make slight modifications to the FPR 2010 and PD3A to reflect the plan that mediators should give information about the scheme at MIAMs. The intention would also be that data collection of the scheme is undertaken throughout the pilot project.
- 9.4** MoJ Policy said that the intention is to launch the scheme in the week beginning 22 March and in order to raise awareness, the Committee proposed that the communications strategy associated

with the scheme should draw in strands from those at Government level and the President of the Family Division's office as well as bodies representing legal advisers, court staff, mediators and others.

ACTION

Mediation vouchers to return as a full agenda item in December 2021, to review the pilot.

DEED POLL NAME CHANGES

- 10.1** MoJ Policy updated the Committee on the latest position on proposed changes to the Regulations on the change of a child's name by deed in the enrolled process within the Queen's Bench Division of the High Court. The Committee were informed that in getting into the detail of this process, MoJ Lawyers have identified fundamental concerns with an approach of conferring jurisdiction on the family court to enrol deeds poll evidencing change of name for children. The vires problem is that the family court is not part of the Senior Courts, so regulations under this power cannot make any provision for enrolment in the family court.
- 10.2** MoJ Policy said that actual enrolment must take place in the Senior Courts which for this purpose means the High Court, although that could be the Family Division. Consideration is now being given to the approach of having the change of name considered in the family court (for example via a s8 CA 1989 specific issue application). If and when the family court authorises a change of name, then an application could be made to the High Court to enrol a deed poll. The Acting Chair said that this appeared to be an overly cumbersome method and asked whether further solutions could be found but MoJ Policy said that the restriction imposed by the Regulations (Enrolment of Deeds (Change of Name) Regulations 1994 have made this a very difficult problem to resolve.
- 10.3** The Acting Chair asked whether the Committee representative on the Deed Poll Working Group could make contact with the Judicial College to see whether guidance and training could be highlighted in the Judicial newsletter.
- 10.4** The Committee noted that even where all appropriate people consent to a change of name, this does not mean that the case is by definition "non-contentious". A loss of a birth name is significant. MoJ Policy said that the QB Masters did not have the data to quantify exactly the proportion of contentious applications, but the figures were estimated as low.
- 10.5** The Committee also asked whether the Working Group had considered the impact on Cafcass and how an increase in name change applications would add to existing workloads in terms of safeguarding checks and s7 CA 1989 reports.
- 10.6** MoJ Policy said that the intention is that substantive draft Regulations and changes to rules/Practice Direction will be submitted to the Committee in April, with a further report on wider reforms to the Regulations going to the CPRC in May. The Acting Chair asked whether this paper could also include an update on the training point and give more details on the volume of applications.

ACTION

MoJ Policy to return to the Committee with a full paper detailing draft Regulations, changes to Practice Directions, an update on the extent of the issue; and further information on the training requirements and drawing up of guidance.

PENSIONS ON DIVORCE

- 11.1** MoJ Policy set out the work undertaken by the Ministry of Justice and the Department for Work and Pensions (“DWP”) in identifying various issues relating to pensions on divorce. At the March 2020 Committee meeting there was discussion in relation to an issue raised by District Judge Harrison and District Judge Suh in respect of whether FPR r.9.36(5) as currently drafted might allow a pension holder to draw funds from their pension after a Pension Sharing Order (“PSO”) has been made but before Decree Absolute is granted. This issue was considered by the Pensions Advisory Group and was further discussed by the Committee in December 2020.
- 11.2** MoJ Policy set out some initial policy views in respect of some of the various pensions issues identified.
- 11.3** MoJ Policy set out that the large number of pensions issues identified could mean work on this area would be a very considerable project indeed.
- 11.4** The Committee agreed for this work be put on hold until after implementation of the Divorce Dissolution and Separation Act 2020. In the meantime, MoJ said it would liaise with HMCTS in respect of whether there may be improved mechanisms to ensure that the court serves PSOs on pension providers, and would keep the Committee updated in this regard.

ACTION

Pension sharing on divorce to return as a full agenda item in November

STATEMENTS OF TRUTH

- 12.1** MoJ Policy noted that the Committee had agreed at its February meeting to amend all forms containing a statement of truth to mirror CPR amendments to include an acknowledgement of the consequences of giving a false statement of truth. Draft amendments to PD17A were put to the Committee and agreed.
- 12.2** MoJ Policy also raised the issue that not all application forms currently contain a statement of truth and sought the Committee’s views on whether they should do so, even if the only facts included in the form related to names and addresses. The Committee discussed and then agreed that all application forms should contain a statement of truth.
- 12.3** MoJ Policy outlined, and the Committee agreed with, plans for triaging the work to add statements of truth (starting with forms used most frequently). It was agreed that an update on progress should be provided to the October meeting.

ACTION

Statements of Truth to return to the FPRC in October to update on progress with amending forms.

AMENDMENTS TO THE FAMILY COURT (COMPOSITION AND DISTRIBUTION OF BUSINESS) RULES 2014: DRAFT RULES AND CONSEQUENTIAL AMENDMENTS TO FPR PD30A

- 13.1** MoJ Legal said that at the November 2020 Committee meeting, the President of the Family Division consulted the Committee on proposed amendments to the Family Court (Composition and Distribution of Business) Rules 2014. The Committee were asked to consider draft Rules making the agreed amendments to the 2014 Rules and to consider whether any transitional provision is needed.

The Committee were also asked to consider and agree to a draft amendment to FPR PD30A which will be needed in consequence of the amendment to rule 7(1) of the 2014 Rules.

13.2 MoJ Legal informed the Committee that if agreed, the amending Rules and the PD30A amendment will be submitted to the President, and then to the Minister, for formal signing and then the amending Rules will be laid before Parliament on 26 April. It is proposed that the amending Rules, and the PD30A amendment, should come into force on 24 May.

13.3 The Committee were content with the draft amending Rules and the PD30A amendment.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

14.1 MoJ Policy said that no other items will need to be discussed bar that of the overriding objective which has been raised previously at this meeting.

PRIORITIES TABLE

15.1 MoJ Policy spoke to the priorities table and asked for the Committee's view that this accurately reflects the current position in relation to the work of the Committee. The Committee's view was also sought on the current tiering of work commitments. The Committee proposed that 'service of orders at refugees' should be moved into tier 1. The Committee also asked whether the issue regarding the differences between CPR and FPR in relation to financial remedies practice should also be reflected on the table.

PENDING PRACTICE DIRECTIONS AMENDMENTS

16.1 MoJ Legal presented a table setting out the current Practice Direction related projects and said that further updates are needed to reflect projects such as the DDSA 2020, DA Bill and Harm Panel implementation work. It was noted that the table is lengthy and that there will need to be some triaging of the work to be done.

FORMS WORKING GROUP UPDATE

17.1 MoJ Policy said that the FPRC Forms Working Group met on the 17th February to progress work on the various forms which are listed on the table and are next due to meet on 17th March.

17.2 MoJ Policy updated the Committee in respect of the revised draft D81 form. It confirmed that a revised version of the form would be sent to the Committee before its next meeting so that the Committee could consider whether it is necessary for guidance notes to be attached to the form.

ACTION

MoJ Policy to send to the Committee a revised version of the D81 Form prior to its next meeting.

17a. CONTEMPT FORMS

- 17.3** MoJ Policy detailed further changes to the Contempt forms which were suggested following the February FPRC meeting. Amended versions were presented to the Forms Working Group on 17 February and returned to the Committee at this meeting for sign off in light of the amendments. The Committee proposed that further analysis work be undertaken by MoJ Policy on the FC601 to compare the filtering process on the Civil side in relation to the Name and Rank of Judge section. The Committee asked whether the Forms Working Group could consider page 6 of FC600 and whether the box which states that there is no requirement for a penal notice should have an additional information box to say why. Another amendment was proposed to the FC600 to ask the applicant the basis of their belief as to the defendant being aware of the consequences of breaching the undertaking. It was agreed the forms would return to the next Forms Working Group meeting after this work has been done. The Committee were content that the FC602, FC603 and FC604 could be signed off.

17b. A58 FORMS AND GUIDANCE

- 17.4** MoJ Policy said that the A58 adoption form and associated notes had been reviewed by the Forms Working Group following a judgment (ZH v HS [2019] EWHC (Fam) 2190) where an application to revoke an adoption order should not have been issued as particular gateway requirements were not met during the application process. The form and supporting notes have been amended to include explicit reference to these gateway requirements and confirmation that these requirements may affect the applicant's eligibility to apply for an adoption order. The Committee agreed to sign off the amended A58 form and supporting notes document.

DRAFT APRIL AGENDA

- 18.1** MoJ Policy said that the draft agenda will be amended to reflect any changes following this Committee meeting.

ANY OTHER BUSINESS

SERVICE OF ORDERS AT REFUGE ADDRESSES

- 19.1** MoJ Policy noted that issues around the service of orders at the residential address of refuges had been raised during the passage Domestic Abuse Bill, and Ministers had indicated that this was a matter to be considered carefully, including by engaging with the Committee.
- 19.2** There was agreement from the Committee that further consideration of this issue was important.
- 19.3** The Acting Chair proposed that this return in April as a separate agenda item with an indicative timeline for taking this forward.

ACTION

MoJ Policy to provide a paper with indicative timetable of work for the April meeting

MIRRORING THE CPR IN FINANCIAL REMEDIES

- 19.4** The Committee considered a paper which outlined the differences between the CPR and the FPR and whether things that are in the CPR that ought to be in the FPR from a financial remedy perspective. The Committee agreed that this is important but not urgent and should be considered in light of other priorities and resource implications.

ACTION

MoJ Policy to advise at the April meeting when it might be possible to take this matter forward.

POTENTIAL AMENDMENTS TO PD12F

- 19.5** Mostyn J had noted some candidates for amendment in PD12F. It was noted that when the Committee had considered the implications of the UKSC decision in Re NY the possibility of amending PD12F has been raised. The Committee had agreed at that point that PD12F warranted overall review so had decided not to make any amendments pending such a review. It was noted that the review would be resource intensive. Against this background, it was agreed not to make amendments at this point in time, but to include the points raised by Mostyn J at such time as PD12F is reviewed.

TIME FOR NEXT MEETING

- 19.6** The Committee agreed that meeting times should be moved forward to 10:00am to reflect the larger agendas and longer running times.

DATE OF NEXT MEETING

- 20.1** The next meeting will be held on Monday 19 April 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat

March 2021

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