



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Via Microsoft Teams
At 10.00 a.m. on Monday 19 April 2021

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Mr Justice Mostyn	High Court Judge
District Judge Suh	District Judge
District Judge Branston	District Judge
District Judge 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
Graeme Fraser	Solicitor
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1** Apologies were received from Lord Justice Baker, HHJ Raeside, HHJ Godwin and Tony McGovern.
- 1.2** HHJ Roberts and HHJ Waller have been invited to attend to the item on the Divorce, Dissolution and Separation Act 2020.
- 1.3** HHJ Knowles has been invited to the Domestic Abuse Bill Implementation and the Special Measures amendments

MINUTES OF THE LAST MEETING: 8 MARCH 2021

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

ACTIONS LOG

- 3.1** The Committee agreed that the Domestic Abuse item on the table will be moved from the table when next presented in May.
- 3.2** The Committee asked that the D81 Form remain on the Actions List and welcomed further discussion with MoJ's Marriage and Divorce Law Policy team to help progress matters.

MATTERS ARISING

Accessibility of Procedure Rules – producing summaries of the FPR 2010

- 4.1** MoJ Policy said that the first drafts of the summaries of the FPR have been prepared in conjunction with the President of the Family Division's Office and the three Family Division Judicial Assistants. This will now return in May for review.

Brexit Working Group

- 4.2** MoJ Policy said that the EU has not yet formally begun to consider the UK's application to re-join the Lugano Convention and will try to give the EU Exit Working Group an update at their next meeting provisionally set for 28 April.

Mediation Vouchers pilot

- 4.3** MoJ Policy said that the scheme launched on 26 March and that there had been considerable interest
- 4.4** The Committee raised the point that the scheme could benefit from further publicity despite that already undertaken.

PD17A update

- 4.5** MoJ Policy confirmed that further to the amendments to PD17A being agreed at the last meeting, an issue had since been raised by the HMCTS' User Centred Design team that the statement of truth wording on both civil and family forms may be too complex for unrepresented parties. Whilst this is further discussed between User Centred Design, MoJ policy and MoJ legal, amendments to PD17A and PD22A are being held back. An update on the progress of this work will be provided to the Committee in May.

FGM and FM Protection Order Mailbox

- 4.06** MoJ Policy reported that the Committee were updated in March in relation to the pilot for communicating forced marriage and FGM protection orders to the police. The issues raised then have now been overcome and the new procedure is due to come into force on 26th April. The President of the Family Division confirmed that he has signed the accompanying Practice Direction Update.

Migration of FPR 2010 to Gov.uk

- 4.07** MoJ Policy updated the Committee on progress being made on the exercise to move the Family Procedure Rules online presence from the Justice site to Gov.UK and confirmed that this is making steady progress. However, it has been agreed that the Justice site will remain open until the exercise is completed. The Judicial led group who met before Easter will be updated further over the next

couple of weeks on proposed next steps in terms of the usability issues identified, further research and feedback from users.

CATJAFS update

- 4.08** The Committee were updated on current progress of CATJAFS work. It was confirmed that roughly 2700 child arrangement orders have been issued by justices' legal advisors since summer 2020, but the numbers decreased at the end of the year.
- 4.09** The Committee were informed that questionnaires consisting of 4 or 5 questions are due to be sent to both the Magistrates Association and DFJs to obtain preliminary findings to assist the Working Group make a recommendation to the Committee regarding the functions of justices' legal advisers. Views on the impact of PD36Q and PD36R will also be sought in the questionnaires, which have a closing date of 4 May, and any initial findings will be presented to the Committee at the May meeting.

STANDING ITEM: CORONAVIRUS RELATED ITEMS

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

SUBSTANTIVE ITEMS

SERVICE OF ORDERS AT REFUGES

- 6.1** MoJ Policy spoke to the issues relating to the confidentiality of refuge addresses in family proceedings. There are two issues to consider: service at refuge addresses and the inadvertent disclosure of refuge addresses on court documents.

The Committee previously agreed to consider ways of effecting the service of applications and court orders on women living in refuges to ensure that this is done safely. On the issue of confidentiality of refuge addresses, MoJ Policy said that there are four means by which the court can order the address or contact details of a child to be disclosed with the most common being location orders obtained by application under the inherent jurisdiction of the High Court. The Tipstaff has advised that if domestic abuse is an issue in a location order case, then any address established for the child is only disclosed to the court. However, it was noted that there is no express provision for specifically restricting an applicant's access to this information. There is a risk that addresses could be wrongly shared, for example by applicant's solicitors or by being recorded on court orders.

- 6.2** MoJ Policy said that, as well as the risk associated with the service of orders on parties at residential refuge addresses, they also intend exploring options with HMCTS as to whether any operational steps need to be taken to prevent the potential risk of the court sharing the residential address of a refuge with any individual or third party.
- 6.3** The Committee welcomed this work and stressed the importance if even for a small number of cases; but asked whether consideration could be given to expanding this area to cover those addresses that were not just refuges but to other addresses, for example if a person has moved to a new address for safety reasons.

- 6.4** MoJ Policy asked the Committee whether they agreed to set up a working group to specifically consider domestic abuse related issues in the pipeline for the coming 12-24 months, including this work, the IDAC pilot and DA Bill implementation. A number of Committee Members volunteered to be on the Working Group and Mrs Justice Knowles also agreed to contribute to this work.

ACTION

MoJ Policy to make contact with the DA Working Group with a view to arranging a first meeting.

DEED POLL NAME CHANGES

- 7.1** MoJ Policy said that the Judicial Working Group had met on 15 April and made some further changes to the draft Regulations circulated, but that a final draft would come to this Committee at its May meeting.
- 7.2** MoJ Policy said that the Family Court will as part of the gatekeeping function when assessing the complexity of cases also need to be aware of the publicity around the enrolled deed poll process in order to take a view on whether publication is in the best welfare interests of the child. This will be at the Court's discretion and MoJ Policy said that in some cases such as gender name changes or those from abusive relationships, there may be a request not to publicise a name change. Generally, if the Family Court authorises a child's name change it makes an Order and the case returns to the High Court for the formal enrolment process, complying with the primary legislation.
- 7.3** MoJ Policy said that further work is underway on related forms, finance and training and that the Judicial College have already been contacted in relation to the latter.
- 7.4** MoJ Policy asked the Committee to consider a draft set of amending Regulations. The Committee has previously seen text for amending regulation 8 of the Regulations which relate to child name change applications but can now see the Regulation in the wider context. A number of revisions are being made to modernise the instrument and further work is planned on gender neutral referencing to applicants and providing court discretion on the form of advertising of a name change.
- 7.5** The Acting Chair asked whether consideration had been given to the hearing location especially bearing in mind the effect that approximately 900 applications would have on the system. The Committee said that the one court advantage would be that these applications were relatively routine and could therefore be dealt with by lay-bench with only more complex cases such as transgender children needing to be escalated to the High Court. MoJ Policy said that this issue had been considered within the Working Group and they were of the view that this should be spread out nationally but further views will be considered. The argument was between having a dedicated centre building up expertise against sharing the burden of extra work more evenly, and as this was a national service a regional spread would mean local hearings where one was needed.

ACTION

MoJ to return in May with amended draft Regulations and an update note which provides consideration of the one court issue.

PD36U – REQUIREMENT FOR NON-MOLESTATION ORDERS TO BE PERSONALLY SERVED

- 8.1** MoJ Policy asked the Committee to consider three options to deal with the expiry date of pilot Practice Direction 36U, which tested the impact of allowing courts to direct service of applications and orders under Part 4 of the Family Law Act 1996 other than by personal service. Practice Direction 36U was introduced as a temporary measure to assist with pressures arising from the coronavirus pandemic and social distancing restrictions.
- 8.2** The three options presented by MoJ policy were: to make permanent provision in the FPR to the same effect as Practice Direction 36U (the recommended option); to extend the expiry date of pilot Practice Direction 36U to 30th April 2022 to enable further assessment; or to allow pilot Practice Direction 36U to expire on 3rd May 2021 and revert to the previous rules.
- 8.3** The Committee were largely supportive of the recommendation for permanent provision. It was noted that some legal representatives seem to pick their preferred method of service without appreciating that the court needs to direct the appropriate method.
- 8.4** The Committee signed off the recommendation to make permanent provision in the FPR to the same effect as Practice Direction 36U. That Practice Direction will be extended until the date on which the new FPR provisions come into force. MoJ policy said that they would keep the permanent provision under review to test the impact, which the Committee agreed to and asked for this to be completed 6 months after the permanent provision comes into force.

PD36T – PILOT PD MANDATING USE OF ONLINE CONSENT FINANCIAL REMEDY SYSTEM BY APPLICANTS' LEGAL REPRESENTATIVES

- 9.1** MoJ Legal asked the Committee to consider making permanent provision to mirror the currently piloted provision in PD36T. This PD has been in place since August 2020 and expires on 31 May 2021. It mandates the use of the online system by Applicants' legal representatives when submitting consent financial remedy applications.
- 9.2** The Committee said that they agreed that the online system works well. They asked for consideration to be given to providing a single point of contact where technical issues occur. HMCTS indicated they would take this forward. Committee members also raised concerns about the different calls on DJs' time, including dealing with online consent applications. It was agreed that further conversations were needed with HMCTS to prevent over-loading. The Acting Chair indicated that she would raise this matter with the President.
- 9.3** The Committee asked about the prospect of the online system being made available for use by unrepresented parties. HMCTS said that in 86% of cases applicants are legally represented. For any unrepresented applicants, their paper applications would be bulk scanned by HMCTS and would then progress in the same way as an application that had been made online.
- 9.4** HMCTS noted that they had discussed the proposal for permanent provision with representatives of Resolution, who were supportive of the proposal.
- 9.5** The Committee agreed to PD41B being amended as proposed, without the need for a prior consultation exercise, and that the necessary amendments should be included in a future PD Update to be submitted to the President and then to the Minister. The amendments to PD41B will need to come into force at the point at which pilot PD36T expires (31 May 2021).

AMENDMENTS TO AN ORDER UNDER THE SLIP RULE, FPR 29.16

- 10.1** HMCTS said that a complaint has recently been received from a customer where an order had been amended by a member of staff to correct the Judge's name. This was done without reference to a Judge. The customer alleged that the member of staff had abused his position (they cited section 4 Fraud Act 2006) and had been guilty of false representation (section 2 Fraud Act 2006).
- 10.2** HMCTS Policy said that it is common practice for court staff to amend orders if the error is clearly an administrative one. This has been a long-term situation, although they have been unable to uncover any staff guidance which indicates this is permissible. MoJ Legal indicated that their view is that r29.16 envisages judicial involvement, but it is not clear whether there may be separate provision, perhaps unwritten, which enables court staff to make certain amendments. In any event, MoJ Legal suggested a need for clarity.
- 10.3** HMCTS Policy said that they have asked the judiciary via the Family Court Operational Forum whether they would wish to see requests to amend their orders where the error was clearly administrative. Most who responded said that the court administrative staff should be permitted to correct typographical errors without reference to a Judge, but two DFJs were of the view that all proposed amendments should be referred to a judge. The Committee said that they agreed with staff amending obvious typos but offered a note of caution that these could be a minor name change or correct identification of gender which would still have implications, for example, if two judges with near matching details operated from the same circuit. The Committee also added that previous Supreme Court Rules referred to "clerical" errors.
- 10.4** The Committee agreed that clarity is needed as to when it is appropriate for court staff to correct errors and when matters must be referred to a judge.
- 10.5** MoJ Legal suggested that that clarity could be provided in a Practice Direction underpinning rule 29.16 FPR 2010. The Committee agreed that further work is required to be clear where the line should be drawn between court staff making amendments or referring matters to judges. Members volunteered to look at draft Practice Direction provision and to highlight risks before this issue returns to the Committee.

ACTION

MoJ to liaise with volunteer Committee members to consider draft new Practice Direction. Matter to return to the June or July Committee meeting.

PARLIAMENTARY ITEMS

Divorce, Dissolution and Separation Act 2020 Implementation

- 11.1** MoJ Policy outlined that the Committee had approved the consultation paper on procedure rule changes needed for implementation of the Divorce, Dissolution and Separation Act 2020 ("DDSA 2020") (and attached draft procedure rule changes) at its December meeting. The consultation opened on 15 December and closed on 2 March and fourteen responses were received in total.
- 11.2** MoJ Policy set out that the FPRC's dedicated divorce implementation Working Group had met a number of times in March to consider the consultation responses in detail, as well as the initial work completed by MoJ in respect of relevant Part 6 and Part 7 Practice Directions and wider consequential amendments to the FPR and other Practice Directions.
- 11.3** The Working Group's proposed post-consultation amendments to Part 6 and Part 7 were outlined to the Committee. MoJ Policy further set out to the Committee that the Working Group had had very

extensive discussions in relation to the issue of service and the consultation responses in this respect, carefully considering suggestions made by stakeholders as well as potential rule amendments which might address concerns raised. However, the Working Group concluded that the draft rules on service that went out for consultation do strike the delicate balance needed between the rules ensuring prompt service by the applicant and the rules not imposing unduly harsh sanctions. It therefore concluded that no substantive post-consultation changes should be made in respect of these rules. The Committee agreed the Working Group's approach in regard, as well as agreeing the Working Group's other post-consultation draft amendments.

- 11.4** In relation to the issue of costs in divorce, dissolution and separation proceedings, MoJ Policy outlined to the Committee that whilst no questions were raised in relation to this issue in the consultation paper, both Resolution and Rights of Women did raise the issue of costs as part of their consultation responses. MoJ Policy set out that the Working Group had had very detailed discussions about this issue in light of these responses. It had broadly agreed that costs orders should not be made on a regular basis in standard divorce proceedings under the new law. However, the Working Group was divided on how best to achieve this. The majority view of the Working Group was that the current costs discretion should be retained, but with clear guidance setting out the basis upon which costs orders would not be or might be made in the new landscape. The Committee discussed the issue of costs and agreed that the current 'clean sheet' costs rules should be retained, with there being a need for very clear guidance setting out the high benchmark needed for costs orders to be made.
- 11.5** The Committee considered whether it wished to refer the issue of costs to its dedicated Costs Working Group at this stage, and decided that it did not, given its decision to retain current costs rules. As set out in the consultation paper, a separate consultation on costs may be considered once there has been time for assessment of the operation of current costs rules following DDSA implementation. The Committee further discussed the possibility of not including within the application form for divorce, dissolution or separation the option of applying for costs, so as to disincentivise applications.
- 11.6** MoJ Policy referred to an addendum to the main paper which concerned the issue of whether there should be a specific rule within Part 7 in respect of the court making directions to consider a stay of proceedings where the papers reveal the existence of concluded overseas proceedings. The Committee welcomed and supported the proposal that Practice Direction provision be made within PD7A to deal with the circumstance on concluded overseas proceedings for divorce or dissolution.
- 11.7** Overall, the Committee agreed to the approach taken in respect of the amended draft Part 6 and Part 7 rules. MoJ confirmed it would bring draft amendments to relevant Practice Directions to the Committee at its May meeting, alongside the draft rules. This would be with the aim of the Committee giving a final 'sign-off' of the rules and Practice Directions at its June meeting.

ACTION

Amended relevant Practice Directions to be presented at the May meeting.

DOMESTIC ABUSE BILL IMPLEMENTATION

- 12.1** MoJ Policy said that the Domestic Abuse Bill remains on course to receive Royal Assent at the end of April 2021 and is due back in the House of Lords this week. An update was given regarding the elements of the Bill which would require amendments to the Family Procedure Rules and Practice

Directions and the provisional timelines for bringing different elements into force. The Committee noted that the Bill provisions could have consequences for Acts such as the Children Act 1989.

- 12.2** The Committee asked for an update on the provision on 're-education for family Judges'. They were informed that this was over-turned in the Commons and that the Government intention was that it should not form part of the final Act.

ACTION

To return to the Committee in May (or June) on the timescales for the introduction of the DAPO/N pilot. To return to the Committee after the summer in relation to cross-examination provisions.

SPECIAL MEASURES AMENDMENTS

- 12.3** MoJ Policy asked the Committee to consider draft amendments to FPR Part 3A and Practice Direction 3AA, to implement clause 63 of the Domestic Abuse Bill (*Special measures in family proceedings: victims of domestic abuse*). Clause 63 was inserted into the Bill to strengthen and improve the use of special measures for victims of domestic abuse in family proceedings and the intention is that these draft amendments are revised in line with the Committee's views. Ministers are keen for the introduction of this provision within six months of the Bill receiving Royal Assent.
- 12.4** MoJ Policy said that the Harm Panel report highlighted that screening and video links (and other special measures) were not being used as effectively as they could be and that changes to the Family Procedure Rules have not achieved their objective of offering better protection and affording victims the opportunity of giving their "best evidence". Clause 63 of the Bill mandates an amendment to the existing Family Procedure Rules to automatically deem victims of domestic abuse as "vulnerable" for the purposes of determining whether a participation direction should be made, although this is not intended to create a legal obligation on HMCTS to otherwise guarantee the provision or availability of certain special measures in family courts. MoJ Legal said that the process is explained further in the annexes and asked for the Committee's comment including on the suggestion that a slight title change will be required.
- 12.5** The Committee noted that the draft rule wording may need amending if the intention is that there should be no need for a judicial determination as to whether someone is a victim or at risk of domestic abuse before the new presumption of vulnerability applies.
- 12.6** The Committee also raised the issue that special measures might not be guaranteed to be available. MoJ acknowledged that there may be court buildings where, for example, separate entrances for different parties are not available. It will remain, as now, at the discretion of the judge to consider whether to move a hearing to another building.
- 12.7** The Committee also queried why the special measures provision in the Domestic Abuse Bill for civil proceedings is different to that for family proceedings. MoJ Policy said they would liaise with Civil colleagues and revert to the Committee on this point.
- 12.8** The Committee discussed proposals to undertake work in relation to the Domestic Abuse Bill definition of "domestic abuse" in stages: by first including provision in Part 3A and then considering implications elsewhere in the FPR and Practice Directions as part of a wider review of provisions in light of the new definition, but also of the Harm Panel recommendations. The Committee noted that

it would not want there to be differing definitions applicable in different provisions in the same proceedings.

ACTION:

MoJ Policy to return with a paper in May addressing issues raised on the special measures draft rule provision and on the differences between the civil and family special measures clauses in the Bill.

HARM PANEL REPORT IMPLEMENTATION

- 13.1** MoJ Policy updated the Committee on progress against commitments outlined in the Government's Implementation Plan, published in June 2020 alongside the Final Report of the Expert Panel on Harm in the Family Court. The Committee were also provided with an update on the work of the Private Law Advisory and Pilots Group who are co-ordinating and planning a programme of pilots to reform private family law.
- 13.2** MoJ Policy updated the Committee on legislative changes and the need for pilot Practice Directions in the Autumn for the Integrated Domestic Abuse Court (IDAC) pilot. A timetable has been provided including the work needed to cover the Private Law Advisory and Pilots Group, currently chaired by Mr Justice Cobb.

ACTION

To return as a standing item in May

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 14.1** MoJ Policy said that no specific issues have been raised, save for an issue in relation to Practice Direction 5B which will be brought to the May meeting. The Acting Chair asked whether links could be established with the Chairs of the other Rule Committees with a view to inviting them to attend a future meeting of the FPRC.

PRIORITIES TABLE

- 15.1** MoJ Policy said that the table reflected the latest position on a number of live issues and the required resource to take these forward. Officials will revert to the Committee on the overriding objective review proposals in May. Proposals to make new provision in relation to the exercise of the court's inherent jurisdiction in relation to adults will be considered later in 2021. Matters in relation to the information sharing between criminal and family courts will be considered as part of the IDAC project.
- 15.2** The Committee asked whether the recent Fees consultation will be added to the list of work projects. MoJ Legal said that it won't be necessary to add this area to the Priorities Table, as fees are not a matter within their remit, but agreed that the Committee should have sight of this exercise by way of information.

ACTION:

Committee should have sight of the outcome of the fee's consultation exercise.

PENDING PRACTICE DIRECTIONS AMENDMENTS

- 16.1** MoJ Legal presented a table setting out the current Practice Direction related projects and said that it contains information outlining the candidates for inclusion in the next Practice Direction Update, which will be submitted to the President this week. The paper also outlines future identified PD amendments/ new PDs.

FORMS WORKING GROUP UPDATE

- 17.1** MoJ Policy provided the Committee with a brief update on the work currently being considered by the Forms Working Group. The Forms Working Group are next due to meet on Wednesday 5 May.

17a. CONTEMPT FORMS

- 17.2** MoJ Policy reported that following additional comments received by a member of the Contempt Working Group, specific amendments to the FC600, FC602, FC603 contempt forms have been made in addition to changes to the FC601 and FC603 which were agreed by the Forms Working Group. MoJ Policy also clarified the FC601 would be issued under circumstances where the court proceeds with contempt proceedings of its own accord. The forms were presented for sign off.
- 17.3** The Committee discussed whether the style should be brought in line with the suite of forms under the Family Order Project and MoJ Policy said that they would compare the documents and return in May for final sign off.

ACTION

MoJ Policy to compare the Contempt forms with standard orders and make changes where necessary.

17b. A58 ADOPTION FORM AND GUIDANCE

- 17.4** MoJ Policy said following formal sign-off of the form and guidance at the March FPRC, these are now being translated into Welsh and when complete both the English and Welsh versions will be published and added to the forms catalogue. FPRC stakeholders will also be updated of these changes.

DRAFT MAY AGENDA

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

ANY OTHER BUSINESS

DISCLOSURE OF INFORMATION FROM FAMILY PROCEEDINGS TO SSHD/ IMMIGRATION TRIBUNALS

- 19.1** The Committee considered a letter from the Secretary of State for the Home Department to the President of the Family Division seeking permission for use of documents originating from Family Court proceedings in the Immigration decision making process. This followed a number of recent cases in the First Tier Tribunal (Immigration and Asylum Chamber), where individuals making immigration applications to the Secretary of State for the Home Department had submitted

documents arising from Family Court proceedings to the Secretary of State for the Home Department in support of their applications without permission to do so.

- 19.2** The Committee agreed that this issue should be progressed, especially as it noted as being a significant issue in East London with court time being taken up with requests to disclose information.

ACTION

Item to return for consideration at either the June or July meeting.

TIME FOR NEXT MEETING

- 19.3** The Committee agreed that the re-arranged meeting time should remain at 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 10 May 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat

April 2021

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