



Ministry
of Justice

Family Procedure Rule Committee

Annual Report April 2020 – March 2021

This annual report of the Family Procedure Rule Committee of April 2020 to March 2021 includes references to rules made during the period of the report, the Committee's terms of reference, membership and dates of meetings.

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1. Terms of Reference

The Family Procedure Rule Committee (“the Committee”) is an Advisory Non-Departmental Public Body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in family proceedings in the Family Division of the High Court and the family court. Its power to make rules is to be exercised with a view to securing that the family justice system is accessible, fair and efficient and the rules are both simple and simply expressed. Before making rules of court, the Committee must meet and discuss proposed rules (unless it is inexpedient to do so) and consult such persons as it considers appropriate.

2. Background

The Committee was established in 2004 in accordance with the provisions of the Courts Act 2003.

3. Membership

The Committee comprises the following members:

- The Right Honourable Sir Andrew McFarlane –President of the Family Division (Chair)
- The Honourable Mrs Justice Theis –High Court Judge/ Acting Chair
- The Right Honourable 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 Anna Williams
- District Judge Branston (Magistrates’ Court)
- Michael Seath – Justices’ Clerk
- Fiona James JP – Lay Magistrate
- Poonam Bhari – Barrister
- Rhys Taylor – Barrister
- Graeme Fraser - Solicitor
- Tony McGovern –Solicitor
- Melanie Carew – Cafcass
- Rob Edwards – Cafcass Cymru
- Bill Turner – Lay member

To note that the following Committee Members completed their tenure during this period:

- William Tyler QC – Barrister
- Michael Horton – Barrister
- Dylan Jones - Solicitor

4. Remuneration

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

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

A register of member interest for the period of this report is also published on the Committee's website.

5. Meetings

The Committee met on the 2nd March 2020, 6th April 2020, 4th May 2020, 8th June 2020, 6th July 2020, 5th October 2020, 16th November 2020, 14th December 2020, 8th February 2021 and 8th March 2021. The meeting on the 5th October 2020 was held as an open meeting where stakeholders were invited to attend. The next open meeting is due to be held on 4th October 2021.

Due to the coronavirus pandemic meetings for the period covered by this report have all been undertaken remotely.

6. Working Parties

The Committee establishes working parties to consider the detail of the rules relating to specific types of family proceedings. During the period of this report, the following working parties were in existence:

- EU Exit Working Group,
- Divorce Working Group,
- Costs Working Group,
- CATJAFS Working Group,
- Contempt Working Group,
- Enforcement Working Group; and the
- Forms Working Group

The following working groups were in existence but did not meet during the period of this report:

- Digitisation sub-committee,
- Voice of the Child Working Group

The EU Exit Working Group considers Ministry of Justice Policy's contingency preparations for a no-deal scenario in family law, with particular regard to the draft Statutory Instrument covering the Family Procedure Rules and Practice Directions. The members of the EU Exit Working Group are Mrs Justice Theis, Mr Justice MacDonald, Mr Justice Williams, William Tyler QC, Eleri Jones, Rob George, Paul Eames and Ministry of Justice legal/policy officials.

The Divorce, Dissolution and Separation Working Group was convened to support the Committee in overseeing the drafting of proposed new and amended procedure rules in relation to the DDSA 2020. The members of the Working Group are Her Honour Judge

Roberts (Chair), District Judge Williams, District Judge Todd, His Honour Judge Waller, Gavin Smith (barrister member), Oliver Gravell (solicitor member), Professor Liz Trinder (academic member) and HMCTS/Ministry of Justice legal/policy officials

The Costs Working Group was convened to consider what changes need to be made to encourage parties to consider costs at an earlier stage in financial remedy proceedings. This included a consultation on changes to PD28A and a revised form of Calderbank offers. The members of this Working Group are made up of a mix of committee members and members from outside organisations. The members of the Costs Working Group are: Mr Justice Mostyn, Mr Justice Francis, Michael Horton, Peter Burgess and Margaret Heathcote (providing representation from Resolution) and Ministry of Justice legal/policy officials.

The CATJAFS Working Group considers the functions of justices' legal advisers further to a consultation. The group will consider what changes (if any) need to be made to the Family Procedure Rules in relation to justices' legal adviser functions and put to the Committee for their consideration. The members of the CATJAFS Working Group are: Her Honour Judge Raeside, His Honour Judge Godwin, District Judge Suh, Michael Seath, Hannah Penfold, James George and Ministry of Justice legal/policy officials.

The Contempt Working Group considers the simplification of Part 81 of the Civil Procedure Rules, and Part 37 in the Family Procedure Rules, in relation to contempt proceedings. The members of the Contempt Working Group are: Mrs Justice Lieven, Michael Horton, His Honour Judge Godwin, Gavin Smith and Ministry of Justice policy officials.

The Enforcement Working Group considers providing simple rules and Practice Directions to give guidance on enforcement and provide a set of standard responses for use by the Court. The members of the Enforcement Working Group were: Lord Justice Baker, His Honour Judge Waller, Mr Justice Mostyn, Michael Horton and Ministry of Justice legal/policy officials.

The Forms Working Group considers changes that need to be made to the Family Forms. The members of the Forms Working Group are Mrs Justice Theis, District Judge Suh, Melanie Carew, Tony McGovern and Ministry of Justice policy officials.

The Digitisation sub-committee provides the Committee with an overview of the rule changes needed to facilitate digital reform in divorce, financial remedies following divorce, private law children's cases and public law children's cases. The members of the Digital Working Group are: Lord Justice Baker, His Honour Judge Waller and Ministry of Justice legal/policy officials. The group has not needed to meet over the course of 2020/21.

The Voice of the Child Working Group Children Working Group meet on an ad hoc basis with Ministry of Justice and HMCTS Officials to further the drafting of the Children and the Vulnerable Witnesses Practice Directions prior to drafts being submitted to the full Committee for consideration and comment. The members of the Voice of the Child Working Group were Mrs Justice Theis, Her Honour Judge Raeside, Rob Edwards,

Melanie Carew, Fiona James and Ministry of Justice policy officials. This group has not met over the course of 2020/21.

7. Family Procedure Rules 2010

The Family Procedure Rules, which were made by the Committee on 13 December 2010, came into force on 6 April 2011. The rules are contained in 40 Parts covering different areas of procedure and different types of proceedings. Under the provisions of the Courts Act 2003, rules may, instead of providing for any matter, refer to provision made about that matter in directions. Accordingly, much of the detail of the procedure is contained in Practice Directions supplementing the Parts of the Rules.

The Committee adopted the following principles in development of the rules:

- i. Modernisation of language;
- ii. Harmonisation with the Civil Procedure Rules to the extent that it is appropriate;
- iii. Creation of a single unified code of practice in addition to rules; and
- iv. Alignment of procedures in all levels of Court except where there are strong reasons not to do so.

8. Family Procedure (Amendment) Rules 2020

During the period covered by this report, the rules were amended by two statutory instruments. The amendments are made by the Family Procedure Rule Committee and formally allowed by the Lord Chancellor.

The Spring SI, **Family Procedure (Amendment) Rules 2020** made amendments to the Family Procedure Rules 2010, which included;

- implementing the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 provisions in the family court;
- clarifying the requirement that all correspondence sent to the court is copied to all parties (with specified exceptions);
- inserted a new Part 41 into the FPR 2010 to make provision for a practice direction to set out procedures to be followed in relation to cases proceeding by electronic means;
- made rule amendments that require parties to financial disputes to provide estimates of legal costs to the court at an early stage and at various stages in a case and to make early open settlement offers;
- inserted new rules to specify a procedure for the High Court to set aside specified types of order where no error of the court is alleged;
- clarified that a direction can be applied for a notice of proceedings need not be given to a person with foreign parental responsibility and that directions can be given by the family court as well as the High Court; and
- inserted reference to the fact that a new practice direction may make provision regarding expert evidence in relation to toxicology testing; and to set out the rules for recordings and obtaining transcripts of, and sharing of informal notes of, family proceedings.

The majority of amendments came into force on 6th April 2020. Those that relate to estimates of costs and settlement offers came into force on 6th July 2020

More details of this instrument can be found on the legislation website at the following link:

<https://www.legislation.gov.uk/uksi/2020/135/contents/made>

The Autumn SI, **The Family Procedure (Amendment No 2) Rules 2020** replaced the existing Part of the Family Procedure Rules relating to contempt of court proceedings with a new streamlined Part mirroring the approach which has been taken for the corresponding Part of the Civil Procedure Rules. This rule came into force on 1 October 2020.

The following supplementary Practice Direction amendments were also made:

- provide the consequential amendments that ensure that references to contempt proceedings are correctly referred to across the FPR 2010. (These will be achieved through amendments to PD5A, PD17A and PD33A)
- provide further guidance on points of procedure pertinent to family proceedings, through an accompanying Practice Direction 37A. These will:
 - I. clarify that witness statements may not be used against the defendant in the contempt application unless, and until, the defendant chooses to use them in support of the defendant's case;
 - II. clarify that the court may strike out procedural defects in certain circumstances;
 - III. clarify the effect of two provisions in new rule 37.8.

More details of this instrument can be found on the legislation website at the following link:

<https://www.legislation.gov.uk/uksi/2020/758/contents/made>

9. Consultations

The Committee may run consultations to seek the views of key stakeholders during their consideration of the rules of court governing the practice and procedure in family proceedings. During the period of this report, the Committee ran two stakeholder wide consultations and one tailored consultation. These consultations are briefly outlined below:

- The Divorce, Dissolution and Separation Act 2020: The Committee ran a consultation which considered proposed amendments and new rules in relation to Part 6 (Service) and Part 7 (Procedure for Applications in Matrimonial and Civil Partnership Proceedings) of the Family Procedure Rules 2010. The consultation opened on 15 December 2020 and closed on 2 March 2021.
- Legal Bloggers: The Committee consulted on whether legal bloggers, or accredited media representatives, should permanently be provided with access to certain family proceedings. This Consultation ran from 2 March 2020 and was due to close

on 30 April. However due to the coronavirus pandemic the Committee agreed that the end date should be extended to the 30 December 2020.

- Justices' Legal Advisers (CATJAFS): The Committee undertook a tailored consultation to seek District Family Judges and Magistrates views on the impact of the provision introduced as part of the Coronavirus response which provided temporary extensions to the functions of justices' legal advisers.

10. Contact

Any enquiries about the work of the Committee may be addressed to:

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