



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**Via Microsoft Teams**  
**At 10.00 a.m. on Monday 5 July 2021**

**Present:**

<b>Sir Andrew McFarlane</b>	President of the Family Division
<b>Mrs Justice Theis</b>	Acting Chair
<b>Lord Justice Baker</b>	Court of Appeal Judge
<b>Mr Justice Mostyn</b>	High Court Judge
<b>Her Honour Judge Raeside</b>	Circuit Judge
<b>His Honour Judge Godwin</b>	Circuit Judge
<b>District Judge Suh</b>	District Judge
<b>District Judge Branston</b>	District Judge
<b>Poonam Bhari</b>	Barrister
<b>Rhys Taylor</b>	Barrister
<b>Melanie Carew</b>	Children and Family Court Advisory Support Service
<b>Tony McGovern</b>	Solicitor
<b>Graeme Fraser</b>	Solicitor

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1** Apologies were received from District Judge Williams, Fiona James, Rob Edwards and Bill Turner.
- 1.2** Mrs Justice Knowles attended as an invited guest.
- 1.3** The Acting Chair announced that the Head of MoJ's Marriage and Divorce team, which most recently focussed on the Divorce, Dissolution and Separation Act 2020, is leaving his post. The Acting Chair thanked him for his professionalism, wisdom and thoughtful contributions to the Committee.

## **MINUTES OF THE LAST MEETING: 14 JUNE 2021**

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

## **ACTIONS LOG**

- 3.1** MoJ Policy provided brief update status on Deed Poll Name Changes; Guidance for use of Rule 29.1 (Slip Rule); Fees Consultation; Contempt Forms; FGM and FM Protection Order Mailbox; and the Amendment to the overriding objective.

## **MATTERS ARISING**

## **Migration of FPR 2010 to Gov.uk and inaccuracies on the Justice website**

- 4.1** MoJ Policy confirmed the Justice site will remain in operation for a further year. The previous re-directs (from Justice to Gov.uk) have been reversed. The Government Digital Service have updated the Judicially led Working Group with the intention of writing to stakeholders with a progress report. MoJ Policy will ensure that this update is forwarded to the Committee.
- 4.2** MoJ Policy drew the Committee's attention to the amendments needed to PD6C (Tracing through Government Departments) in particular that the Justice content does not reflect amendments previously made to Practice Direction 6C and that even where those past amendments are included, Practice Direction 6C is out of date and in need of an overhaul and the latter will need extensive resource to address the issue.

### **ACTIONS 1**

- **MoJ Policy to send the Government Digital Service update to the Committee**
- **MoJ Policy to assess the issues raised concerning amendments to Practice Direction 6C over the Summer recess and to consider how this work can be reflected on the list of priorities.**

## **Mediation vouchers update**

- 4.3** MoJ Policy advised that following the scheme going live on 26 March, take up has been relatively high and work is now underway to consider the future of the scheme. The Policy team are planning a communications campaign involving Judges and Magistrates to raise awareness.

### **ACTION 2**

- **MoJ Policy to provide an update in October on the publicity strand of the scheme.**

## **STANDING ITEM: CORONAVIRUS RELATED ITEMS**

### **Practice Direction 36Q/Practice Direction 36R**

- 5.1** MoJ Policy provided an update regarding Practice Directions 36Q and 36R, which are due to expire on 31 October 2021. MoJ Policy presented a new draft Practice Directions that will allow the flexibilities provided in the Practice Directions to be used in a non-Covid context.
- 5.2** MoJ Policy advised that further to the update provided in June 2021, the views of the Family Justice Reform Implementation Group (FJRIG) had been sought. The FJRIG's view was that the provisions in the two Practice Directions are essential for dealing with both current backlogs and receipts. FJRIG agreed that the flexibilities should continue after the end of the Covid-19 pandemic for a further pilot period, which will allow HMCTS, Cafcass and MoJ analysts to gather sufficient data on how the flexibilities work outside of the Covid-19 context, and for MoJ Policy to provide a recommendation on any appropriate permanent changes to the Child Arrangements Programme (CAP).
- 5.3** MoJ Policy noted that a further 6-month pilot would be insufficient to collect enough data and analyse it ahead of making recommendations about any permanent change to the CAP.
- 5.4** MoJ Policy advised that the other planned private law pilots, which may have a local impact on the CAP, would also need to be taken into account. Those private law pilots are planned to run for at least 24 months before an evaluation period of more than 6 months. Due to this, more fundamental changes to the CAP will not be possible before Spring 2024. Taking into account this timeframe, MoJ

Policy proposed that the flexibilities of Practice Direction 36Q and Practice Direction 36R be evaluated alongside the private law pilots and align emerging recommendations where possible and suggested an extension period of 9 or 12 months.

- 5.5 The Committee agreed with the proposal to extend the flexibilities for a further period of 12 months, beginning when the pandemic is deemed to have ended.
- 5.6. Some concerns were expressed about whether the original CAP would then come back into use, pending the outcome of the private law pilots.
- 5.7 The Committee were content with the proposed new provision in the new Practice Direction that would require information to be provided about any local modifications to the CAP. It was agreed that the same provision should be added to existing Practice Direction 36Q, to come into force on 1 October 2021, although local courts could be encouraged to put this in place sooner if possible.
- 5.8 The President advised that around 17 DFJ areas were identified where there have not been any new flexibilities introduced under Practice Direction 36Q and that he will be focusing on them, in the hope that by the autumn every court will have a modified process.

### **ACTION 3**

- **MoJ Policy to return with a further update to the Committee (after 6 months) midway through the operation from the date that the new Practice Direction takes effect.**

### **STANDING ITEM: PRIVATE LAW REFORM UPDATE**

#### **a. Private law pilots (including Integrated Domestic Abuse Courts (IDAC))**

- 6.1 MoJ Policy updated the Committee on the core Investigate Approach model which will be piloted in Dorset and North Wales. Although no significant changes are envisaged, the model is still being finalised before work commences on required pilot Practice Directions over the summer.
- 6.2 MoJ Policy advised that the IDAC model was designed to address the recommendations made by the Family Justice Board's Private Law Advisory Group for in-court redesign as well as the commitments made in the Harm Panel implementation plan and the report of the President's Private Law Working Group. It is intended that a pilot Practice Direction will be presented to the Committee for approval in October. MoJ Policy shared a timetable to demonstrate the milestones that will need to be achieved to reach this target.
- 6.3 The Committee asked whether clarification will be provided in October on whether individual courts or whole DFJ areas will be pilot locations. The Committee also proposed that reference to "early neutral evaluation" be included as an out of court option, alongside mediation and arbitration. The Committee proposed that information on access to early legal advice be provided to assist parties.
- 6.4 The Committee noted that the detail of the core model is to be discussed in a judicial workshop in July, which would include consideration of how to ensure the model is Article 6 compliant, how to approach contested cases and how to integrate fact-finding into the model.

#### **b. Wider Harm Panel Implementation**

- 6.5 MoJ Policy are reviewing the progress made against the Harm Panel Implementation Plan and hope to publish an update on gov.uk over the summer. In the meantime, a number of priorities - including

fees for police disclosures of evidence in domestic abuse cases, and a review of the evidence base for Domestic Abuse Perpetrator Programmes in the family court will be progressed in the coming months.

## **DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE**

### **a. General Update**

- 7.1** MoJ Policy updated the Committee on the Domestic Abuse Act (DAA) implementation. In its most recent meeting, the FPRC DA Working Group discussed how PD12J should be amended to take account of new definitions and the new provisions on special measures in the Act, which are due to come into effect in October. The Working Group are due to meet on 15 July 2021 and will focus particularly on the prohibition of cross-examination.
- 7.2** It was noted that it is not intended to include any transitional provisions on the introduction of the new provisions on special measures, or on the amendments to PD12J, meaning that the new provisions and amendments will apply to all cases, existing and new, from the date they come into force. The Committee agreed with this way forward.

### **b. Initial proposed amendments to PD12J**

- 7.3** MoJ Legal asked the Committee to consider draft initial amendments proposed to PD12J, which seek to (a) import the definition of “domestic abuse” from the DAA into PD12J (b) include reference to children as victims of domestic abuse, as provided for in section 3 DAA and (c) make changes consequential on the new provisions on special measures. The Committee was content with the draft amendments to PD12J on these points.
- 7.4** The Committee agreed that the definition of “abandonment” should be amended to include reference to childcare rights.
- 7.5** The Committee agreed that the amendments to PD12J should be included in the next PD Update and should come into force on the date on which section 63 of the DAA comes into force.

### **c. Barring Orders**

- 7.6** The Committee were asked to consider whether Practice Directions should be amended in light of section 67 DAA, which amends section 91(14) Children Act 1989 (“barring orders”).
- 7.7** The Committee considered the options and noted that it was important that parties know in advance if the court is considering making a section 91(14) order, and that there be a clear record when the court raises the prospect of a section 91(14) order being made. The Committee recommended that the DA Working Group undertake further consideration of Practice Direction amendments before reverting to the Committee with detailed proposals in the October 2021 meeting. The consensus was that a new, bespoke Practice Direction specifically on barring orders should be drafted and consideration made to necessary amendments to existing relevant Practice Directions.

## **ACTION 4**

- **MoJ Policy to provide a further update at the October FPRC meeting.**

## **PARLIAMENTARY ITEMS**

### **DIVORCE, DISSOLUTION AND SEPARATION ACT 2020 IMPLEMENTATION: PRACTICE DIRECTIONS AND CONSEQUENTIAL AMENDMENTS**

- 8.1** MoJ Policy asked for the Committee's final approval of amendments to the costs guidance and the resultant changes to Part 7 and PD7A in relation to costs. MoJ Policy detailed the changes to Part 7 which were approved at the previous Committee meeting as well as a further change which had been made following proof reading. In relation to PD7A, MoJ Policy confirmed a new section had been inserted which clarifies the procedure for costs applications for standard cases, and noted that creation of a proforma check/tick box template for the judge to have written reasons would be considered as part of further implementation planning. The Committee raised the issue of the N260 form on the costs guidance and whether this needs to be completed as it was seen as being time consuming and complex. Instead, it was agreed that a short summary of costs would be more helpful than the N260, with the judge to direct when a N260 is necessary.
- 8.2** The Committee agreed to approve the amendments to Part 7, PD7A and the costs guidance. MoJ Policy advised that officials progress further implementation work and an update on this will be provided at the October FPRC meeting. MoJ Policy also confirmed that the draft amendments to Part 6 and Part 7 will be included in a future FPR amending statutory instrument. MoJ Policy then thanked Philip Waller and the DDSA Working Group for their contributions to date.

#### **ACTION 5**

- **MoJ Policy to provide a further update at the October FPRC meeting**

## **SUBSTANTIVE ITEMS**

### **FAMILY PROCEDURE (AMENDMENT No.2) RULES 2021: FOR SIGNING**

- 9.1** The Committee were asked to sign the Statutory Instrument, the details of which were discussed in June.
- 9.2** It was noted that it should be made clear that the assumptions in new rule 3A.2A FPR only apply for the purposes of deciding whether to make a participation direction and not for any other purpose. It was agreed that this point should be made in the PD3AA amendments associated with the amendments to Part 3A FPR.

#### **ACTIONS: 6**

- **Committee members to sign and return copies of the Rules to the FPRC Secretariat.**
- **MoJ Legal to draft amendments to PD3AA and to flag these to the President when submitting the PD Update for his signature.**

### **UKSC DECISION IN G v G INTERNATIONAL CHILD ABDUCTION AND ASYLUM CLAIM**

- 10.1** MoJ Policy asked for the Committee's view on how to implement the steps as set out in the UK Supreme Court (UKSC) judgment in G v G [2021] UKSC 9 of 19 March 2021 for 1980 Hague return cases with linked asylum claims.
- 10.2** The Committee expressed a preference for inserting new rules as a new chapter of Part 12. The Committee agreed that development of such a chapter should be undertaken through a Working

Group and suggested that Lord Justice Moylan be approached to recommend a representative with Hague experience to sit on the group.

- 10.3** The Committee agreed that new rules, Practice Directions and guidance should include provision for inherent jurisdiction and section 8 cases with linked asylum cases as well as 1980 Hague Convention cases.

#### **ACTION 7**

- **The Legal Secretary to the President of the Family Division in conjunction with the Secretary to the FPRC to assemble names for the Working Group and to convene the first meeting of this group.**

#### **DEED POLL NAME CHANGES (DRAFT REGULATIONS AND AMENDMENTS TO PRACTICE DIRECTIONS)**

- 11.1** MoJ Policy asked the Committee to consider a draft Family Practice Direction and set of Regulations for the enrolled deed process for name changes, and review work required to implement reforms so that child name applications can be considered by the family court.
- 11.2** MoJ Policy addressed the concerns around the C100 form, which were raised at the June FPRC meeting. It was agreed that the C100 forms be used for these proceedings and the Working Group will address this point in the training materials which will be developed to support this area.
- 11.3** The President of the Family Division highlighted that unenrolled deed polls are a considerable issue and concerns have been raised that individuals can change their name simply by following guidance on the Government website. The President of the Family Division was in favour of the reforms but asked if any of the staff who currently service deed poll applications to the Queen's Bench Division would transfer to the family side. HMCTS reported that local courts will check their requirements before making a decision on staff resources and allocation.
- 11.4** The Committee approved the draft Practice Direction 3A as amended and were content in principle with the wording of the draft Regulations, which are due to be considered by the Civil Procedure Rule Committee on 9 July 2021. MoJ policy to report to the Committee secretariat on the outcome of the Civil Procedure Rule Committee.

#### **ACTION 8**

- **MoJ Policy to update the Committee on progress with the reforms including fees, guidance, court handling and training for judiciary and court staff at the October 2021 meeting.**

#### **PARENTAL ALIENATION EXPERTS**

- 12.1** The President of the Family Division updated the Committee on the issue. Although the Committee had previously considered whether President's Guidance may be the preferable route by which to proceed, after further discussion the conclusion was reached that this issue was not appropriate for such guidance. It was recognised by the Committee that this was an issue being experienced in some areas more than others and was considered a subject better suited to the work of the Family Justice Council, and that the Family Justice Council ought to be asked to consider this issue and whether any Family Justice Council guidance was more suited.

#### **ONLINE PUBLIC LAW ROLL OUT AND PRACTICE DIRECTION 36M AMENDMENTS**

- 13.1** MoJ Policy invited the Committee to consider proposals to make amendments to PD36M to, firstly, extend the end date of the pilot PD to 1<sup>st</sup> February 2022 and, secondly, mandate use of the online

system by Local Authorities in specified courts, from specified dates. The intention is that the pilot will end earlier if the system is fully functional before this proposed date and therefore national mandation will also start sooner.

- 13.2** The Committee agreed to the proposals. MoJ Policy noted that it is intended to include an extension to Practice Direction 36P (online system for placement proceedings) to 1 September 2022 in the pending Practice Direction Update No. 5 of 2021.

#### **MANDATING OF DIGITAL DIVORCE SERVICE FOR APPLICANTS' LEGAL REPRESENTATIVES**

- 14.1** MoJ Legal advised that it is proposed that a new pilot Practice Direction be put in place, mandating the use of the online divorce system by legally represented applicants. While noting that this was a matter for the Committee to decide, it was suggested that no consultation is necessary as this would be a pilot project. It was noted that stakeholders' views are constantly being sought as part of the process. HMCTS agreed to reassure stakeholders of the intention to resolve any operational and legal issues.
- 14.2** The Committee agreed with the proposal and pilot Practice Direction 36X will be included in Practice Direction Update No. 5 of 2021.

#### **COSTS IN FINANCIAL REMEDY – WITHOUT PREJUDICE OFFERS**

- 15.1** MoJ Policy updated the Committee on this project and advised that the intention was to arrange for a Costs Working Group to meet ahead of the July 2021 FPRC meeting but personnel changes, capacity within the team and the need to prioritise the work associated with the Divorce, Dissolution and Separation Act 2020 has meant that it has not been possible to progress this.
- 15.2** The Committee noted that it previously agreed to put on hold any further decisions about whether to make new provision regarding costs provisions in relation to without prejudice negotiations, as it wanted to see if any "culture change" resulted from the amendments to Practice Direction 28A and Part 9 FPR made previously. It was noted that a body of jurisprudence is now developing in this area, and Members noted the discussions that took place on this matter at the recent Resolution Conference.
- 15.3** The Committee agreed to consider a final decision on whether to make any amendments to the FPR in relation to Calderbank offers and as part of this will seek the views of Mr Justice Francis on the need for amendments in light of the updated position on Calderbank offers.

#### **ACTIONS 9**

- **Matter to be revisited at the February 2022 meeting in light of any views received from the Costs Working Group.**
- **The Committee to seek Mr Justice Francis' views on the requirement for further amendments**

#### **ENFORCEMENT**

- 16.1** MoJ Policy informed the Committee that work needed to be put on hold on the project relating to enforcement of financial orders, although significant progress had been made in assessing the consultation results and providing objectives for the Enforcement Working Group to review.
- 16.2** Members suggested that the key matter to take forward would be the introduction of a standard order to be issued when a general enforcement application is made. It was agreed that the standard

order in use in Kent would be shared with MoJ Policy, to be compared with the standard order in use in the Central Family Court.

#### **ACTION 10**

- **Draft Standard Order to be shared with MoJ Policy and for MoJ Policy to return with an update in October.**

#### **FORWARD PLANNING AND UPCOMING MEETINGS**

#### **RESULTS FROM THE FPRC SURVEY**

- 17.1** MoJ Policy reported that a number of responses to the survey had been received and thanked all of those who responded. The top line data indicating that nearly all respondents favoured a return to in-person meetings, but on a hybrid basis. There was some concern over the volume of papers before each meeting, but this was prefaced with an understanding of the wide remit of the Committee's work.
- 17.2** The Acting Chair sought the Committee's view on meeting start times for when face-to-face meetings return and whether the current 10am start should remain in place. The Committee suggested that this be reviewed over the Summer but agreed that the start time may need to be put back to allow for sufficient travelling time for those who need to come into London.

#### **OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

- 18.1** MoJ Policy advised that discussions have taken place with the Civil Procedure Rule Committee Secretariat and that there is nothing to raise at this meeting.

#### **PRIORITIES TABLE**

- 19.1** MoJ Policy updated the Committee in relation to the Priorities Table.
- 19.2** The Committee asked whether consideration of a proposal to mirror CPR PD57AC (witness statements) could be added to the list of priorities. It was agreed that there should be discussion at the October meeting about where this matter could fit on the Committee's priorities.

#### **ACTION**

- The witness statement issue to be added to the FPRC work list but to be discussed in October as to where it fits into the list of priorities

#### **UPCOMING PRACTICE DIRECTIONS AMENDMENTS**

##### **a. Forthcoming Practice Direction Update (Provisionally to be signed July 2021)**

- 20.1** MoJ Legal presented Practice Direction Update No. 5 of 2021 and outlined the contents. It was noted that this Update would be amended in light of decisions at this meeting and then submitted to the President and then the Minister for formal signing.

##### **b. Table of future candidates for amendment**

- 20.2** MoJ Legal referred to the table setting out the various PD-related projects that are underway or pending. This includes those updated following the June meeting and contained within Practice Direction Update No. 5 of 2021.

#### **FORMS WORKING GROUP UPDATE**

- 21.1** MoJ Policy presented the table listing current work being considered by the Forms Working Group and advised that the forms signed off at the June meeting have been commissioned for Welsh translation.
- 21.2** MoJ Policy provided an update on the D81 form. It was confirmed that work on this form has been delayed as the team dealing with the Divorce, Dissolution and Separation Act 2020 have not been able to commit resource to it. MoJ Policy noted that there were some comments on earlier drafts outstanding and that they would endeavour to collate and reflect these before the end of July. The Acting Chair proposed that this then be discussed at the next Forms Working Group meeting to be arranged for September 2021 and that prior to that, input be sought from the Committee's District Judge members about the pros and cons of issuing the revised form with or without guidance notes.
- 21.3** The Acting Chair asked for a Committee Member to consider joining the FPRC Forms Working Group and to contact the FPRC Secretariat with expressions of interest

#### **ACTION 11**

- **MoJ Policy to consider the comments received on the D81 Form and present a paper for the Forms Working Group to consider.**

#### **UPDATE ON WORK OVER THE SUMMER (INCLUDING PLANNING FOR THE OPEN MEETING)**

- 22.1** MoJ Policy provided an update detailing planning projects over the summer.
- 22.2** The Committee suggested that the open meeting be held in November and that this should be undertaken remotely to mitigate against having large numbers in one venue if Covid-19 restrictions are still in place and following the success of the event in 2020.

#### **DRAFT OCTOBER AGENDA**

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

#### **WORKING GROUP MEMBERSHIP**

- 24.1** The Acting Chair reminded the Committee that the table showing Working Group membership is a fluid list and if anyone wants to volunteer for a group or feels overcommitted and would prefer to leave a group to make contact with the FPRC Secretariat.

#### **ANY OTHER BUSINESS**

- 25.1** The Acting Chair thanked all for their participation and wished everyone a relaxing summer.

#### **DATE OF NEXT MEETING**

**26.1** The next meeting will be held on Monday 4 October 2021 at 10:00am via MS Teams unless Covid-19 restrictions change and a venue for an in-person meeting can be located.

Simon Qasim – Secretariat

July 2021

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