

Approved

Minutes of the Civil Procedure Rule Committee (Only Urgent Business Meeting)

Friday 10th September 2021 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)

Mr Justice Kerr

Mr Justice Trower

His Honour Judge Bird

Master Cook

Brett Dixon

Masood Ahmed

Lizzie Iron

Dr Anja Lansbergen-Mills

John McQuater

David Marshall

Isabel Hitching QC

Tom Montagu-Smith QC

Apologies

His Honour Judge Jarman QC, District Judge Parker, District Judge Cohen, The Chancellor.

Item 1

1. **Welcome and Introductory Comments:** The Chair welcomed everyone, with thanks, for attending this out of sequence meeting in order to conduct the following urgent business. It was explained that the usual formalities to agree minutes, deal with any matters arising and to review the action log, will be dealt with as part of the next, mainstream meeting in October.
2. **Richard Viney – In Memoriam:** The Chair reiterated his sorrow in acknowledging the sudden death of past member, Richard Viney (Barrister at 12 Kings Bench Walk) who served on the Civil Procedure Rule Committee from 2014 – 2020, but who had continued to volunteer his valuable time on various important topics until his untimely death in a cycling accident on Thursday 26th August 2021. Upon learning of this sad news, the Chair wrote to the family expressing condolences on behalf of all members and officials and in recognition of Richard's CPRC service. Richard, who also served as a Deputy District Judge, will be remembered as a kind and well-humoured man who made a meaningful and meritorious contribution to the administration of civil justice. He will be much missed. Details of the funeral and any memorial event are yet to be announced. The Chair concluded by inviting all present to pause for a moment of reflection, whereupon a **ONE-MINUTE SILENCE WAS OBSERVED.**

Item 2 Disclosure Pilot for the Business & Property Courts (BPC) PD51U CPR(21)43

3. Ed Crosse was welcomed to the meeting and presented the matter on behalf of the Disclosure Working Group.
4. It was explained that this was last before the July meeting, when a suite of amendments, based on user feedback, were considered and agreed in principle. Some further, out of committee, drafting revisions were also made and when doing so, the working group identified some further changes to tighten the language. Thanks were conveyed to all concerned. In accordance with the CPRC's July resolution to publish the final drafts, the drafting was made available online with an explanatory note from the Chancellor on 29th July 2021. No adverse feedback has been received.

5. Mr Crosse added that the sector engagement activity he and the working group had undertaken had received a very positive response. Users welcomed the incremental approach of a *living* pilot with changes being made based on feedback.
6. The drafting revisions made since the July CPRC meeting (and included in the published drafts), were summarised as follows to highlight the changes which the CPRC had not previously reviewed, but had asked to be included:
 - The final sentence of paragraph 6A.2, PD51U, is amended to make it clear that an application notice is required if a court determination on an issue relating to disclosure is sought (see also 13.5) and paragraph 6A.4 is revised to make it clear that the parties may apply to vary a deadline and that Court approval is not required provided the variation will not affect the date set for the case management conference.
 - Appendix 5 concerning Less Complex Claims (LCC) has five drafting revisions: (i) paragraph 3 to change the first sentence so that not all the factors have to be considered (together) for the purposes of assessing whether a claim is suitable for the LCC regime (ii) paragraph 6 to make it clear that the LCC regime can apply to existing as well as new proceedings (iii) paragraph 10.3 to clarify that the Disclosure Review Document (DRD) for LCCs does not have to be completed for claims where no searched based orders are being sought (iv) paragraph 10.4 Issues for Disclosure in LCC should be limited to five. Sub-issues should not be used if that will materially increase the length and complexity of the List of Issues for Disclosure (v) paragraph 10.7 to make it clear that the parties must seek to agree the draft List of Issues for Disclosure.
 - Appendix 7 (Explanatory Notes to the DRD for LCC) is also modified thus (i) paragraph 5 to ensure consistency with paragraph 1 in the PD, namely that it is not necessary to complete the DRD if you are not seeking searched based orders, but you may do so if that will assist (ii) paragraph 6 to carry across equivalent changes made to the Appendix 2 DRD, to clarify who should complete the DRD for LCCs. Consequential changes are also made to Steps 2 and 6.
 - No further changes were made to Appendices 2 (DRD), 3 (notes to DRD) or 4 (the Disclosure Certificate).
7. Following discussion, the package of amendments to PD51U were **AGREED** as drafted for onward inclusion into the next available PD Update, with an expected in-force date of 1st November 2021.
8. It was **NOTED with thanks**, that the working group were planning further engagement with the judiciary and users later this year, with the prospect of reverting to the CPRC in the New Year.
9. **Actions:** (i) Drafting Lawyers & Secretariat to include PD51U amendments in the next available Update cycle with an expected in-force date of 1st November 2021.

Item 3 Other Urgent Business

- **Section 2(7) Sub-Committee**
The Chair provided a brief update, observing that substantive work was required in order to consider the feasibility of some related aspects, such as the LOOP (Library of Online Practice) concept.

- **Terms of Reference for the Damages & Money Claims Sub-Committee CPR(21)42**
The Chair explained that this item follows the decision (as reported at the 11th June 2021 meeting) to disband the existing Online Civil Money Claims (OCMC) Sub-Committee and establish a new, combined group, with the Damages Sub-Committee which will focus on both online reform strands. The new, 'Damages & Money Claims Sub-Committee' is chaired by Mr Justice Johnson.

In reviewing the proposed Terms of Reference (ToR), the following points were aired and **NOTED**:

- on the basis that the Damages & Money Claims Sub-Committee is a sub-committee of the CPRC, that should be specifically cited on the face of the ToR and the schematic diagram therein; Brett Dixon and Lizzie Iron were also listed under the, 'Judicial Membership' segment, which needed to be corrected.
- in the interests of completeness as to the approval process, reference should be made to the need for PD Updates to also receive Ministerial consent. This may be best reflected within the second bullet point at the top of page two.
- whether the drafting in the first line under, 'Governance' in which it states, 'The group will ultimately be answerable to the Master of the Rolls...' was accurate.
- the remit of the sub-committee is much wider than the usual CPRC sub-committee model because it has multiple functions to perform, ultimately it serves to do what a mainstream sub-committee of the CPRC does. However, because of the unique nature of digital reforms there are also some additional responsibilities.
- currently both OCMC and Damages are governed by pilot PDs under the CPR.
- in the event that the Judicial Review and Courts Bill, currently before Parliament, becomes enacted and an Online Procedure Rule Committee is established, the position is likely to be reviewed.

It was **RESOLVED** to defer the matter to October to allow for any further comments to be provided and considered before the final proposed drafting was cast.

Actions: (i) The Chair to discuss with Johnson J (ii) Officials and Drafting Lawyers to confer as to any drafting revisions (iii) Secretariat to schedule item to return on 08 October 2021.

- **Covid-19 Pandemic Public Inquiry:** The Chair explained that following the Prime Minister's confirmation that there will be a statutory Public Inquiry into the government's response (this includes Arm's Length Bodies such as the CPRC) to the Covid-19 pandemic, the Secretariat has been asked to make preparations to meet the obligations to provide relevant information to the Inquiry, if requested. The Inquiry will have full statutory powers under the Inquiries Act 2005 and is likely to begin to call for evidence in Spring 2022. Essentially, therefore, there is a moratorium on the destruction of records relating to the pandemic and this was duly **NOTED**.
- **Extending Fixed Recoverable Costs - Consultation Response:** It was **NOTED** that on 6th September 2021, the Ministry of Justice published the Government's consultation response on extending Fixed Recoverable Costs (FRC) in civil law cases in England and Wales: <https://consult.justice.gov.uk/digital-communications/extended-fixed-recoverable-costs-consultation/>. It follows the 2019 consultation paper, *Extending Fixed Recoverable Costs in Civil Cases: Implementing Sir Rupert Jackson's Proposals*, which was based on Sir

Rupert's 2017 recommendations. It is, therefore, expected that MoJ Policy will report to the CPRC in due course.

Item 4 Next Meeting & Close

The Chair confirmed that CPRC meetings will remain remote (via MS Teams) for the time being with the next meeting being on 8th October 2021, as planned.

C B POOLE
September 2021

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Katie Fowkes, Government Legal Department
Andrew Currans, Government Legal Department
Luke Classen, Government Legal Department
Andy Caton, Judicial Office
Emily Wickens, HM Courts & Tribunals Service
Flora Freeman, HM Courts & Tribunals Service
Master Dagnall, Chair, Lacuna Sub-Committee
Ed Crosse (Item 2)