



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
QB1M, Queens Building, Royal Courts of Justice
And via Microsoft Teams
At 10.30 a.m. on Monday 4 October 2021

Present:

Sir Andrew McFarlane	President of the Family Division
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 Branston	District Judge
Fiona James	Lay Magistrate
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Melanie Carew	Children and Family Court Advisory Support Service
Rob Edwards	Children and Family Court Advisory Support Service (Cymru)
Graeme Fraser	Solicitor
Bill Turner	Lay Member

Guest:

Mrs Justice Knowles	High Court Judge
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ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from District Judge Williams and Tony McGovern.
- 1.2 The Acting Chair welcomed members to the first hybrid meeting of the Committee since the beginning of the pandemic.

MINUTES OF THE LAST MEETING: 5 JULY 2021

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

ACTIONS LOG

- 3.1** MoJ Policy provided a brief update on the status of the action points not listed for discussion elsewhere on the agenda. This included the Family Procedure (Amendment No.2) Rules 2021 and the establishment of the Working Group responding to the UKSC decision in G v G, which covered points around international child abduction and asylum.

MATTERS ARISING

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

- 4.1** MoJ Policy informed members that the Government Digital Service are progressing the migration of the online Family Procedure Rules (FPR) to Gov.UK and committed to update the Committee with any future developments.
- 4.2** MoJ Policy confirmed they are in the progress of updating the online material previously flagged as incorrect and committed to keep the Committee informed of progress.

Member Recruitment

- 4.3** The re-appointment process for two Committee Members was finalised over the summer. Both will now serve a further three-year period on the Committee.

FGM and FM Protection Orders: pilot reforms Review Point

- 4.4** MoJ Policy reported that contacts at the Metropolitan Police have indicated that the system for notifying the police when orders are made is working well at present. Some minor issues resulting from human error have been reported and remedied.

Enforcement of Financial Remedy Awards

- 4.5** MoJ Policy advised that some resource has been identified to take this work forward. They asked for any steers from the Committee as to what should be tackled first. The Committee suggested that a District Judge be added to the Enforcement Working Group.

ACTIONS

- **ACTION POINT 1 - Working Group membership to be amended and to meet in November.**
- **ACTION POINT 2 - MoJ Policy to provide a progress report in November and a full report in December.**
- **ACTION POINT 3 – Main agenda item in February 2022.**

H v An Adoption Agency Judgment

- 4.6** The Committee were notified that a second judgment from MacDonald J includes items that the Committee may need to consider (at paragraph 74). Members agreed that there should be consideration of its impact on the FPR.

ACTION

- **ACTION POINT 4 - The Committee and the Secretariat to consider the issues raised in the second judgment and to report back at the November FPRC meeting.**

Opposite Sex Civil Partnerships Implementation

- 4.7** MoJ Policy informed the Committee that GEO advise that this work has been delayed and that the relevant regulations are yet to be laid.

ACTION

- **ACTION POINT 5 - Issue to return as a matter arising in November.**

Summer Practice Direction Update

- 4.8** MoJ Legal updated the Committee on Practice Direction (PD) Updates No 5 and No. 6 of 2021 which made changes to several PDs and introduced new PDs.
- 4.9** The Committee were told that the Family Procedure (Amendment No.2) Rules 2021, which made a number of changes to the FPR 2010, came into force on 1st October 2021.

Priorities Table and PD Updates

- 5.1** MoJ Policy informed the Committee of changes to the structure and use of the Priorities Table.
- 5.2** The Committee considered how to take forward proposed work to mirror the changes in the Civil Procedure Rules (CPR) PD 57AC (Trial Witness Statements in the Business and Property Courts) into the Family Procedure Rules (FPR). The Committee discussed whether the provisions were applicable to children's cases and noted that the current approach can slow down or delay cases. It was agreed that no FPR PD provisions were needed, but that guidance from the President of the Family Division may help.

ACTION

- **ACTION POINT 6 - To return as a matter arising in November.**

- 5.3** The Committee discussed the workstream on the 'Voice of the Child' and agreed that it needs to remain a distinct piece of work, despite being present in other workstreams such as consideration of the Harm Panel report.

ACTION

- **ACTION POINT 7 - Voice of the Child to return as a full agenda item in March 2022.**

STANDING ITEM: PRIVATE LAW REFORM UPDATE

a. Private law pilots

- 6.1** MoJ Policy introduced this issue and updated the Committee on the development of the core pilot model, which will form the basis of the pilots to be commenced in the pathfinder courts in North Wales and Bournemouth.
- 6.2** The President of the Family Division advised that the accompanying PD should be drafted in such a way that it contains only the details necessary to those involved in the operation of the pilots. It should not be too prescriptive or too descriptive.

- 6.3** The Committee made a series of recommendations for the drafting of the PD. A draft will be shared with [HHJ Knowles and DJ Suh} outside of Committee meeting times. The draft PD will then be brought to the November 2021 Committee meeting.

ACTION

- **ACTION POINT 8 - MoJ Policy to return in November with a draft pilot PD for consideration.**

b. Harm Panel Implementation

- 6.4** MoJ Policy updated the Committee on the latest developments in regard to the consideration of the Harm Panel's recommendations. A steering group for the DA Perpetrator Programmes has been set up, and that the monitoring of the role of the DA Commissioner is progressing.

DOMESTIC ABUSE ACT IMPLEMENTATION UPDATE

a. Cross Examination Provisions

- 7.1** MoJ Policy outlined the FPR and PD changes necessary to implement the prohibition on the cross-examination of domestic abuse victims by alleged perpetrators. The Committee were asked to consider a timetable leading to the making of a PD in March 2022.
- 7.2** MoJ Policy outlined the proposed approach to consultation on the new measures. The Committee asked for clarification on several points and suggested the draft statutory guidance be included with the consultation (even though there is no statutory duty to consult on the guidance).
- 7.3** MoJ Legal said that the views raised in this meeting will be considered by the Domestic Abuse (DA) Working Group at its next meeting and that many of the points may be better dealt with in the statutory guidance rather than in the PD. The Committee were content with this approach and that the DA Working Group contained the relevant personnel.
- 7.4** The Committee proposed that rather than replicating the statutory provisions in full in an Annex to the PD that they be replaced with a footnote or link which would prevent the need for associated work if changes are made to the statutory provisions in the future.

ACTIONS

- **ACTION POINT 9 - MoJ Policy to make early contact with practitioner bodies to let them know consultation is due to be published.**
- **ACTION POINT 10 - MoJ Policy to provide an update responding to the points raised by the Committee at its November meeting.**

b. Section 91(14) Orders

- 7.5** The Committee agreed that this issue be referred to section 91(14) orders rather than Barring Orders going forward.
- 7.6** MoJ Policy reported that the relevant work was currently being considered by the DA Working Group.

- 7.7** The Committee asked that HMCTS provide further information on special measures at the November 2021 meeting.

ACTION

- **ACTION POINT 11 - HMCTS to provide a further update on special measures provisions at the November meeting.**

PARLIAMENTARY ITEMS

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

- 8.1** MoJ Policy confirmed that, since the July meeting, officials have been taking forward further implementation work to amend court forms, oversee changes to the online divorce system, and ensure information and signposting are updated. A detailed update was provided for each of these work strands.
- 8.2** MoJ Policy confirmed that the draft amendments to Part 6 and Part 7 of the FPR are candidates for inclusion in the upcoming FPR amending SI and that they will return to the Committee for consideration at the end of this year.

ACTION

- **ACTION POINT 12 - MoJ Policy to provide a further update at the November FPRC meeting.**

SUBSTANTIVE ITEMS

EXTENSION OF PD36Q AND PD36R

- 9.1** MoJ Legal invited the Committee to consider two options for the extension of PD36Q and PD36R in light of the current position in relation to the pandemic. The Committee agreed to extend the expiry date to 31 March 2022.

ACTION

- **ACTION POINT 13 - MoJ Policy to make arrangements for the extension of PD36Q and PD36R**

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

- 10.1** MoJ Policy updated the Committee on the delayed work on this issue.
- 10.2** The Committee asked MoJ Policy to clarify whether this issue still had the same level of concern amongst stakeholders as it previously did and to understand whether figures could be obtained to give a picture on the number of pre-pandemic applications. The Committee made clear the Judicial College should be provided with adequate lead in time before changes are made.

ACTION

- **ACTION POINT 14 - MoJ Policy to contact QB Masters for data and to further understand the level of concern with a view to reporting back in November.**

INFORMATION SHARING – IMMIGRATION PROCEEDINGS

- 11.1** MoJ Policy reported that Home Office officials had recently provided responses on a number of questions initially asked in July, but that this hadn't come in time to give a full update at this meeting.

ACTION

- **ACTION POINT 15 - Issue to return in November following consideration of Home Office response.**

OVERRIDING OBJECTIVE AMENDMENT

- 12.1** MoJ Policy invited the Committee to consider the issue discussed most recently at its May 2021 meeting. The Committee were asked to consider the establishment of a specific Working Group to consider a review of the overriding objective.
- 12.2** MoJ Policy and Legal indicated that they will have appropriate capacity to fully support the work in early 2022 and asked the Committee if they are content to proceed on this timeline.
- 12.3** The Committee agreed with the timetable and suggested that the DA Working Group could pick this work up rather than forming a separate working group but requested that this issue be looked at as a whole with the focus not solely being on amendments relating to vulnerable parties and witnesses.

ACTIONS

- **ACTION POINT 16 - DA Working Group to consider this issue at a separate meeting (rather than as part of a meeting on other projects).**
- **ACTION POINT 17 - Committee Members who expressed an interest to be invited to attend the DA Working Group meeting for consideration of this issue.**

BULK SCANNING

- 13.1** MoJ Legal invited the Committee to consider draft new rule 5.8 FPR, which will enable permanent provision to be made in a PD in relation to bulk scanning of documents.
- 13.2** The Committee agreed with the proposal and that new rule 5.8 FPR is to be included in the next set of FPR amending Rules.

ACTION

- **ACTION POINT 18 - new rule 5.8 FPR to be included in the next set of FPR amending Rules.**

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 14.1** MoJ Policy reported that regular meetings are held with the Civil Procedure Rule Committee Secretariat but that there was nothing significant to report this time.

- 14.2** The Committee requested that contact be made with the Secretariat for the Court of Protection Rules Committee as part of a regular set of catch ups.

ACTION

- **ACTION POINT 19 - The FPRC Secretariat to make contact with the Court of Protection Rules Committee Secretariat to initiate regular meetings and to report back anything relevant under this item at each Committee meeting.**

FORMS WORKING GROUP UPDATE

- 15.1** MoJ Policy presented the table listing current work being considered by the Forms Working Group. It was proposed that a paper be sent to the Forms Working Group ahead of their next meeting on 12 October to cover the changes required to reflect the Domestic Abuse Act implementation work as discussed earlier in the meeting.
- 15.2** MoJ Policy stated that work in relation to the D81 form has not been progressed due to the pressures to implement the Divorce, Dissolution and Separation Act 2020 Implementation. The Committee suggested that a Judicial Assistant be assigned to draft the relevant notes.

ACTIONS

- **ACTION POINT 20 - MoJ Policy to send the DA paper to the Forms WG ahead of their next meeting.**
- **ACTION POINT 21 - MoJ Policy and the Committee to work together to produce a draft of the guidance notes and to produce an updated version of the D81 form by 19th October.**

PLANS FOR THE 2021 OPEN MEETING

- 16.1** MoJ Policy advised that advertisements for the Open Meeting were published on 20 September 2021. Several expressions of interest have been received. The meeting will be undertaken solely on a remote basis to ensure safety in relation to the necessary pandemic precautions and to allow access to as many attendees as possible.

DRAFT NOVEMBER AGENDA

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

WORKING GROUP MEMBERSHIP

- 18.1** 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, they should make contact with the FPRC Secretariat.

ANY OTHER BUSINESS

- a) **FCP Appeals**

- 19.1** The Committee noted that the Civil Procedure Rules 1998 provisions about when permission to appeal can be sought are to be amended to deal with the situation where the hearing where judgment is made is adjourned. It was agreed that the FPR should mirror these amendments.

ACTION

- **ACTION POINT 22 - The FPRC Secretariat to contact the CPRC Secretariat for an update on their current position and if necessary, begin the process for reflecting the position in the FPR.**

b) Draft PD for Drafting Orders

- 19.2** The Committee discussed a draft PD submitted to the President by a barrister which aims to streamline the process of amending and finalising an order. The Committee agreed that the current practice that has developed can delay progress and the time taken for an order to be agreed, or the number of issues that they then need to resolve, and can lead to further work for the judiciary.
- 19.3** The Committee did not consider that new PD provision was needed, but the President agreed that he would be content to issue (further) guidance on this matter.
- 19.4** The Committee discussed a concern raised about metadata in the standard orders making it difficult to use and adapt the orders.

ACTIONS

- **ACTION POINT 23 - The Committee to work with the President of the Family Division on existing guidance and for this to be raised as a matter arising at the November meeting.**
- **ACTION POINT 24 - The Committee to speak to relevant contacts on the standard orders to take this matter on further.**

c) Public Law automated system

- 19.5** The Committee discussed an issue around the assignment of Deputies and Recorders on the public law application system and the resulting receipt of notifications from that system by those judges. The President of the Family Division stated that this is an issue he had looked at in the past and that he would now take this further again.

ACTION

- **ACTION POINT 25 - Members to provide Acting Chair with details of their concerns.**

d) Financial Dispute Resolution (FDRs)

- 19.4** The Committee discussed whether FDRs should run over two days to give time for reflection. The Committee agreed to discuss this matter with FLC Judges to seek their view.

DATE OF NEXT MEETING

- 20.1** The next meeting will be held on Monday 2 November 2021 at 10:00am via MS Teams.

Simon Qasim – Secretariat

October 2021

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