

Approved

Minutes of the Civil Procedure Rule Committee

Friday 4th February 2022 (via video conference)

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Trower
His Honour Judge Jarman QC
His Honour Judge Bird
Master Cook
District Judge Clarke
Lizzie Iron
Dr Anja Lansbergen-Mills
John McQuater
Isabel Hitching QC
David Marshall

Apologies

Members: Mr Justice Kerr, Tom Montagu-Smith QC, District Judge Cohen; Others: Master Dagnall (Chair, Lacuna Sub-Committee); Katie Fowkes (MoJ Legal).

Item 1 Welcome, Minutes, Action Log & Matters Arising

1. The Chair opened the meeting with the following introductory remarks:
 - **New District Judge Member: District Judge Clarke**, whom the Master of the Rolls was pleased to appoint as the new DJ member with effect from 1st February 2022, was welcomed to the Committee. The appointment was made following the usual expression of interest process and to identify a successor to DJ Parker (as was). DJ Clarke was appointed to the District bench in 2014 and sits full time at the County Court at Burnley. In 2017, he was appointed as a Regional Costs Judge for Lancashire; he is also an IT Liaison Judge. Prior to judicial appointment, he was a solicitor in private practice, specialising in commercial litigation. It was **RESOLVED** that DJ Clarke join the Lacuna Sub-Committee and Forms Sub-Committee, respectively.
 - **Congratulations to His Honour Judge Parker**: The Committee extended their congratulations to HHJ Parker following his appointment to the Circuit bench. Valedictory remarks were noted in the minutes of the last meeting. However, given ongoing vacancies across the Committee, the Chair was pleased to confirm that HHJ Parker will continue to support some Sub-Committee activity for a transitional period over the next 12 months and this was duly **NOTED**.
2. The minutes of the meeting on 3rd December 2021 were **AGREED**.
3. The Action Log was duly **NOTED** and the following matters arising, were also **NOTED** from the Chair:
 - **Renting Homes (Wales) Act provisions (AL(21)95)** had been deferred to the next available CPR Update in order for the in-force date and other operational implementation issues (including consequential form changes) to be finalised.
 - **Small Claims Paper Determination Pilot (AL(21)105)** had also been deferred from the most recent (140th PD Update) cycle to allow for policy and

implementation issues to be settled. The pilot was expected to be introduced via an out-of-cycle PD Update soon.

- **Revised Commercial Court Forms (AL(21)106)** went live on the HMCTS Form Finder (gov.uk) facility and on the judiciary web on 21st January 2022 (with some remedial revisions made shortly thereafter). It was **NOTED** that work was now underway to update the Financial List forms and those revisions are expected to be approved out-of-committee by the Forms Sub-Committee under delegated powers.
- **ASBI PAP (AL(21)107(i))** has been redrafted in response to comments from the last meeting. It is now with lawyers and will need to be reviewed by HMCTS; an in-force date can then be settled before referral to the MR and consequential promulgation.
- **Routes of Appeal in Committal Cases (AL(21)107(iii))** consultation with the Court of Appeal Registrars has taken place; the matter is progressing but requires more time before it is ready to return.

Item 2 Damages & Money Claims Committee (PD51S) CPR(22)01

4. Mr Justice Johnson and Alana Evans (HMCTS) were welcomed to the meeting.
5. The Chair made some introductory remarks in which thanks were **NOTED** to Brett Dixon (former CPRC member) for his initiative during the early part of the Pandemic, to utilise the County Court Online Pilot PD, 51S, as a means for lawyers to issue claims online and to HMCTS for embracing that proposal and implementing it at a time of national urgency. Mr Dixon also provided valuable assistance in promoting the scheme to encourage practitioner take up. Such is the success of the pilot since then, it has now reached a natural point of review.
6. Thanks were also **NOTED** in recognition of the extensive work being undertaken by Johnson J as Chair of the Damages and Money Claims Committee for his and the Committee's collective efforts; it is a phenomenal task.
7. Johnson J echoed the Chair's opening remarks, adding that it was always intended to reform the scheme under PD51S, whereby it would cease to exist because of other reform work. However, it was not considered appropriate to repeal it until the vast majority of claims that are brought within PD51S could be brought within an alternative service, namely the Damages Claims Pilot, governed by PD51ZB. In practice, that has meant waiting until PD51ZB can cater for simple multi-party claims (i.e. up to 2 claimants, or up to 2 defendants). This functionality has now come online, which means that PD51S can be discontinued.
8. HMCTS have conducted quite extensive communications with users/solicitor firms, including a banner headline on the PD51S portal, to the effect that PD51S will be repealed. It was explained that there has not been any opposition to that and this was duly **NOTED**.
9. It was **RESOLVED, subject to final drafting:**
 - **to omit from the CPR, Practice Direction 51S** – The County Court Online Pilot (with an appropriate transitional and saving provision) with effect from 1st March 2022.
10. **Actions:** (i) Drafting lawyers and Secretariat to incorporate into a standalone PD Update (to be the 141st PD Update) and arrange urgent promulgation (ii) HMCTS to arrange operational delivery and communications.

Item 3 Service Sub-Committee

11. The Chair opened the item by expressing thanks for the huge amount of work being carried out by the Sub-Committee and its co-opted members. It is important work, which raises many sensitive and legal complexities.
12. John McQuater reiterated tributes to Tom Montagu-Smith QC for his chairmanship of the Sub-Committee and for the expert input of its non-CPRC members, namely Mr Justice Foxton (who is also a member of the Lord Chancellor's Advisory Committee on Private International Law), Mr Justice Miles and Mr Justice Chamberlain, together with Paul Lowenstein QC, Sam Goodman and Thomas Raphael QC. Alasdair Wallace (MoJ Legal), Eral Knight (MoJ Policy) and the Secretariat, have also provided welcome assistance.
13. A summary of the context and work undertaken was provided. It was explained that the Sub-Committee's main focus has been PD6B and the Gateways (which define the circumstances in which the Court may give permission for a claim to be served out of the jurisdiction) and thus the mechanics, rather than looking at broader issues of jurisdiction.
14. The drafting exercise has been approached in the interests of brevity and usability. Next steps include liaison with the Private International Law Committee (which is co-chaired by Lord Mance and the Parliamentary Under-Secretary of State for Justice, Lord Wolfson QC) in late February, followed by a focused consultation in the Spring, in readiness of a fuller report to the CPRC in May. The aim is that the amendments are incorporated into the next mainstream Update as part of the October 2022 in-force cycle.
15. The oral report was duly **NOTED** with thanks.
16. **Action:** Secretariat to allocate time in the May and/or June meetings.

Item 4 Forms Sub-Committee: EX105 Requests that the costs of transcripts be paid at public expense & PDs under Part 52. CPR(22)02

17. Master Cook explained that a now out of date CPR reference in form EX105 has highlighted a need to make revisions to PD52B (Appeals in the County Court and High Court) and Form EX105 (Requests that the costs of transcripts be paid at public expense). It was natural that sometimes when the CPR is amended forms become out of date and need retrospective revision. However, this served as a useful reminder to members and officials to please check forms and guidance when any CPR change was being made.
18. In discussing the proposals, it was highlighted that a similar amendment to PD52C was needed, as well as to PD52B to expressly provide that any application for a transcript at public expense should be made "...on form EX105 and submitted with ~~within~~ the appellants notice."
19. A further question was raised as to whether it was necessary to change the signpost in the Appellant's Notice, but the preference was to update the supporting guidance leaflet/s (including Form 202, How to Appeal to the Court of Appeal) which covers the relevant procedure.
20. It was **RESOLVED, subject to** consultation with the Court of Appeal Masters and final drafting, to:
 - **amend, PD52B** (Appeals in the County Court and the High Court) at paragraph 4.3;
 - **amend PD52C** (Appeals to the Court of Appeal) at paragraph 6(2);

- **amend Form EX105** (the first bullet point thereon) to make up to date reference to both the rule (r.52.14) and PDs. Amendments to be made to both the English and bilingual Welsh-English versions of form EX105;
- **recommend that HMCTS update Form 202** to bring it in line with the PD and EX105 changes.

21. **Actions:** (i) Master Cook to consult CA Masters and relay to the Chair and Secretary (ii) Drafting lawyers and Secretariat to incorporate into an upcoming standalone PD Update when ready (iii) Subject to CA Master's feedback, HMCTS/MoJ Design to amend (a) EX105 in both the English and bilingual Welsh-English versions (b) Form 202 to bring it up to date with the PD and EX105 changes.

Item 5 Any Other Business:

Online Rules Migration

22. The Chair advised that the Working Group, chaired by Mr Justice Pepperall, received its last update from officials just before Christmas. Whilst work to ensure a smooth transition to migrate the online rules from *Justice* to gov.uk continues, it is slow. In the interim, officials have restated the commitment to ensure www.justice.gov.uk is, stable, secure and supported and this was duly **NOTED**.

23. Master Cook highlighted the need that, in the interim, if pages on *Justice* were updated, for example with the publication of revised Model Forms/Standard Directions, the parallel material on gov.uk also needed updating. A related point on housekeeping concerning the impact of "caching" (whereby IT systems reuse previously retrieved or computed data) was raised. The concern being that some users may, unwittingly, be accessing out of date information. However, this is unfortunately outside the CPRC's direct control. **Action:** Secretariat to raise with MoJ and gov.uk web teams to ensure consistency across both public facing web sites.

Law Commission Review on Contempt

24. It was **NOTED** from the Chair that a review of the law on contempt is anticipated, but as yet, neither the terms of reference, nor a timetable for the consultation are yet known. However, the Commission is aware of the CPRC's work in 2020 and the reformed CPR Part 81.

N180 Small Claims Directions Questionnaire – proposed revisions

25. The Chair explained that there are two strands of work necessitating revisions to form N180, one is in relation to the anticipated pilot to deal with some small claims on paper; the other is in relation to vulnerability and in consequence of the Domestic Abuse Act.

26. The revisions in relation to the Small Claims Pilot PD were first raised at the December CPRC. It was resolved that said revisions be co-ordinated, if practicable, with the work of the Vulnerable Parties Sub-Committee, so that publication of all the related form changes are aligned. The forms also need to be translated into Welsh.

27. The aim is to have the forms published by the end of May 2022.

28. His Honour Judge Jarman QC reiterated that Cardiff was pleased to be included as one of the pilot courts, however, he had been asked to raise whether the judgment template will be available to District Judges at the pilot courts. It was confirmed that it would be.

29. A discussion ensued in which Lizzie Iron raised some drafting points and Dr Anja Lansbergen-Mills undertook to provide some proposed revised drafting in the interests of consistency, to the Vulnerable Parties Sub-Committee, out of committee.

30. It was **RESOLVED** to:

- **defer** revisions in response to vulnerability to the March meeting;
- **approve** revisions in relation to the small claims pilot, in which a new section D is inserted to form N180 to deal with suitability for determination without a hearing, and consequential changes to the numbering and wording of existing section D (now section E) relating to a small claims hearing.

31. Thanks were conveyed to Her Honour Judge Clarke (co-opted Chair of the Small Claims Sub-Committee) and District Judge Byass (co-opted Chair of the Vulnerable Parties Sub-Committee) for their respective work on this.

32. **Actions:** (i) HMCTS to ensure template judgments are provided to courts as part of the small claims pilot implementation (ii) Dr Anja Lansbergen-Mills to provide proposed drafting to the Vulnerable Parties Sub-Committee, for consideration (iii) MoJ/HMCTS prepare revisions for the March meeting and, subject to that, produce and release revised forms in both English and Welsh language.

Workplace PAP Sub-Committee Membership (AL(21)99)

33. The Chair was pleased to confirm that HHJ Jarman QC has agreed to chair the sub-committee; work would be able to commence, once the external co-options were in place and this was duly **NOTED**.

Civil Justice Council's (CJC) Final Report on Small Claims (Civil Justice Council calls for improved procedure for claims under £500 | Courts and Tribunals Judiciary)

34. It was **NOTED** that the CJC's report was published on 28th January 2022. The report is yet to be considered by MoJ Policy and therefore, CPRC consideration is expected in due course.

35. The report makes a number of recommendations (see section 8 at page 39 onwards) that will be of interest to the CPRC. For example, to introduce a specific PAP for claims under £500 and to amend its rules to allow the Court to determine cases by telephone/remote hearing or on the papers, where appropriate. Other recommendations call on HMCTS to consider the information available to litigants before they make a claim and once initiated, including the production of short videos to improve public understanding of the small claims process and the options available to litigants.

36. The CPRC's existing work on the introduction of a Pilot PD for the paper determination of some Small Claims (para 3 above refers) and the Lacuna Sub-Committee's previously raised item (ref AL(21)72) regarding CPR r.27.6 prohibiting preliminary hearings and whether the rule should be more flexible, are related.

37. **Action:** MoJ Policy to advise the Secretariat when the matter is ready to be programmed in for CPRC consideration.

Item 6 Next Meeting & Close

38. The Chair invited views on a tentative return to in-person meetings, which found support. It was **RESOLVED** to conduct the next meeting as a hybrid meeting, with in-person attendance at the usual (pre-pandemic) venue, as well as some remote attendance via MS Teams. **Action:** Secretariat.

C B POOLE
February 2022

Attendees:

Carl Poole, Rule Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice
Alasdair Wallace, Government Legal Department
Andy Currans, Government Legal Department
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Mr Justice Johnson (Item 2)
Alana Evans, HM Courts & Tribunals Service (Item 2)