



# Ministry of Justice

## **FAMILY PROCEDURE RULE COMMITTEE**

**In person at QB1M, Queens Building, Royal Courts of Justice**

**And remotely via Microsoft Teams**

**At 10.30 a.m. on Monday 4 April 2022**

### **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>	High Court Judge
<b>His Honour Judge Godwin</b>	Circuit Judge
<b>District Judge Suh</b>	District Judge
<b>Her Honour Judge Williams</b>	Representing District Judge
<b>District Judge Branston</b>	District Judge
<b>Fiona James</b>	Lay Magistrate
<b>Michael Seath</b>	Justices' Clerk
<b>Poonam Bhari</b>	Barrister
<b>Rhys Taylor</b>	Barrister
<b>Melanie Carew</b>	Children and Family Court Advisory Support Service
<b>Rob Edwards</b>	Children and Family Court Advisory Support Service (CYMRU)
<b>Graeme Fraser</b>	Solicitor
<b>Tony McGovern</b>	Solicitor
<b>Bill Turner</b>	Lay Member

### **Guest:**

<b>Mrs Justice Knowles</b>	High Court Judge
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## **ANNOUNCEMENTS AND APOLOGIES**

**1.1** No apologies were received.

- 1.2 The Chair noted that a member of the Law Commission's Property, Family and Trust Law Team would be attending the meeting as an observer.

#### **MINUTES OF THE LAST MEETING: 7 MARCH 2022**

- 2.1 The Committee agreed that the minutes of the March 2022 meeting were an accurate record.

#### **ACTIONS LOG**

- 3.1 MoJ Policy reported that a new section has been added to the Actions Log to note the progress for each action.

#### **MATTERS ARISING**

##### **Update on Justice Website Corrections**

- 4.1 MoJ Policy reported that one new issue in relation to how temporary pilot modifications are represented online has been identified and resolved.

##### **Opposite Sex Civil Partnership Implementation**

- 4.2 MoJ Policy reported that Cabinet Office colleagues confirmed that they hope to be able to lay the relevant SI in advance of the 2022 Summer Recess.

##### **Practice Direction Update No 3 of 2022**

- 4.3 MoJ Policy reported that Practice Direction (PD) Update No 3 of 2022 had been approved in the usual way.

##### **Family Procedure (Amendment No. 2) Rules 2022**

- 4.4 MoJ Policy reported that they were in the process of 'bidding' for a slot to lay the Committee's second SI of 2022 in July and would update the Committee regarding the final outcome.

##### **Online Procedure Rule Committee**

- 4.5 MoJ Policy reported that the Judicial Review and Courts Bill, which will establish the Online Procedure Rule Committee (OPRC), is currently at Report Stage in the House of Lords. The MoJ colleagues who are supporting the work on the OPRC have been invited to attend the Committee's May meeting to provide members with a more detailed update. The Committee requested a paper to support this item.

**ACTION POINT 1: Paper to be tabled for the May 2022 Online Procedure Rule Committee item.**

##### **Deed Poll Name Changes**

- 4.6** MoJ Policy reported they were awaiting feedback on a variety of points from the Judicial Working Group and Judicial College.
- 4.7** The Committee asked that MoJ Policy seek the view of the Queen's Bench (QB) Masters and the Working Group in regard to applications for name changes for 16-17 year olds being treated as adult applications to align with the approach in the Family Court in that applications in relation to 16-17 year olds for name changes are not normally made under specific issues orders under the Children Act.
- 4.8** MoJ Policy also clarified a point made during the March 2022 meeting and noted that non-contentious adult applications are dealt with by HMCTS staff with the QB Masters drawn in where necessary. Contrary to the indication given at the March meeting, all applications for name changes for minors are dealt with by QB Masters.

**ACTION POINT 2: Deed Poll name changes to be included as a substantive item in May.**

#### **Information Sharing - Immigration Proceedings**

- 4.9** MoJ Policy stated there has been no progress on this issue since the previous meeting as Home Office views are still awaited. The Committee asked whether they could help to expedite progress, especially bearing in mind the wider situation in Ukraine.

**ACTION POINT 3: Secretariat to contact Government colleagues highlighting the Committee's concerns in relation to the situation in Ukraine and the impact it may have.**

**ACTION POINT 4: The issue is to return in May for a further update.**

#### **Future Committee Workstreams**

- 4.10** MoJ Policy informed the Committee that several issues which had been scheduled for discussion at the April 2022 meeting would now be included as part of the June 2022 Agenda, due to competing priorities and high workloads.

**ACTION POINT 5: Secretariat to schedule this issue as a Matter Arising for the May 2022 meeting.**

#### **PRIORITIES TABLE AND PD UPDATES**

- 5.1** MoJ Policy reported that a number of priorities have been completed and removed from the Priorities Table since the March meeting. The Committee asked whether some of the issues in Tier 3 of the list could be moved higher up the list.
- 5.2** The Committee agreed that the Priorities Table should be allocated more time at the May 2022 meeting and in the meantime, members should send the Secretariat views on those items they feel need higher priority.

**ACTION POINT 6: Members to send views on the current ordering of priorities and whether any should be amended to the Secretariat ahead of the May meeting.**

**ACTION POINT 7: Secretariat to schedule an extended item on the Priorities Table for the May 2022 meeting.**

#### **STANDING ITEMS**

## **POLICE DISCLOSURE ORDERS**

- 6.1** Further to discussions at the March 2022 meeting, MoJ Legal introduced proposed amendments to PD12B to put in place a procedure for applying for a police disclosure order in private law cases.
- 6.2** The Committee expressed concerns that the proposals could add an additional administrative burden on parties, particularly Litigants in Person. It was agreed that the existing Part 18 FPR procedure should apply to any such applications, and that PD12B should emphasise the court's ability to make these orders of its own motion. The Committee agreed that the Rules should not place the onus the courts to redact details in information received from the police. The police should be expected to redact as appropriate, and then to send the information to the parties and to the court (subject to any direction to the contrary from the court). The Committee agreed to draft a template Order and an annex which would include any confidential information. The Order and annex would be served on the police, but only the Order (not the annex) would be served on the parties.
- 6.3** Members agreed that consultation was necessary before PDs could be amended and favoured a tailored approach based on the Committee's stakeholder list but asked that the list be updated in advance and that the final list be agreed by the Committee.

**ACTION POINT 8: MoJ Legal to redraft PD amendments based on Committee feedback and to return with an update in May.**

**ACTION POINT 9: Committee to draft a template Order and to contact lead Judge on Orders.**

**ACTION POINT 10: Secretariat to update the Committee's Stakeholder list.**

## **DIVORCE, DISSOLUTION AND SEPARATION ACT**

- 7.1** MoJ Policy provided the Committee with an update on the final preparations for the implementation of the consequential changes necessitated by the Divorce Dissolution and Separation Act, all of which are ready to go live on 6 April 2022. It was confirmed that work was in place to ensure that changes to Parts 6 and 7 would appear in the body of the Rules on the Justice website, as well as a link to the previous versions of Parts 6 and 7 of the Rules.
- 7.2** The Committee welcomed the news but asked to be involved in ensuring that the Family Procedure Rules and Practice Direction changes are displayed accurately.

**ACTION POINT 11: MoJ Policy to confirm when web Family Procedure Rules (FPR) and PD changes will be made and the format for representing 'old and new' versions online.**

## **SUBSTANTIVE ITEMS**

### **PD36Q and PD36R**

- 8.1** MoJ Policy provided the Committee with a high-level summary of the information gathered about the operation of PDs 36Q and 36R, which lapsed on 31 March 22 and have been succeeded by PD36Y. MoJ Policy confirmed that an assessment of the flexibilities allowed for by the PD outside of a pandemic setting will be delivered to the Committee within a year of its commencement.

- 8.2** The Committee proposed that the work form the basis of a session at the forthcoming President of the Family Division's Conference. The Committee asked whether a table detailing which model each DFJ area has implemented could also be put forward as part of this work. MoJ Policy agreed to take this forward, involving the President's Office.

**ACTION POINT 12: President's Office to work with MoJ Policy to establish how the paper can be used as a basis for a session at the President's Conference in May 2022.**

## **TRANSPARENCY**

- 9.1** MoJ Policy updated the Committee on the progress of the workstream in relation to the proposed media reporting pilots.
- 9.2** The Committee noted that the proposed timescale, especially the need to provide appropriate training to the relevant judges, was tight. The Committee asked for the timetable to be updated to include an additional milestone for engagement with Judges.

**ACTION POINT 13: MoJ Policy and Legal to update the timeline for delivery so that it includes a parallel engagement with Judges. Further update to be provided to the May meeting.**

## **G v G – INTERNATIONAL FAMILY WORKING GROUP**

- 10.1** MoJ Policy reported that a new draft rule, which has been prepared by the International Family Working Group, will be brought to the May 2022 meeting for the Committee's consideration.

**ACTION POINT 14: Item to be scheduled at the May 2022 meeting so members can discuss proposed FPR amendments.**

## **H v AN ADOPTION AGENCY WORKING GROUP**

- 11.1** MoJ Policy advised that the Working Group met for the first time on 16 March 2022. The meeting was focussed on establishing how the Group will work and planning the next steps rather than discussing the specific issues and another meeting of the group is being arranged for late April or early May. The Working Group has been expanded to include representatives from Cafcass and DfE.

**ACTION POINT 15: Further updated to be scheduled at the May 2022.**

## **DOMESTIC ABUSE IMPLEMENTATION**

### **a) S. 91(14) Orders**

- 12.1** MoJ Policy and Legal introduced a series of updated PDs, which reflect the Committee's feedback in February 2022 and the input of the Domestic Abuse Working Group.
- 12.2** The Committee provided several points where further updates to the proposed amendments would be useful.

**ACTION POINT 16: MoJ to update amendments based on feedback from Committee.**

**ACTION POINT 17: Amendments to be reviewed by Mrs Justice Knowles before being incorporated in a future Practice Direction Update.**

## **b) DAPN and DAPO Introduction**

- 12.3** MoJ Policy introduced a proposed approach to upcoming work in preparation for the implementation of the Domestic Abuse Protection Notice (DAPN) and Domestic Abuse Protection Order (DAPO) pilot in early 2023. MoJ Policy noted that similar discussions had taken place at the Civil Procedure Rule Committee's April 2022 meeting.
- 12.4** The Committee agreed there was a need for an enabling 'hook' to be made as part of the FPR, so that detailed pilot procedure could then be set out in a PD. They were concerned that there may not be time for consultation before 2023.
- 12.5** MoJ Policy stated that sufficient time has been allocated for this work so views will be considered in advance of the early 2023 pilot commencement date. In the meantime, the Committee agreed that a Cross-Jurisdictional Group should be established to support the work and suggested that representatives from the Civil Procedure Rule Committee, the Criminal Procedure Rule Committee and the Court of Protection Rules Committee should be involved.
- 12.6** The Committee also agreed that stakeholder consultation should be formally developed.

**ACTION POINT 18: MoJ Policy to develop the FPR enabling rule to be included in the rule amending SIs to be laid by June.**

**ACTION POINT 19: MoJ Policy to set up a cross jurisdictional working group.**

**ACTION POINT 20: MoJ Policy to develop a formal stakeholder consultation.**

## **CONTESTED FR ONLINE**

- 13.1** MoJ Policy provided an update to note that work is underway to make improvements to the digital FR contested service.
- 13.2** The Committee asked for a more detailed, written, update at the May 2022 meeting.

**ACTION POINT 21: An item, supported by a paper on the work taking place to resolve the issues raised previously, to be scheduled for May 2022.**

## **FORWARD PLANNING AND UPCOMING MEETINGS**

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

- 14.1** MoJ Policy met separately with the Secretaries of the Civil Procedure Rule Committee, the Court of Protection Rule Committee and the Criminal Procedure Rule Committee as part of the regular series of meetings. No specific points of interest were raised in discussion.

## **FORMS WORKING GROUP UPDATE**

- 15.1** MoJ Policy advised that the Forms Working Group met on 17 March 2022 with the main area of discussion being the consequential changes to be made resulting from the implementation of the

Domestic Abuse Act 2021. The aim is for the next meeting of the Working Group to be arranged ahead of the Committee's May FPRC meeting.

- 15.2** HMCTS raised the issue of the C7 acknowledgment of service form which the Committee were asked to endorse following recent discussion at the Forms Working Group. The Committee agreed to the changes made including the international elements but wanted clarification on how it will be encouraged to be completed digitally.

#### **FPRC WORKING GROUPS**

- 16.1** MoJ Policy confirmed that the changes to the membership of the working groups discussed in March have all now been made.

#### **DRAFT MAY 2022 AGENDA**

- 17.1** MoJ Policy advised that the draft May agenda would be updated following this meeting.

#### **ANY OTHER BUSINESS**

##### **a) Independent Domestic Violence Abuse Advisors (IDVAs)**

- 18.1** The Committee noted the Home Office had published a Domestic Abuse plan. The Committee felt it would be necessary to consider whether any FPR changes would be necessary if IDVAs and Independent Sexual Advice Workers were put on a statutory footing: might they then be entitled to attend proceedings as a matter of right, rather than at the judge's discretion? The Committee therefore asked whether a "likely timeline" for any primary legislation around IDVAs be provided, so that any necessary FPR/PD amendments can be built in time for any new statutory provisions to come into force.

**ACTION POINT 22: This issue to be raised under matters arising at the May 2022 meeting.**

##### **b) PD5A/ financial remedy applications**

- 18.2** The Committee expressed the view that Form E2 is not appropriate for variation applications to capitalise periodical payment orders. Form E should be used instead. It was suggested that PD5A be amended accordingly. MoJ noted that Form E and E2 might need amending too.

**ACTION POINT 23: MoJ to consider proposed amendments to PD5A and whether Forms E and E2 would also require amendment.**

**ACTION POINT 24: Once confirmed and Forms amended, amendments to be added to the next available PD Update.**

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

- 19.1** The next meeting will be held on Monday 9 May 2022. This will be a hybrid meeting so will be undertaken in person at QBIM, Queens Building, Royal Courts of Justice and remotely by MS Teams.

Simon Qasim – Secretariat

April 2022

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