



Ministry
of Justice

Civil Procedure Rule Committee

Annual Report 2021

This information is also available at

<https://www.gov.uk/government/organisations/civil-procedure-rules-committee>

This annual report of the Civil Procedure Rule Committee includes references to rules and Practice Directions made, sub-committee work and consultations conducted, during the period of the report; the Committee's terms of reference, membership and number of meetings held.

Contents

<u>FOREWORD</u>	3
<u>1.TERMS OF REFERENCE</u>	5
<u>2.BACKGROUND & COMMITTEE STRATEGY</u>	5
<u>3.MEMBERSHIP</u>	6
<u>4.REMUNERATION & MEMBER INTERESTS</u>	7
<u>5.MEETINGS</u>	7
<u>6.SUB-COMMITTEES & WORKING PARTIES</u>	7
<u>7.PROJECT TO SIMPLIFY THE CIVIL PROCEDURE RULES (CPR)</u> ...	8
<u>8.CIVIL PROCEDURE RULES 1998</u>	9
<u>9.CPR UPDATES</u>	9
<u>10.CONSULTATIONS</u>	9
<u>11. FUTURE BUSINESS</u>	10
<u>12.CONTACT</u>	10

Foreword



It is with great pleasure that I introduce the latest Annual Report of the Civil Procedure Rule Committee, covering the 2021 reporting period – my first full year as Deputy Head of Civil Justice and de facto Chair.

It is a huge honour to Chair the Committee on behalf of the Master of the Rolls. In doing so, the collective efforts, care and expertise of many people, fellow judges, members, officials, drafting lawyers and others, join together to consider and bring about positive change across the civil justice system. By regularly updating and revising the Civil Procedure Rules (CPR) and their supplementing Practice Directions, we aim to ensure that the practice and procedure to be followed in the civil courts across England and Wales is kept up to date and relevant. I pay tribute to everyone concerned, over what has been another very busy year.

I am especially pleased with the introduction, this year, of a new project to simplify the CPR. It is perhaps inevitable that over the course of the last 22 years, since the CPR's inception, the rules have grown in length and at times complexity. It is therefore timely to renew, afresh, the ways in which we deliver against our statutory duty, at s.2(7) of the Civil Procedure Act 1997, that,

“The Civil Procedure Rule Committee must, when making Civil Procedure Rules, try to make rules that are both simple and simply expressed”.

The establishment of a s.2(7) Sub-Committee brings an enhanced focus and drive to simplifying the rules for everyone who uses them. This is a mammoth task and expected to take quite some time, but it is already showing promise. Combined with this, a new online process to conduct a continuous programme of consultation has been introduced, so that proposals can be seen and commented on before changes are finalised. I am very grateful to everyone who has taken the time to submit responses thus far. You can read more about this work, later in the report.

This work sits alongside the usual busy programme of mainstream and other updates. The four sets of statutory amendments and 12 Practice Direction Updates implemented this year have covered a wide variety of topics. Work in consequence of the Covid-19 Pandemic and EU Exit have continued, as has the increasingly regular rhythm of Updates required to support digital reforms, whether that be enhancements to the Online Civil Money Claims Pilot (under PD51R) or the introduction of the new online Damages Claims Pilot (PD51ZB).

This year also saw the culmination of extensive work to introduce a new suite of provisions (including PD27B) for Road Traffic Accident (Whiplash) claims in consequence of the Civil Liability Act 2018. Other important changes include the suite of revised PDs under Part 54 (Judicial Review) that came into effect in May 2021 and which were prompted by concerns expressed by the Court of Appeal, that pleadings and skeleton arguments in public law cases had become too lengthy and too complex. Work to consolidate all the Planning Court related provisions into one place reached fruition in October and should come into force in April 2022. A two year pilot scheme (PD51ZC) in which appropriate small claims under £1,000 can be resolved on paper, will become operational on 1st June 2022.

In addition, a whole collection of other revisions to address gaps, clarify points of detail and respond to developments in case law and practice have also been introduced. This included a wide collection of form revisions, most notably for Judicial Review and Commercial Court proceedings.

But probably one of the most fundamental changes – one of the few since its creation in 1998 – was an amendment to the CPR's Overriding Objective and with it, the introduction of a new Practice Direction concerning the participation of vulnerable parties or witnesses (PD1A). This followed the Civil Justice Council's recommendation in their February 2020 report on Vulnerable Witnesses. The ensuing year will also see further reforms to the CPR in consequence of the civil clauses contained within the Domestic Abuse Act 2021.

In August, members and officials mourned the untimely death of Richard Viney (barrister at 12 Kings Bench Walk) who served on the Committee with characteristic care, drive and distinction, up to and beyond the usual maximum term of six years (from 2014 to 2020), continuing to volunteer his valuable time on various important topics thereafter. I knew Richard well and worked with him throughout this period. Richard was able to draw on his breadth of expertise as a practitioner as well as a Deputy District Judge. He contributed to a wide variety of reforms to improve court practice and procedure. He will be remembered as a kind and well-humoured man who made a truly meaningful and meritorious contribution to the administration of civil justice.

In happier news, the Committee was pleased to acknowledge Tim Parker's elevation from the District to Circuit bench, this year. But, by doing so, the inevitable vacancy for a new District Judge member arose. Judge Parker was an outstanding member of the Committee (from 2019 to 2021), having been hugely active both in and out of committee and across a wide range of issues. Most notably on housing possession matters and reviewing court forms, where his expertise and focus on detail has been invaluable.

With the passage of time since the formal year-end and publication of this report, I warmly welcome District Judge Paul Clarke, as successor, and I take this opportunity to pay tribute to Brett Dixon, Masood Ahmed and John McQuater, all of whom reach the end of their respective terms on the Committee. Lasting contributions have been made by each of them and they will be very much missed.

I am confident that the momentum of change, nationally, will continue to provide a demanding programme of work for the Committee into the future and I am heartened by the resolve that this is sure to be matched by the motivation and dedication of its members and officials.

I hope you find this report informative.

Lord Justice Birss

Deputy Head of Civil Justice

Terms of Reference

The Civil Procedure Rule Committee (“the Committee”) is an advisory, non-departmental public body, sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in:

- the Civil Division of the Court of Appeal;
- the High Court; and
- the County Court.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Procedure Act 1997 (as amended by the Courts Act 2003, the Constitutional Reform Act 2005, the Crime and Courts Act 2013, the Anti-Social Behaviour, and the Crime and Police Act 2014).

Background & Committee Strategy

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The Committee’s aim is to provide rules of court in line with the aims stated in Lord Woolf’s 1996 report “Access to Justice”.

Before making any rules, the Committee is:

- obliged to consult such persons as it considers appropriate and
- to meet (unless it is inexpedient to do so).

Rules are made into legislation by way of a Statutory Instrument. The Committee aims to sign Statutory Instruments in June and December each year, to come into force in October and April respectively. The Civil Procedure Rules (CPR) are supplemented by Practice Directions (PD), and whilst these are not the direct responsibility of the Committee, the Committee is involved in their drafting because of their close relationship with the rules. However, both Statutory Instruments & Practice Direction Updates may be made throughout the year.

The Committee’s strategy serves to achieve its statutory function and the Overriding Objective that the rules should be ‘simple, and simply expressed’.

Both the Committee, and the team of officials and lawyers which support it, are a limited resource, and often overstretched. It is, therefore, necessary to be able to prioritise the work which the Committee is asked to undertake. The following priorities apply:

- **Legislation (where necessary)**
Amendments to the rules driven by legislation are often required on a timetable outside the Committee's control. It was, therefore, decided that these items should take precedence wherever necessary. However, this is subject to the caveat that amendments are required. Often, legislation which impacts civil justice will not require an amendment. The default position is that no amendment be made in response to new legislation unless absolutely necessary.
- **Modernisation**
This refers mainly to the incorporation of the scheduled rules into the main body of the Civil Procedure Rules. When the Civil Procedure Rules were made in 1998, not all of the Rules of the Supreme Court (RSC) and County Court Rules (CCR) had been transformed into Civil Procedure Rules. The remaining RSC and CCR were placed in 'schedules' to the Civil Procedure Rules to be incorporated at a later date, and thus became known as the Scheduled Rules. The incorporation of these remaining rules is a regular feature of the Committee's work. Additionally, in 2021 a new "simplification" project was established, which compliments and accelerates the delivery of this priority. You can read more on this project (and the s.2(7) Sub-Committee) below.
- **Comprehensive Reviews**
These will be led by the Ministry of Justice, but topics will be agreed with the Committee and preferably focused around issues of concern to judiciary, practitioners and litigants. They will focus on a particular part or topic, and will include a full review of the drafting of that part, seeking to simplify language and procedure, and eliminate duplication (between the rule and the Practice Direction, for example).

Suggestions for amendments to be considered outside these three priority areas will either need to be held back for incorporation into an appropriate review, or pass a reasonably rigorous test for consideration based on urgency, scale of (potential) injustice, political imperative and scale of difficulties being encountered in practice.

Membership

During the period covered by this report, the Committee comprised of the following members:

- The Head of Civil Justice, Master of the Rolls, Sir Geoffrey Vos, Ex Officio
- The Deputy Head of Civil Justice, The Rt Hon Lord Justice Birss, Ex Officio
- The Hon Mr Justice Kerr, High Court Judge Member
- The Hon Mr Justice Trower, High Court Judge Member
- Master Cook, High Court Master Member

- His Honour Judge Bird, Circuit Judge Member
- His Honour Judge Jarman QC, Welsh Judge Member
- District Judge Parker, District Judge Member
- District Judge Cohen, District Judge Member
- Dr Anja Lansbergen-Mills, Barrister Member
- Isabel Hitching QC, Barrister Member
- Tom Montagu-Smith QC, Barrister Member
- Mr Brett Dixon, Solicitor Member
- Mr David Marshall, Solicitor Member
- Mr Masood Ahmed, Solicitor Member
- Mr John McQuater, Lay Advice/Consumer Affairs Member
- Mrs Lizzie Iron, Lay Advice/Consumer Affairs Member

Remuneration & Member Interests

The Chair and members are not remunerated for their service on the Committee.

Members of the Committee are permitted to submit reasonable claims to travel and subsistence expenses which are paid by the Ministry of Justice; no such claims have been submitted during the period of this report.

A register of member interest for the period of this report is held by the Secretariat; should you wish to view it, please contact the Secretary via the means at the end of this report.

Meetings

In addition to its usual calendar of nine meetings per year, the Committee also met to conduct urgent business in January and September, respectively, meaning the Committee met 11 times in 2021. All meetings were conducted via remote technology in the interests of public health (in response to the Pandemic). The May meeting was the annual “open” meeting when the public and other interested parties observe the Committee in session and have the opportunity to ask questions. Minutes of Committee meetings are publicly available online here: <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#minutes>

Sub-Committees and Working Parties

The Committee establishes sub-committees and working parties to consider the detail of the rules relating to specific projects and/or proposals and much of the initial work is conducted in this way. Generally, there are around 15 such committees operating at any one time. They include (listed in alphabetical order):

- **Access to court documents by non-parties** - to consider the Lacuna Sub-Committee referral regarding access to court documents from non-parties (prompted

by the Supreme Court judgment in *Cape Intermediate Holdings Ltd -v- Dring* [2019] UKSC 38).

- **Anti-Social Behaviour Injunctions (ASBI)** - to consider and make recommendations in response to the Civil Justice Council's Report on ASBIs. (<https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/anti-social-behaviour-injunction-asbi-working-group/>).
- **Appeals** - to consider related referrals from the Lacuna Sub-Committee concerning, for example, Skeleton Arguments on Appeals and Part 36 Offers and related Appeals.
- **Court Forms** – to consider changes to or new court forms.
- **Civil Liability Act - Whiplash & the RTA Portal (increasing small claims track limit for RTA Injury)** - to consider related rules, PD & PAP amendments.
- **Costs** - to consider cost related matters.
- **Damages and Money Claims (online reform)** - creation of rules to support the pilot schemes for online claims under PD51ZB, PD51R and PD51S respectively.
- **EU Exit** - to consider any CPR related, post BREXIT, consequential.
- **Fixed Recoverable Costs** – to implement the proposed extension of fixed costs.
- **Housing & Possession Enforcement** - to maintain a general watching brief on Housing & possession related matters.
- **Judicial Reviews (CPR Part 54)** - to consider and make recommendations in response to the Lord Chief Justice's judgment in *Dolan and others -v- Secretary of State for Health and others* Neutral Citation Number: [2020] EWCA Civ 1605.
- **Lacuna** - to consider possible gaps in the CPR as alerted by the judiciary / judgments and to review requests received from any interested party, including general enquiries received via the secretariat, to determine suitability as to whether it merits full committee consideration.
- **Open Justice** - maintain a general watching brief on open justice related issues.
- **Paper Adjudication of some Small Claims** - to consider and make recommendations in response to the Civil Justice Council's Report: <https://www.judiciary.uk/wp-content/uploads/2021/06/April-2021-The-Resolution-of-Small-Claims-interim-report-FINAL.pdf> and other related matters.
- **Part Transfer of Deeds Poll to the Family Division** - to draft related rule changes.
- **Section 2(7) Simplification and Brevity** - to review the CPR, over a phased programme of 12-24 months (initially) in order to reduce and simplify the rules pursuant to the Rule Committee's statutory duty under s.2(7) Civil Procedure Act 1997 to, '...try to make rules that are both simple and simply expressed.'

- **Service (CPR Part 6 and PD6B)** – to review the rules on service out of the jurisdiction (the gateways) and thereafter, electronic service and any wider reforms.
- **Vulnerable Parties** - to update the CPR in consequence of the civil provisions of the Domestic Abuse Act 2021 and to consider the Civil Justice Council's report and recommendations, 'Vulnerable Witnesses and Parties within Civil Proceedings'.
- **Welsh Housing** – to draft the rules consequent upon implementation of the Renting Homes (Wales) Act.
- **Workplace Claims** – to review amendments proposed by the Health & Safety Executive to Annex A (Standard Disclosure in Workplace Claims) of the Pre-Action Protocol for Personal Injury Claims.

Project to simplify the Civil Procedure Rules (CPR)

This year, the Committee commenced a new project to try to simplify the rules; this being a statutory duty under s.2(7) of the Civil Procedure Act 1997. The work is being conducted by a sub-committee chaired by Mr Justice Kerr which is approaching its task in a phased way over the next 12-24 months, initially. Essentially, this is the most comprehensive review of the CPR since its inception some 22 years ago. The Committee also resolved to commence a rolling (ongoing) programme of consultation, whereby drafting proposals are published for comment before changes are introduced, and this is working very effectively.

You can read more on the sub-committee's outline programme by viewing the Committee minutes, online (in particular those of the 11th June 2021) via the following link:

<https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#minutes>

Civil Procedure Rules 1998

The Civil Procedure Rules, which were made by the Committee on 10 December 1998, came into force on 26 April 1999. The rules are contained in 89 Parts covering different areas of procedure and different types of proceedings. Much of the detail of the procedure is contained in Practice Directions supplementing the Parts of the Rules.

New Rules, Statutory Instruments and Practice Direction Updates

This has been another very busy year. During which, four Statutory Instruments and 12 Practice Direction Updates (the 127th – 138th) have been made; these bring about a diverse suite of changes across the Civil Procedure Rules and can be read online via this link:

<http://www.justice.gov.uk/courts/procedure-rules/civil>

More details can also be found on the CPR and legislation websites at the following links:

<https://www.justice.gov.uk/courts/procedure-rules/civil>

<https://www.legislation.gov.uk/>.

Consultations

The Committee has the power to conduct a variety of consultations when evidence/opinions are sought during their consideration of the rules of court governing the practice and procedure in civil proceedings.

As explained above, a 'rolling consultation' programme has been introduced to support the work to simplify the CPR. It enables drafting proposals to be published online for comment before changes are introduced. Importantly, these proposed CPR changes are focused on drafting amendments rather than substantive changes, however, some proposed reforms do seek to relocate or dispense with provisions altogether.

A number of consultations have taken place, via this programme, during the period of this report. The first set of proposed reforms concerned CPR Part 10 (Acknowledgment of Service) and Part 12 (Default Judgment) and that exercise closed on 12 November 2021 with amendments being reflected in the Civil Procedure (Amendment) Rules 2022 & 140th Practice Direction Update. The next set of proposed reforms published for consultation concerned CPR Part 2 (Application and Interpretation of the Rules), Part 3 (the Court's Case Management Powers), and Part 4 (Forms) and that exercise has also now closed. Further proposals will continue to be published, for consultation, on an ongoing basis. Please follow this online here: <https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about>

Thank you to everyone who has submitted responses to date. Developments can be monitored by following progress via the Minutes and subsequent CPR Updates.

This, 'rolling consultation' programme operates in addition to any other consultation exercises the Committee deems appropriate. Accordingly, in the summer, the Committee ran one other public consultation to seek views on the operation of PD51X Statement of Costs for Summary Assessment Pilot and forms N260A and N260B.

The PD51X consultation closed on 30th July 2021. The responses were duly analysed by the Costs Sub-Committee and reported to the full Committee on 3rd December 2021, whereupon it was resolved not to renew the pilot scheme under PD51X following its expiry on 31st March 2022, but to review whether costs form N260 required amendment. Minutes of that meeting can be read online via this link: [CPRC Minutes](#)

Future Business

The Committee's work programme and resulting amendments to the CPR are driven by many and often competing priorities. It is not always possible to identify, well in advance, the core topics to be considered. Primary or other legislation is often required on a timetable outside the Committee's direct control or that of the Ministry of Justice (MoJ). Other topics focused around issues of concern to the judiciary, practitioners, litigants and other users will feature throughout. Issues such as urgency, scale of (potential) injustice, political imperative and the extent of difficulties being encountered in practice, all form part of the process to manage the programme of work to best effect.

Wherever possible, amendments to the CPR will following the two common commencement dates of October & April. However, given the weight and urgency of some work, additional Updates are to be expected.

Topics likely to drive the work programme for the ensuing year are expected to include a mixture of projects already started, alongside new strands of work; together they include (listed in alphabetical order):

- Business as usual activity by the Lacuna Sub-Committee and Forms Sub-Committee
- Costs Form N260
- Digital Reform: Damages Claims Pilot PD51ZB & Online Civil Money Claims Pilot PD51R
- Extending Fixed Recoverable Costs
- HM Courts & Tribunals Service's Reform Programme
- Vulnerable Parties and Witnesses
- Recommendations from the Civil Justice Council's report on Small Claims
- Recommendations from the Independent Review of Administrative Law
- Service out of the Jurisdiction Part 6 and PD6B
- Simplification work across the CPR generally and the associated programme of rolling consultations
- Welsh Housing in consequence of the Renting Homes (Wales) Act

Contact

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