

## Approved

### Minutes of the Civil Procedure Rule Committee

Friday 1<sup>st</sup> July 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

### Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (for items 4 & 5)  
Mr Justice Kerr (Chair)  
Mr Justice Trower  
Master Cook  
His Honour Judge Jarman QC  
His Honour Judge Bird  
Lizzie Iron  
David Marshall  
Dr Anja Lansbergen-Mills  
Isabel Hitching QC  
Tom Montagu-Smith QC  
District Judge Cohen  
District Judge Clarke  
Virginia Jones  
Ben Roe

### Apologies

Lord Justice Birss (Deputy Head of Civil Justice); Andrew Currans (Government Legal Department); Alison Cook (HMCTS – Item 4); Chis Owens (Ministry of Justice - Item 8).

### Item 1 Welcome, Minutes, Action Log & Matters Arising

1. **Welcome:** Mr Justice Kerr welcomed everyone to the meeting, whether attending in person or remotely. A particularly warm welcome was extended to District Judge Cohen, who was able to join the meeting remotely, having been absent due to medical leave for sometime. Lord Justice Birss was unable to be present due to a personal commitment and thus, it was Kerr J's pleasure to be in the Chair for today's meeting. He was pleased to welcome Virginia Jones and Ben Roe, both of whom had been successful in the recent campaign to appoint two new legal members; brief introductions followed:

**Virginia Jones** is Head of Knowledge at Stewarts Law, however, most recently Virginia spent 10 years at Lexis Nexis where, since 2017, she headed up the Dispute Resolution team. Prior to that, Virginia had a commercial litigation practice at Marriott Harrison.

**Ben Roe** is the Lead Knowledge Lawyer at Baker McKenzie's Global Disputes and Compliance Group, where he has responsibility for knowledge management and training for approximately 1,400 litigation, arbitration and compliance lawyers. Prior to his time at Baker McKenzie, he spent 10 years in private practice and has broad experience of high-value commercial litigation, along with regulatory and internal investigations. Ben has higher rights of audience and is an accredited mediator and an officer of the International Bar Association's litigation committee.

2. **Minutes:** The minutes of the meeting on 10<sup>th</sup> June 2022 were **AGREED** following modest typographical corrections.
3. **Matters Arising and Action Log:** the Action Log and following Matters Arising were duly **NOTED:**

4. **Sub-Committee workloads and priorities review (AL(22)59):** The Chair noted with thanks the members who have already submitted a roundup of their current/ongoing sub-committee commitments for workload and priorities planning purposes. He requested all responses be sent to the Chair by the end of July. **Action:** all members to email Chair by 31<sup>st</sup> July.
5. **Part 52 Appeals and ASBI related work (AL(21)107):** His Honour Judge Bird provided a brief oral update to advise that he and MoJ legal have been working on drafting proposals, but before reporting substantively, the intention is to complete the internal consultation with Lord Justice Underhill and the Court of Appeal Registrars.

## **Item 2 Business & Property Courts Disclosure Working Group (PD51U) CPR(22)32**

6. Lord Justice Flaux, Chancellor of the High Court, was welcomed to the meeting; as were Mr Justice Robin Knowles CBE, Ed Crosse and Deputy Master Marsh, all of whom are Disclosure Working Group (DWG) members.
7. The Chancellor set out the background and rationale. It was explained that the current pilot, under PD51U commenced on 1<sup>st</sup> January 2019 and has been extended twice. The reviews have enabled user feedback to be acted upon and the pilot PD further improved. The DWG is very grateful to everyone who took the time to provide feedback, ideas and proposals for further change.
8. Disclosure is important in achieving the fair resolution of civil proceedings. It involves identifying and making available documents that are relevant to the issues in the proceedings. It was acknowledged that any significant procedural reform inevitably presents challenges for users, but, as a result of the Disclosure Pilot, a significant change in culture has been seen, whereby parties are engaging at a much earlier stage in discussion and agreement and thus a far more focused and efficient approach to the disclosure process generally.
9. The DWG recommend making the scheme permanent by replacing the current pilot PD51U with a new PD in substantially the same form, but under CPR Part 57A (Business & Property Courts). Two modest refinements were proposed for inclusion in the final PD related to the Less Complex Claims: change the indicative figure from £500,000 to £1 million and modify paragraph 10.5 in response to feedback.
10. A discussion ensued. The question of brevity in drafting was raised in the context of the ongoing programme to simplify the CPR, highlighting that the PD was long and detailed. However, it was recognised that this was a specialist jurisdiction and users appreciated the guidance and assistance provided by the pilot PD. At this stage, therefore, it should, remain substantially unchanged. However, it may be that in the years ahead a further review can be conducted and this was **NOTED**.
11. The location of the PD was considered and whether it should be imported into the CPR as a schedule to a new paragraph 6 within the existing PD57AA. An alternative of having a rule with guidance in the Court Guide was considered, but not favoured. The DWG explained that the initial thinking in support of scheduling the PD to PD57AA was to preserve the existing numbering within PD51U because significant changes were likely to cause additional work and potential confusion for users. Following discussion, it was **AGREED** not to schedule the revised PD to PD57AA, but to import it as a substantive PD, 57AD.
12. PD 57AD will apply to existing and new proceedings in the Business and Property Courts of England and Wales and the Business and Property Courts in Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle. It will not apply in the County Court.

13. Mr Justice Trower raised a question in regards to Part 8 claims which was discussed and it was **AGREED** to remove, "or a Part 8 claim form" from paragraph 5.1.
14. In response to a question from the Chancellor, the Secretary confirmed the timetable for promulgation and undertook to co-ordinate publication with the Chancellor's Private Office in order to ensure maximum advance notice to users.
15. It was **RESOLVED, subject to the above and to final drafting, to APPROVE** the introduction of PD 57AD (and its Appendices) "Disclosure in the Business and Property Courts", with effect from 1<sup>st</sup> October 2022.
16. **Actions:** (i) Ed Crosse to provide perfected drafting to the Secretariat and Drafting Lawyers by 4<sup>th</sup> July 2022 (ii) In consultation with Judicial Office, Drafting Lawyers and Secretariat to include in the upcoming PD Update as part of the October 2022 common-commencement cycle and co-ordinate publication (on/around 15<sup>th</sup> July) with the Chancellor's Private Office.
17. **Post Meeting Note:** *PD57AD was promulgated pursuant to the 149<sup>th</sup> PD Update; fuller detail (including tracked change versions) were also published online at [www.judiciary.uk/announcements/disclosure-working-pilot-has-been-approved/](http://www.judiciary.uk/announcements/disclosure-working-pilot-has-been-approved/)*

### **Item 3 Extending Fixed Recoverable Costs CPR(22)33**

18. The Chair welcomed Robert Wright (MoJ) to the meeting. Mr Justice Trower set out the background and provided a progress report, which was duly **NOTED**. In summary, the report covered the following areas: (i) the drafting process and related issues; (ii) timing and (iii) the consultation on vulnerability and Qualified One-way Costs Shifting (QOCS) related issues.
19. It was explained that, at the November 2021 meeting, the Costs Sub-Committee was tasked with overseeing the necessary CPR drafting to implement the extension of fixed recoverable costs (FRC). Praise was expressed for the hard work and expertise of the Sub-Committee members (Master Cook, Isabel Hitching QC and David Marshall) which is enhanced further by way of the two co-opted members with a particular expertise in FRC cases, namely District Judge Simon Middleton and Andrew Parker. MoJ drafting lawyer assistance is provided by Andrew Currans, and policy input comes from the MoJ policy team led by Robert Wright.
20. The drafting exercise is substantial and the Sub-Committee has been meeting regularly since March, when the first drafts became available, and will continue to meet, over the summer in order to provide further reports and drafting in the autumn with the aim to secure final approval in December for implementation in April 2023.
21. The work thus far has highlighted some drafting issues. The existing structure of Part 45 is not ideal for the lay reader (mainly in Part 45, but other Parts too). It has evolved in stages over time, with new elements being added on in a rather piecemeal way which has unfortunate consequences in terms of clarity of drafting. But the Sub-Committee is very conscious that the current FRC rules (most Fast Track Personal Injury claims) cover hundreds of thousands of cases per annum and are generally well understood by PI users. As such, tinkering, risks wider and unintended consequences.
22. Consideration as to whether starting afresh would make the rules more accessible has been undertaken, but reluctantly the Sub-Committee concluded it is not the ideal approach, and a better method would be to keep the current structure, but try to make navigation of the rules easier for the much wider range of user following the extension of FRC across the fast track.

23. One of the consequences of the historic piecemeal drafting is that issues such as VAT and London weighting are apparently dealt with inconsistently (see for example Section I of the current Part 45, which makes no provision for recovery of VAT and Section IIIA, rule 45.29C(3) which does). This is not ideal, but it is recognised that (i) the current rules seem to work (or, at least, there is no suggestion that they do not), and (ii) making changes for the sake of consistency would have substantial implications (by increasing or reducing the costs that are otherwise recoverable by 20%) and could involve a substantial amount of additional work including possibly a further consultation. The CPRC was asked to **NOTE** that, in the Sub-Committee's view, pragmatism should take precedence over consistency of drafting, such that they will do the best they can, but that it may not amount to full consistency. However, the intention is to propose solutions to simplify the drafting, by co-locating references to specific issues to avoid repetition where practicable and remove or at least significantly modify Section II, which will have limited effect once the new rules are in place.
24. The Sub-Committee is also mindful of the anticipated drafting implications of the new online procedures and will consider them as arrangements are confirmed.
25. The recent consultation on the approaches to be adopted for vulnerability and QOCS closed on 20 June. It yielded 49 responses in total, with 38 responding on vulnerability and 33 responding on QOCS. MoJ is considering those responses and the policy way forward carefully, in order that the Sub-Committee, will be in a position to consider the consequential drafting changes over the summer.
26. Following discussion, it was **RESOLVED**:
- Costs Sub-Committee work to continue in the direction set out;
  - Further update and points of principle to be determined at the October meeting;
  - Fuller drafting proposals and detailed discussion at the November meeting;
  - Final determination at the December meeting (to enable amendments to be included, if possible, in the mainstream winter Update cycle for April 2023 in-force).
27. **Actions:** Secretariat to programme in accordingly.

#### **Item 4 Court Officers Pilot Scheme CPR(22)34**

28. Rosemary Rand (HMCTS) was welcomed to the meeting and provided a brief introduction.
29. It was explained that Birss LJ and District Judge Jenkins had developed a proposal to introduce a new pilot PD for certain paper case management directions to be made by non-legally qualified Court Officers in the County Court (i.e. its operation is not restricted to certain pilot court centres), overseen by Designated Civil Judges, and had discussed this with HMCTS who were supportive and therefore bringing it to the CPRC. The proposed PD, which will be supported by way of template orders, excludes the more complex Small Claims and Fast Track cases (such as Road Traffic Accident claims), and does not include digital work, namely, Online Civil Money Claims or claims within the Damages Claims Portal pilot. The aim is to introduce the pilot PD with effect from 1<sup>st</sup> October 2022. This was duly **NOTED**.
30. The MR set out the context, explaining that the proposal flows from a wider piece of work instigated by the Lord Chief Justice and forms part of a collection of measures which the senior judiciary have been considering, as a means of reducing the burden in response to workload pressures, particularly in respect of District Judge workloads.

31. A discussion ensued which raised various questions as to scope (for example whether the directions will include time estimates for listing purposes), staff training, implementation and drafting. Overall, there was general support for the principle. HMCTS confirmed that court officers will be able to refer cases to a Judge (as now) if needed and that the judiciary are involved in devising the template directions orders that will be used as part of the pilot scheme. The MR observed that DCJs will be involved to ensure only appropriate cases are administered under the PD and that the pilot would need to be closely monitored.

32. It was **RESOLVED, subject to final drafting:**

- **APPROVE, IN PRINCIPLE**, the introduction of a new pilot Practice Direction “County Court Officers Pilot Scheme” under CPR Part 51;
- Duration of pilot (anticipated to be for an initial period of two years) to be settled out-of-committee;
- In-force date (anticipated to be 1<sup>st</sup> October 2022) to be settled out-of-committee;
- Delete paragraph 3 (ii) from the proposed draft PD;
- His Honour Judge Bird to assist the Working Group and Drafting Lawyers as to final drafting.

33. **Actions:** (i) Drafting Lawyers and Secretariat to include in an appropriate PD Update, at the earliest opportunity (ii) In consultation with MoJ (as to any policy implications), HMCTS to facilitate operational implementation.

#### **Item 5 Small Claims Track Automatic Referral to Mediation CPR(22)35**

34. Dr Anouska Wilkinson (MoJ) was welcomed to the meeting and provided an overview of the background and policy rationale; highlighting its value in the context of a post-Covid recovery landscape.

35. The Government proposes to build on the Civil Justice Council’s (CJC) report (in January 2022), “The Resolution of Small Claims”, which recommended compulsory attendance at mediation for all claims up to £500 in value, and take it further by introducing automatic referral to mediation for all defended Small Claims. Consideration is ongoing as to whether certain classes of claim should be exempt and whether a party may seek judicial permission for an individual exemption. Where mediation takes place, parties would not be under an obligation to settle and if mediation did not result in settlement, litigation would resume as usual.

36. For some years, HMCTS have operated the Small Claims Mediation Service (SCMS), which provides a free one-hour telephone mediation session for parties involved in defended Small Claim disputes. However, the current uptake levels are low (21%). Given the very successful settlement rate (55%) for parties who do go through mediation, the potential impact of the proposed new policy aims to help an additional 272,000 parties every year to access the opportunity to resolve their dispute consensually through mediation and avoid the time and cost of litigation. It is also expected to reduce backlogs and improve performance by diverting up to 20,000 cases each year from the court system, freeing up judicial resources to be used for more complex cases.

37. The scope of proportionate sanctions for non-compliance is still under consideration. A 10 week public consultation is planned. Subject to that, and a Ministerial decision to proceed with the policy, the indicative timescale is for fuller proposals to be presented in

the autumn/winter, with the aim of introducing CPR amendments during the course of 2023.

38. The report was duly **NOTED** and a discussion ensued.
39. The MR observed the importance of this development, which represented a big change. He was pleased that Government had received the CJC report so positively and are keen to develop a system which benefits all concerned. This approach is supported by the fact that Lady Justice Asplin's report (in June 2021) concluded that mandatory (alternative) dispute resolution is compatible with Article 6 of the European Human Rights Convention and therefore lawful. Asplin LJ's report also addressed other questions central to the shape and design of dispute resolution in the twenty-first century. Currently, District Judges are essentially conducting a mediator's role, when judicial time could be focused on more complex cases. The proposal therefore offers the opportunity for wide-ranging improvements within the County Court, which are efficient and just.
40. Overall, there was support for the principle, however, officials were urged to carefully consider issues such as: bulk claims (within which there are likely to be large volumes where both parties are legally represented and as such mediation is unlikely to be efficient, because instructions will need to be taken throughout the process); the prospect of satellite litigation; how compliance is assessed and thus the scale of non-compliance determined; assistance to vulnerable users and the extent to which parties within small claims are heavily invested in the proceedings, notwithstanding the relatively modest sums involved. In response to a question from Ms Iron, MoJ confirmed they were engaging with the Litigant in Person Group.
41. The Chair thanked everyone for their valuable input and extended thanks to MoJ for reporting to the Committee at this preliminary stage.
42. **Actions:** (i) In consultation with MoJ, the Secretariat is to programme in time for October – December (ii) MoJ Policy to provide details of the consultation in advance of publication.
43. **Post Meeting Note:** *the consultation can be seen here:*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1093682/mediation-consultation-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093682/mediation-consultation-web.pdf)

#### **Item 6 Section 2(7) Sub-Committee: Parts 17 & 38 – post consultation proposals CPR(22)36**

44. Mr Justice Kerr explained that this was first before the Committee on 13<sup>th</sup> May 2022 where it was decided to consider Part 17 and 38 together because of recent case law developments which raised points concerning the interaction between amendment and discontinuance of claims, causes of action and proceedings. The consequential consultation commenced on 24<sup>th</sup> May and closed on 21<sup>st</sup> June. Six responses were gratefully received, respectively, from, the Association of Consumer Support Organisations (ACSO), Association of Personal Injury Lawyers (APIL), Forum of Insurance Lawyers (FOIL), Stewarts Law, one judicial respondent, and one student.
45. The Sub-Committee now seek approval, for the reformed Part 17 (Amendments to Statements of Case) & Part 38 (Discontinuance). Kerr J, with contributions from Isabel Hitching QC, took the meeting through each of the proposed amendments and consultee responses, which were discussed.
46. Stewarts Law highlighted that opportunity to confirm the correctness of the Divisional Court's decision in *Rawet -v- Daimler AG et al [2002] EWHC 235 (QB)* concerning amendments to statements of case and thus CPR 17.1(1) is amended accordingly and this was **AGREED**. It was further **NOTED** that the responses to the consultation

concerning proposed reforms to CPR Part 19 (and thus a related point concerning r.19.4 on the procedure for adding and substituting parties) is due to be considered at the October meeting.

47. APIL's response identified a discrepancy between PD17 and CPR 22.1(2), which states that "*where a statement of case is amended, the amendments must be verified by a statement of truth unless the court orders otherwise.*" However, para 1.4 of PD17 states that, "*If the substance of the statement of case is changed by reason of the amendments, the statement of case should be re-verified by a statement of truth.*" Following discussion, it was **AGREED** to amend PD17 to reflect the rule in Part 22 and by doing so, it also avoids concerns as to whether the reforms have changed the substance of the rules.
48. Thanks were conveyed to DJ Simon Middleton for noting the missed gender neutral language in CPR 38.1(2)(b), whereupon it was **AGREED** to change "his" to "their", throughout.
49. FOIL's response in relation to the proposed amendments to CPR 38.7 (discontinuance and subsequent proceedings) ventilated various issues. Their response was presented in the context of applications under CPR 38.7 being rare, however that was not the universal experience and the situation can occur in a variety of cases. The potential impact, operationally, and for the online service/s, were also raised. Alternative drafting options were offered, but not settled upon; it was felt that the issue merited further consideration, out of committee, and this was **AGREED**.
50. It was **RESOLVED** to:
  - **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 17 Amendments to Statements to Case, including the above amendment to PD17 to reflect CPR 22.1(2);
  - **REMIT**, for further consideration, the proposed changes to CPR 38.7, concerning discontinuance and subsequent proceedings (anticipated to return to the October meeting for final determination);
  - **APPROVE IN PRINCIPLE**, the proposed reformed CPR Part 38 Discontinuance, contingent upon the above remittal regarding CPR 38.7 and subject to final drafting.

**Actions:** (i) In consultation with the Sub-Committee, Drafting Lawyers and the Secretariat to include Part 17 and PD17 amendments in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle) (ii) Sub-Committee to reconsider CPR 38.7 amendments and revert to the Secretariat by 28<sup>th</sup> September for inclusion in the October agenda (iii) In consultation with the Sub-Committee, Drafting Lawyers and the Secretariat to include Part 38 amendments (subject to CPR 38.7 resolution at October meeting) in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).

#### **Item 7 Lacuna Sub-Committee (LSC) CPR(22)37**

51. Master Dagnall introduced the item by explaining that the LSC has in the region of over 50 matters before it and that they include some matters which are awaiting initial filter and a significant number which only relate to minor points of wording, updating or cross-referencing. The following five items were reported on and discussed:
52. **LSC2022/4 (General Civil Restraint Orders – whether s.9 judges have jurisdiction to make CROs)**. Master Dagnall presented the matter, setting out the LSC's careful analysis. The matter had been prompted by the decision in *Ingeus UK Ltd -v-*

*Andrew Wardle* [2021] EWHC 1268 (QB), where, at paragraphs 45-48 [www.bailii.org/ew/cases/EWHC/QB/2021/1268.html](http://www.bailii.org/ew/cases/EWHC/QB/2021/1268.html), it was suggested that a Designated Civil Judge (DCJ) sitting as a section 9(1) Judge did not have jurisdiction to make a CRO under Practice Direction 3C. Thanks were conveyed to HHJ Bird, for highlighting the judgment in *Middlesbrough v Earth Energy 2019* EWHC 226. The general view was that the decision in *Ingeus* would have been different if the *Middlesbrough* decision [www.bailii.org/ew/cases/EWHC/Ch/2019/226.html](http://www.bailii.org/ew/cases/EWHC/Ch/2019/226.html) had been cited to the court. The committee did not see a need to change the PD or rules because they are sufficiently clear already, that someone, such as a Circuit Judge or DCJ, who is a s9(1) Judge of the High Court, can make any of the CROs under PD3C in the High Court. It was **RESOLVED** that:

- The matter be duly noted, with thanks;
- No CPR amendments be made;
- The matter be drawn to the attention of the respective legal publishers.

53. **Actions:** Secretariat to write to the Editors of the core legal publishers (White Book, Green Book, Brown Book) to draw attention to the *Middlesbrough* decision and that the *Ingeus* decision was reached without citation of that authority (it was therefore felt that the decision in *Ingeus* would have been different if the *Middlesbrough* decision had been cited to the court).

54. **LSC2022/8 (CPR39.2(4) Anonymity of other persons).** Master Dagnall set out the background. The issue concerned anonymity orders and whether CPR39.2(4) required amendment to extend its scope to protect the interests of a person different from the person anonymised. It was observed that CPR39.2(4) did not seem, on its wording, to enable an anonymisation of the person/party whose interests are not being secured by the making of the order. The LSC commented that it would prohibit it on one strict construction of the wording, although the Court may avoid that outcome by relying on the Human Rights considerations and reading CPR39.2(4) in a flexible way. The LSC therefore recommended consideration of substituting in CPR39.2(4) for “that person” the words “any person”. By doing so it would give flexibility and avoid the underlying policy objective being defeated. The Rule would remain subject to (expressly) the requirement of the anonymisation being necessary to secure the proper administration of justice and (impliedly) the Human Rights considerations. The relevant person would be notified and have a chance to object, and with the order being published on the Judicial website, that would enable the press et al. to make applications if appropriate. A discussion ensued, during which the issue of consultation was raised, but that was not deemed necessary. It was **RESOLVED** to **amend CPR 39.2(4)** by substituting for “that person” the words “any person”.

55. **Action:** Drafting Lawyers and the Secretariat to include the amendment in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).

56. **LSC2022/9 (CPR PD 21 Children and Protected Parties)** It was explained that the PD21 (specifically paragraphs 9.3-9.5 and 10.3-10.7 needed to be brought up to date to accord with modern practice and the use of CE filing. The level of detail (for example, the inclusion of RCJ room numbers) is also no longer appropriate. It was **NOTED** that Master Sullivan is drawing up a QBD Guide. It was also timely to consider variances in operational practice between the High Court, District Registries and the County Court; it may be that a generic PD is not the right solution. It was suggested that a CPRC Sub-Committee be formed to review the position and to produce a recast of PD21 (either as a generic PD or as jurisdiction specific instruments). Kerr J highlighted that, fortuitously, the s.2(7) Sub-Committee was due to consider Part 21 as part of its next tranche of work and this was discussed. It was **RESOLVED** to:

- Form a PD21 Sub-Committee, comprising: Master Cook, HHJ Bird, HHJ Jarman QC, and to invite Master Sullivan to join as a co-opted member;

- The s.2(7) Sub-Committee’s consideration of Part 21 to either await the outcome of the PD review or to continue its review albeit limited to the 13 rules contained within Part 21, thus allowing the newly formed Sub-Committee to review PD21 as a focused project and thereafter to feed their findings and recommendations back for wider consideration as part of the s.2(7) work to simplify Part 21.
57. **Actions:** (i) Master Cook to discuss next steps with Master Sullivan (ii) respective Sub-Committees to advise the Secretariat when matters are ready to return for CPRC consideration.
58. **LSC2022/10 (CPR12.3(3) Default Judgment)** District Judge Clarke presented the report. It was **NOTED** that Master Dagnall is neutral on the matter.
59. The possible lacuna concerns CPR 12.3(3) which relates to circumstances when the claimant may not obtain judgment in default. The LSC has considered whether it requires amendment to align it with changes made to CPR 12.3(1) and (2) which concern the conditions in which the claimant may obtain default judgment. The revisions were introduced following consideration of conflicting caselaw and after consultation (see Civil Procedure (Amendment) Rules 2020 and Civil Procedure (Amendment) Rules 2022). The amendments intended to make clear that default judgment can not be entered if, at the date when judgment is to be entered, certain events have occurred. However, the question is now raised as to whether there is an intended difference in the construction of CPR 12.3(1)/(2) and CPR 12.3(3) and the possibility of it being argued that the difference in wording may suggest that it is not the date of entry of the judgment which is relevant, but rather the date of the request for default judgment. A discussion ensued as to whether clarification was required and for the avoidance of any unintended consequences. Overall, the view was that, in the interests of consistency and in particular to provide clarity for a litigant in person, an amendment should, on balance, be made. It was **RESOLVED** to amend CPR 12.3(3) thus: The claimant may not obtain a default judgment if at the time the court is considering the issue (a) the defendant has applied [etc]”.
60. **Action:** Drafting Lawyers and Secretariat to include the amendment in the next mainstream CPR Update (anticipated to be settled in December and published in February as part of the April 2023 in-force cycle).
61. **LSC2022/11 (Practice Direction 57, Probate etc)** DJ Clarke presented the matter, which was referred to the LSC by HHJ Parker. Part 57 deals with probate claims, and rule 57.2 provides that a probate claim in the County Court must be started at Central London or at a hearing centre with a Chancery District Registry. This is repeated at paragraph 2.2 of PD57 (in practice this is referred to as PD57A but is not formally numbered as such). Paragraph 2.2 identifies the relevant hearing centres and then adds the words “(Section 32 of the County Courts Act 1984 identifies which probate claims may be heard in the County Court)”. It has been suggested that this may be a typographical error in the signpost to section 23 of the Act. However, the LSC have concluded that section 32 has been repealed and the single County Court was introduced (by the Crime and Courts Act 2013) and as part of the package of amendments that saw the repeal of section 32, a new article 2(7B) was added to the High Court and County Courts Jurisdiction Order 1991, with effect from 22 April 2014 (see SI 2014/821 - Article 2) which provides for almost identical wording. This is therefore the equivalent enactment. It was **RESOLVED** to amend the signpost in PD 57 para 2.2 to replace the reference to section 32 of the County Courts Act 1984 with a new reference to article 2(7B) of the High Court and County Courts Jurisdiction Order 1991. The option of awaiting the outcome of the s.2(7) Sub-Committee’s deliberations concerning Part 57 was considered, but given that this would not be reached for sometime, it was decided to correct the signpost now.
62. **Action:** Drafting Lawyers and Secretariat to include in the next mainstream Update cycle.

## Item 8 Any Other Business & Close

63. **Open Justice and PD51Y CPR(22)38:** The Chair explained that this item flows from the last meeting, when Birss LJ reported that MoJ Policy were looking into the issues expressed in response to the CPRC's decision in March to extend elements of PD51Y (Video or Audio Hearings during the Coronavirus Pandemic) and to decouple it from the Coronavirus Act. This amendment came into effect, pursuant to the 143<sup>rd</sup> PD Update on 22<sup>nd</sup> March 2022. For wider context, it was observed that the Police, Crime, Sentencing and Courts Act 2022 ("the Act") has now introduced new provisions concerning remote observation, by amending (pursuant to ss.198 and 199 of the Act) ss.85A and 85B of the Courts Act 2003 (in force since 28 April 2022). The Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (SI 2022/705) is also now in force (effective from 28 June 2022). In addition, the Lord Chief Justice and Senior President of Tribunals have also issued Practice Guidance (dated June 2022) entitled, 'Open Justice – Remote Observation of Hearings – New Powers'. However, it was **NOTED** that any CPR implications are still being considered and will return in due course. **Action:** Secretariat to programme in time at/by the December meeting.
64. **Register of Member Interests – Annual Review:** The Chair requested members to submit, to the Secretariat, an updated Register of Interests before the end of term. **Action:** Members to file an updated Register of Interests, including nil declarations, with the Secretariat by 29<sup>th</sup> July 2022.
65. **Civil Procedure (Amendment No.2) Rules 2022 and the 149<sup>th</sup> PD Update:** The Secretariat provided an overview of the items for inclusion in the imminent CPR Update, due to be published on/around 15<sup>th</sup> July, subject to Ministerial/Parliamentary approval. It was, however, **NOTED** from the Chair, that due to additional work being required in consequence of the anticipated reforms to Part 14 (Admissions), the amendments resolved upon at the 13<sup>th</sup> May 2022 meeting will not be included in this update cycle and are thus deferred. **Action:** Secretariat to provisionally include in the next SI round (for April 2023 in-force). **Post Meeting note:** The CPR Update can be viewed online here: <https://www.justice.gov.uk/courts/procedure-rules/civil>
66. **Date of Next Meeting:** It was **NOTED** that, subject to the direction of the Deputy Head of Civil Justice, the provisional (fully remote) meeting on 9<sup>th</sup> Sep 2022 was not expected to take place, meaning the next mainstream meeting will be on 7<sup>th</sup> October 2022. The Chair closed the meeting with thanks to everyone for all their hard work over a very busy period and wished everyone a restful summer.

C B POOLE  
July 2022

### Attendees:

Carl Poole, Rule Committee Secretary  
Pete Clough, Secretariat  
Master Dagnall, Chair, Lacuna Sub-Committee  
Nicola Critchley, Civil Justice Council  
Alasdair Wallace, Government Legal Department  
Katie Fowkes, Government Legal Department  
Amrita Dhaliwal, Ministry of Justice  
Andy Caton, Judicial Office  
Terry McGuinness, Judicial Office  
The Chancellor of the High Court (Item 2)  
Mr Justice Robin Knowles CBE (Item 2)  
Deputy Master Marsh (Item 2)

Ed Crosse (Item 2)  
Robert Wright, Ministry of Justice (Item 3)  
Rosie Rand, HM Courts & Tribunals Service (Item 4)  
Faye Whates, HM Courts & Tribunals Service  
Dr Anouska Wilkinson, Ministry of Justice (Item 5)