



Ministry
of Justice

Family Procedure Rule Committee

Annual Report April 2021 – March 2022

This annual report of the Family Procedure Rule Committee covering April 2021 to March 2022 includes references to rules made during the period of the report, the Committee's Terms of Reference, membership and dates of meetings.

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1. Terms of Reference

The Family 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 family proceedings in the Family Division of the High Court and the family court. Its power to make the Family Procedure Rules ('the Rules') is to be exercised with a view to securing that the family justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

Before making rules of court, the Committee must meet and discuss proposed rules (unless it is inexpedient to do so) and consult such persons as it considers appropriate.

2. Background

The Committee was established in 2004 in accordance with the provisions of the Courts Act 2003.

3. Membership

The Committee comprised the following members:

- The Right Honourable Sir Andrew McFarlane – President of the Family Division (Chair)
- The Honourable Mrs Justice Theis – High Court Judge (Acting Chair)¹
- The Right Honourable 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 Anna Williams – District Judge (County Court)
- District Judge Branston – District Judge (Magistrates' Court)
- Michael Seath – Justices' Clerk
- Fiona James JP – Lay Magistrate
- Poonam Bhari – Barrister
- Rhys Taylor – Barrister
- Graeme Fraser – Solicitor
- Tony McGovern – Solicitor
- Melanie Carew – Cafcass
- Rob Edwards – Cafcass Cymru

¹ Formally, the Committee is chaired by the President of the Family Division, however in practice, the Committee has been chaired by Mrs Justice Theis. The President of the Family Division attends meetings of the Committee.

- Bill Turner – Lay member

Mrs Justice Knowles, who is the judicial lead for Domestic Abuse in the Family Division also attended each meeting as an invited guest.

4. Remuneration

The chair and members are not remunerated for their service on the Committee. Members of the Committee are permitted to submit claims to travel and subsistence expenses, which are paid by the Ministry of Justice (MoJ). A Register of Member Interests for the March 2021 to April 2022 is also published alongside this report on the Committee’s website.

5. Meetings

The Committee met on the 19 April 2021, 10 May 2021, 14 June 2021, 5 July 2021, 4 October 2021, 1 November 2021, 6 December 2021, 7 February 2022 and 7 March 2022. The meeting on the 1 November 2021 was held as an open meeting with a number of external stakeholders in attendance.

Due to the Coronavirus pandemic, meetings for the period 19 April 2021 to 6 December 2021 were undertaken on an entirely remote basis. Following the Government’s lifting of requirements to work from home, meetings from 7 February 2022 onwards were carried out via a hybrid way of working which meant that Committee members could choose to attend either in person or remotely.

6. Working Groups

Where necessary the Committee establishes working groups to consider the detail of the rules relating to specific issues. During the period of this report, the following working groups were in existence and met at least once:

- Adoption Agency Working Group,
- Contempt Working Group,
- Costs Working Group,
- Divorce Working Group,
- Domestic Abuse Working Group,
- Enforcement Working Group,
- Forms Working Group,
- International Family Working Group; and the
- Transparency Working Group.

The following working groups were in existence but did not meet as work did not progress in these areas during the period of this report:

- Courts and Tribunals Judicial Advisers Functions’ (CATJAFS) Working Group,
- EU Exit Working Group,
- Voice of the Child Working Group.

The Adoption Agency Working Group first met in March 2022 and considered the points raised by Mr Justice MacDonald in his judgment in 'H v An Adoption Agency'. The members of the Working Group are Mr Justice MacDonald (Chair), Mrs Justice Judd, Poonam Bhari, Melanie Carew and Tony McGovern. The Working Group is supported by DfE and MoJ policy and legal officials.

The Contempt Working Group focuses on considering how to simplify Part 81 of the Civil Procedure Rules, and Part 37 in the Family Procedure Rules, in relation to contempt proceedings. The members of the Contempt Working Group throughout the period of this report were Mrs Justice Lieven, Michael Horton (previous Committee member), His Honour Judge Godwin, Gavin Smith (lawyer with particular expertise) and MoJ policy officials.

The Costs Working Group was convened to consider what changes needed to be made to encourage parties to consider costs at an earlier stage in financial remedy proceedings. The members of this Working Group are made up of a mix of Committee members and external experts. During the period of this report, the members of the Costs Working Group were Mr Justice Mostyn, Mr Justice Francis, Michael Horton (previous Committee member), Peter Burgess and Margaret Heathcote (providing representation from Resolution) and MoJ policy and legal officials.

The Divorce, Dissolution and Separation Working Group was convened to support the Committee in overseeing the drafting of proposed new and amended procedure rules in relation to the Divorce Dissolution and Separation Act 2020. The members of the Working Group who contributed to this work were Her Honour Judge Roberts (Chair), Her Honour Judge Williams, District Judge Foss, His Honour Judge Waller, Gavin Smith (barrister member), Oliver Gravell (solicitor member), Professor Liz Trinder (academic member), representatives of HMCTS, and MoJ policy and legal officials.

The Domestic Abuse Working Group was convened to consider work from the Domestic Abuse Act 2021 including consulting on Practice Directions and Rule amendments in relation to the prohibition of cross-examination in person in family proceedings. The Working Group members are Mrs Justice Knowles, District Judge Suh, District Judge Branston, Fiona James, Melanie Carew, Poonam Bhari, Tony McGovern and Bill Turner.

The Enforcement Working Group considers the development of Rules and Practice Directions to give guidance on enforcement and provide a set of standard responses for use by the court. The members of the Enforcement Working Group are Lord Justice Baker, His Honour Judge Waller, Mr Justice Mostyn, Michael Horton and MoJ policy and legal officials.

The Forms Working Group considers changes that need to be made to the family justice forms. The members of the Forms Working Group are Mrs Justice Theis, District Judge Suh, Melanie Carew, Tony McGovern, Graeme Fraser and MoJ policy officials.

The International Family Working Group were convened to consider how to implement the steps set out in the UK Supreme Court judgment in *G v G* [2021] UKSC 9 of 19 March 2021 for 1980 Hague return cases with linked asylum claims. The Working Group members are Mr Justice MacDonald, Mrs Justice Knowles, Melanie Carew, Richard Harrison QC (Barrister member), Tony McGovern and Amy Rowe (Family Lawyer).

The Transparency Working Group met specifically to look at Practice Direction 30B, which covers transparency in appeals and was not amended at the same time as other provisions when the legal bloggers scheme was piloted and later made permanent. The Working Group recommended that the relevant changes should be made. The Working Group members are the President of the Family Division, Mrs Justice Theis, Lord Justice Baker and District Judge Suh.

The membership of the working groups that have not met over the period of this report is as follows:

The CATJAFS Working Group – which considers the functions of justices’ legal advisers. The group also considered providing additional functions to Legal Advisors in response to pressures arising from the coronavirus pandemic. The members of the CATJAFS Working Group are Her Honour Judge Raeside, His Honour Judge Godwin, District Judge Suh, Michael Seath, Hannah Penfold (Deputy Justice Clerk), and MoJ policy and legal officials.

The Voice of the Child Working Group – which looks at the drafting of the Children and the Vulnerable Witnesses Practice Directions prior to drafts being submitted to the full Committee for consideration and comment. The members of the Voice of the Child Working Group were Mrs Justice Theis, Her Honour Judge Raeside, Rob Edwards, Melanie Carew, Fiona James and MoJ policy officials.

The EU Exit Working Group – considered consequential changes to the Family Procedure Rules and Practice Directions as a result of the UK’s exit from the European Union. The members of the EU Exit Working Group are Mrs Justice Theis, Mr Justice MacDonald, Mr Justice Williams, William Tyler QC (Former Committee member), Eleri Jones (Barrister), Rob George (Barrister), Daniel Eames (Resolution) and MoJ policy and legal officials.

7. Amendments to the Family Procedure Rules in 2021-22

During the period covered by this report, the Family Procedure Rules 2010 (‘The Rules’) were amended by two statutory instruments. The amendments are made by the Committee and then formally allowed by the relevant Ministry of Justice Minister on behalf of the Lord Chancellor.

The first amending statutory instrument, the **Family Procedure (Amendment) Rules 2021** made the following amendments to the Rules:

- making a correcting change to rule 6.43 of the Rules which makes provision for cases where service is to be affected on a respondent outside of the United Kingdom.

- inserting a new enabling rule to allow the Rules to be temporarily modified via a Practice Direction in the case of a public emergency.

These amendments came into force on 6 April 2021.

The full statutory instrument and the relevant Explanatory Memorandum can be accessed through the following link: <https://www.legislation.gov.uk/ukxi/2021/155/introduction/made>

The second amending statutory instrument, the **Family Procedure (Amendment No 2) Rules 2021** came into force on 1st October 2021 and made the following amendments to the Rules:

- Amending Part 3A of the Rules, which makes provision in relation to vulnerable parties and witnesses, as required by section 63 of the Domestic Abuse Act 2021.
- Amending rules 10.3, 10.6 and 10.10 of the Rules to clarify that the court may direct a means of service other than personal service for a Part 4 Family Law Act 1996 application or order.
- Amending rule 27.11 of the Rules to make provision to allow “legal bloggers” access to specified family proceedings which are usually held in private, in the same way as accredited media representatives can attend such proceedings.
- Amending rule 29.6 of the Rules, concerning documents relating to gender recognition to be held in special security by the court.

The full statutory instrument and the relevant Explanatory Memorandum can be accessed through the following link: <https://www.legislation.gov.uk/ukxi/2021/875/made>

8. Practice Directions

The Rules are supplemented by a series of Practice Directions. Practice Directions, and amendments to them, are made by the President of the Family Division and approved by a Minister on behalf of the Lord Chancellor. The views of the Committee are usually sought on any Practice Directions and amendments to them.

Practice Direction Updates No 3 to 10 of 2021 and Practice Direction Updates 1 & 2 of 2022 were introduced within the period covered by this report:

These Practice Direction Updates can be found on the 'what's new' page at: <https://www.justice.gov.uk/courts/procedure-rules/family>.

9. Consultations

The Committee may run consultations to seek the views of key stakeholders during their consideration of the rules of court governing the practice and procedure in family proceedings. During the period of this report, the Committee ran one stakeholder wide consultation which is briefly outlined below:

Domestic Abuse Act 2021: The Committee consulted on a proposed new Practice Direction 3B of the FPR 2010 – Prohibition of cross-examination in person in family proceedings under Part 4B of the Matrimonial and Family Proceedings Act 1984. The consultation which opened on 13 December 2021 and closed on 11 February 2022, elicited detailed responses from the Domestic Abuse Commissioner, legal professional bodies, legal stakeholders and the judiciary. The FPRC having carefully considered these responses, finalised and agreed new Practice Direction 3AB which was published on 11 July 2022 ahead of commencement of the new cross-examination provisions on 21 July 2022.

10. Contact

Any enquiries about the work of the Committee may be addressed to:

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