



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**Remotely via Microsoft Teams**  
**At 10.30 a.m. on Monday 7 November 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>	Circuit Judge
<b>His Honour Judge Godwin</b>	Judicial member for Wales
<b>Her Honour Judge Suh</b>	Representing District Judge
<b>District Judge Branston</b>	District Judge
<b>District Judge Birk</b>	District Judge
<b>Michael Seath</b>	Justices' Clerk
<b>Fiona James</b>	Lay Magistrate
<b>Poonam Bhari</b>	Barrister
<b>Rhys Taylor</b>	Barrister
<b>Melanie Carew</b>	Children and Family Court Advisory Support Service
<b>Graeme Fraser</b>	Solicitor
<b>Bill Turner</b>	Lay Member
<b>Mrs Justice Knowles</b>	Invited Guest

**ANNOUNCEMENTS AND APOLOGIES**

- 1.1 Apologies were received from Robert Edwards and Tony McGovern.
- 1.2 The Chair welcomed stakeholders to the annual open meeting of the Committee.

**MINUTES OF THE LAST MEETING: OCTOBER 2022**

- 2.1 The Committee submitted minor amendments to paragraphs 7.5 and 7.6 of the October minutes.

- 2.2 The Committee agreed that subject to changes the minutes were an accurate record.

## **ACTIONS LOG**

- 3.1 MoJ Policy reported 37 actions had been recorded from the October meeting with a further 3 being carried forward from previous meetings making a total of 40. 18 actions were covered at this meeting, and a further 15 actions from the 40 will be covered in December. The remaining 7 actions will be discussed in the new year.

## **PRIORITIES TABLE AND PD UPDATES**

- 4.1 MoJ Policy updated the Committee on the changes to the table since the previous meeting.
- 4.2 The Committee agreed for the item on Pension Sharing Orders to return to the Committee in June 2023, following an anticipated further report from the Pensions Advisory Group.
- 4.3 The Committee agreed for the item on Fast Track Proceedings to return to the Committee in December 2022.

**ACTION POINT 1: The Priorities Table to be updated to amend the timeline for Pension Sharing and Fast Track Proceedings.**

## **MATTERS ARISING**

### **Web Inaccuracies**

- 5.1 MoJ Policy reported that no new inaccuracies were raised since October but has the intention is to update the front web page to accurately reflect the current membership.

### **H v Adoption Agency Working Group**

- 5.2 MoJ Policy stated that the Working Group met most recently on 18 October and will next meet in November.

### **Information Disclosure and Immigration Proceedings**

- 5.3 MoJ Policy reported on the issue raised previously concerning the disclosure of documents from family proceedings when making applications to the Home Office, or to a Tribunal, regarding immigration status. The Committee agreed for this item to return each meeting as a matter arising until Home Office provide a steer.

**ACTION POINT 2: Information Disclosure and Immigration Proceedings to return in February 2023 for an update.**

### **Fast Track Proceedings**

- 5.4 MoJ Policy stated that the Fast Track Working Group had an initial meeting on 1 November, during which members discussed resourcing and operational issues arising from the

Farquhar Committee's proposed new fast track procedure for certain financial remedy proceedings. The Working Group are due to be provided with further details from HMCTS about the feasibility of implementing a pilot via the online digital service. The Working Group plans to meet again in December or January.

**ACTION POINT 3: Fast Track Proceedings to be added to the December 2022 agenda for an update as a matter arising, and as a substantive agenda item for February 2023.**

#### **Practice Direction 27A/PFD E-Bundle Guidance**

- 5.5** The Committee previously noted at the February 2022 meeting, that various documents now make reference to electronic bundling and queried whether they would necessitate any changes to Practice Direction 27A.
- 5.6** The Committee considered a table, presented to the Committee in July, which detailed an analysis of the potentially relevant provisions concerning electronic bundles. It was agreed that there was no inherent conflict between the different documents insofar as they relate to e-bundles, but that it might be difficult for parties, especially litigants in person, to understand what is required of them. It was queried whether there should be a consolidation exercise, or some other way of making the position easier to follow. Members raised that there has been inconsistency in the approach to the filing of e-bundles in cases on the public law portal. The Committee agreed for this item to return in December to discuss the filing of e-bundles on HMCTS Portals and whether there should be a consolidation exercise of the various documents referring to e-bundles, or a way to make the position more user-friendly.

**ACTION POINT 4: The Secretariat to discuss the work involved with the Chair.**

**ACTION POINT 5: MoJ Policy to raise the inconsistencies in the filing of bundles to HMCTS.**

#### **STANDING ITEMS**

##### **ONLINE PROCEDURE RULE COMMITTEE**

- 6.1** MoJ Policy updated the Committee on the Online Procedure Rule Committee (OPRC) recruitment process under which the recent live non-judicial vacancies closed on 24 October.
- 6.2** The Committee were informed that a Secretariat for the OPRC was now in place and engagement is underway to establish some of the necessary groundwork.

#### **SUBSTANTIVE ITEMS**

##### **TEMPORARY MODIFICATIONS MADE IN LIGHT OF/FOLLOWING COVID-19**

- 7.1** MoJ Policy said that work is underway with colleagues from the Court and Tribunals Recovery unit to review shared data on what we have learnt about the impact of various modifications to the Child Arrangements Programme which courts have put in place since PD36Y came into force. As part of this a new PD36Y model uptake survey will be circulated to all DFJ areas. Consideration of PD 36Y will return to the Committee in February and views will be sought on extending the temporary provisions which would provide time for further learning. The Committee asked whether a paper summarising the survey results could be provided in the new year.

- 7.2 The Committee said that they had no immediate concerns with the potential option of an extension of the Practice Direction, beyond April 1, 2023. However, they asked whether the scope of the survey could be widened to include litigants and courts to ascertain what success criteria could look like but recognised that this could be difficult to organise.
- 7.3 The Committee said that they have started to gather preliminary information on first hearing waiting times and offered to send these to MoJ Policy.

**ACTION POINT 6: Temporary modifications made in light of/following COVID-19 to return with an update in December 2022 and as a substantive agenda item in February 2023.**

## **AGE OF MARRIAGE LEGISLATION**

- 8.1 MoJ Policy reported that the Marriage and Civil Partnership (Minimum Age) Act 2022 received Royal Assent in April 2022 and is due to come into force on 27 February 2023. The Act will raise the minimum age of marriage and civil partnership to 18 in England and Wales, removing all consent requirements. As part of the work to implement the Act, the Family Procedure Rules will need to be updated and the Committee were asked to agree to amend the Rules either through the next FPR amending SI or under the consequential power in the Marriage and Civil Partnership (Minimum Age) Act 2022. The Committee were also informed that the Act does not apply in Scotland or Northern Ireland and their minimum age of marriage would remain at 16. It is anticipated that children, under 18s, domiciled in England and Wales would not be able to marry in Scotland because of Scottish legislation. Marriages overseas where a party is under 18 and domiciled in England and Wales are not anticipated to be recognised under the common law in England and Wales. Northern Ireland have carried out a consultation on whether to mirror the position on the minimum age of marriage.

## **ENFORCEMENT WORKING GROUP UPDATE**

- 9.1 MoJ Policy updated the Committee on the work of the Enforcement Working Group and recommended amendments to FPR r.33.3(3) so that if an application is made for such method of enforcement as the court may consider appropriate (FPR r.33.3(2)(b)) the court must issue an order which includes requirements that the debtor must attend court at the time and place specified in the order, complete a financial statement in the form sent with the order, and that all documents should be filed with the court and served on the applicant by the debtor not less than seven days before the date on which the order requires the debtor to attend court.
- 9.2 The Committee discussed the length of time taken to issue orders and asked that clarity be provided on the listing times to ensure that the debtor has time to comply, and that the applicant has time to consider the debtor's forms and documents ahead of the first hearing. The Committee queried whether paragraph 4 of the draft new order should be detailed to reflect an exact date. MoJ Policy stated that this point had been considered but operationally it was thought to not work. The Committee proposed that the job card should detail a clear process and that a further review of how this worked should be brought back in June/July to see how this was operating on the ground.
- 9.3 The Committee agreed that the new order should make clear that the reference to 7 days is to business days, not calendar days. There was also discussion as to whether the period should be longer - perhaps 8 or 10 days.

- 9.4** The Committee also raised a question about the means of service of the order, querying whether it should be personally served. It was noted that the Working Group had considered this issue carefully and that a proposed change would need further consideration by the Working Group and HMCTS.
- 9.5** Ultimately, the Committee agreed to proceed with the amendments proposed by the Working Group. It agreed that there should be a review of the impact of the changes in 6 months' time.

**ACTION POINT 7: rule, PD and standard order proposals to be taken forward. Impact of changes to be reviewed 6 months after implementation (October 2023).**

#### **PD5A**

- 10.1** The Committee agreed that subject to minor proposed changes to Forms E, E2 and guidance notes, that the amendments to PD5A should progress. It was noted that it is proposed the changes should go live on 16 January 2023.

**ACTION POINT 8: Revised Forms E, E2 and Guidance, and associated amendments to PD5A, to be taken forward.**

#### **CONTESTED FINANCIAL REMEDY DIGITAL PORTAL: AMENDMENTS TO PD36N**

- 11.1** HMCTS asked the Committee to consider amendments to PD36N to extend the end date of the pilot to 31 December 2023; and to make provision for Schedule 1 Children Act 1989 applications with effect from the 16 December 2022. The Committee were informed that a PD Update has already been approved by the President to add applications for variation orders to the PD, which will come into effect from the 14 November 2022. HMCTS said that the intention is to return in December with an operational update around the plans for mandating use of the online Portal by legal representatives.
- 11.2** The Committee asked for clarification on whether applications to set aside financial remedy orders, and applications for payments for legal services, can be made on the Portal. Committee members agreed to follow up by email their views on setting aside applications. HMCTS agreed to consider these points and MoJ Legal noted that amendments to the PD would be drafted to reflect the operational reality of what can be applied for via the Portal.
- 11.3** The Committee highlighted the practical challenges experienced by the District Judge bench using the portal. It was noted that sometimes Schedule 1 Children Act 1989 Act cases run alongside Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) proceedings and asked whether consideration has been given to this point.
- 11.4** HMCTS confirmed that access to the digital portal can be extended to Counsel Clerks.
- 11.5** The Committee raised the issues concerning the difficulties experienced in the system and asked for this to be resolved ahead of the next meeting.

**ACTION POINT 9: HMCTS to look at issues raised regarding applications to set aside and applications for payments for legal services. PD amendments to be drafted as necessary.**

**ACTION POINT 10: The Committee to raise the points on applications to set aside in an email to MoJ/HMCTS.**

#### **RECENT PRACTICE DIRECTION UPDATES**

**November 2022 Minutes** – Family Procedure Rule Committee

**a) Practice Direction 8 of 2022**

- 12.1** MoJ Policy stated that Practice Direction No 8 of 2022 will make amendments to PD36N to bring all applications for variation orders within scope of the online system for contested financial remedy applications. The PD Update has been signed by the President and submitted to the Minister and will come into force on the 14 November 2022.

**PERMISSION TO APPEAL (PTA) APPLICATIONS CONSULTATION**

- 13.1** MoJ Policy stated that a consultation was conducted between 26 July to 17 August 2022 on proposed Rule and Practice Direction amendments in relation to which tier of Judge may dismiss an application for permission to appeal on the papers as totally without merit. 24 responses had been received for consideration. The proposal received overall support although concerns were raised on issues such as the disproportionate balance of power it could provide for Circuit Judges in the Financial Remedy Court in appeals compared to Circuit Judges in children's work. Some concern was also raised on the value of oral hearing being impacted.
- 13.2** The Committee were asked to provide a steer on options presented in the paper.
- 13.3** The Committee agreed to Option 1: to proceed with the rule and PD amendments proposed in the consultation paper. The Committee also suggested for a small working group to be established to look at rule/PD provision on permission to appeal more widely along with Civil colleagues. This would include comparing the position in the Court of Appeal to that in lower courts and comparing the position in civil courts to that in family courts. Committee members were asked to contact the Secretariat to volunteer.
- 13.4** The Committee agreed that the Working Group should have an initial meeting to scope the work, liaise with civil colleagues, and return to the Committee in March 2023.

**ACTION POINT 11: MoJ Policy to establish PTA Working Group and for this item to return to the Committee in March 2023.**

**POLICE DISCLOSURE ORDERS CONSULTATION**

- 14.1** MoJ Policy stated that a consultation ran between the 6 July 2022 to 17 August 2022 which sought views on proposed Practice Direction amendments to make clearer the process for police disclosure orders in private law proceedings. MoJ Policy highlighted options and next steps for the Committee to consider.
- 14.2** MoJ Policy stated that the respondents were generally supportive of the proposed Practice Direction amendments but raised further issues for consideration and different proposals for next steps.
- 14.3** The Committee agreed to option 2: for the consultation proposals to be adjusted to reflect the feedback from consultees. Members raised a concern about fees being charged by the police for providing the requested disclosure, which can be a major practical problem.
- 14.4** MoJ Policy stated that they will discuss next steps with HMCTS and MoJ legal and will return to the Committee in March 2023.

**ACTION POINT 12: Police Disclosure Orders to be added to the March 2023 agenda for an update.**

## **PRIVATE LAW CHILDREN APPLICATIONS AND INJUNCTION APPLICATIONS: ONLINE SYSTEM – AMENDMENTS TO PD36ZD**

- 15.1** HMCTS presented an outline of the plans to pilot an end-to-end digital service for Section 8 Children Act 1989 applications and Part 4 Family Law Act 1996 applications from 16 January 2023, for both legal representatives and unrepresented parties. The pilot will apply in Wales initially and possibly some early adopter sites in England before being rolled out from a later date.
- 15.2** HMCTS said that it is also proposed to extend the end date of pilot PD36G and make amendments to that PD in relation to providing MIAMs certifications with the C100 application.
- 15.3** HMCTS said that the pilot sites will now undergo a three-month robust testing period which would include the flexibility of testing in segregated areas which would help provide more solid results.
- 15.4** The Committee raised a number of concerns amongst which were removing glitches for represented parties before rolling the programme to litigants in person; providing a clear “in/out” for repeat users; firmer guidance for those who are not digitally confident; and for improvements to be made from the lessons learnt on the Public Law online programme.
- 15.5** The Committee suggested that the draft Practice Direction amendments should include clarity around opting into using the online service (rather than being required to do so) for litigants in person. The Committee agreed that this matter should return to the December 2022 meeting and that the proposed PD amendments should not be made in the meantime.

**ACTION POINT 13: matter to return as a standing item in December.**

## **FAMILY SOLUTIONS GROUP (FSG) REPORT ON THE USE OF LANGUAGE IN FAMILY PROCEEDINGS**

- 16.1** The President highlighted that FSG had recently published a report on the use of language in family proceedings which emphasised the importance of using non-combative language. It was proposed that a small working group be established by the President’s Office to consider this issue. That group will revert to the Committee if anything it proposes impacts on the work of the Committee.

## **FORWARD PLANNING AND UPCOMING MEETINGS**

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

- 17.1** No specific points of interest for the Committee were raised by the Secretariat following their conversations with the other procedure rule committee secretariats.
- 17.2** The Committee highlighted that a cross-jurisdictional paper had been produced in relation to DAPOs, which would probably first be referred to the DAPO Working Group.

- 17.3** MoJ Legal highlighted that Rule and Practice Direction amendments will be drafted to reflect the Queen's passing.

**ACTION POINT 14: Officials to bring rule and Practice Direction amendments reflecting the accession of King Charles III to the December 2022 meeting.**

## **FORMS WORKING GROUP UPDATE**

- 18.1** MoJ Policy reported that the Forms Working Group focussed on the E form changes discussed earlier at this meeting at their last meeting on Thursday 13 October. The next Working Group meeting is scheduled for 17 November 2022.

## **FPRC WORKING GROUPS**

- 19.1** MoJ Policy said that the Working Group list fully reflects comments received from last month's meeting. The Committee were asked to provide details of any changes and to consider volunteering for Working Groups through the Secretariat.

**ACTION POINT 15: Members to inform the Secretariat of any changes to the Working Group list**

## **DRAFT DECEMBER 2022 AGENDA**

- 20.1** MoJ Policy stated that the draft December 2022 agenda would be updated following this meeting.

## **OPEN MEETING Q&A**

- 21.1** Seven questions were received from those invited stakeholders for consideration by the Committee.
- 21.2** Question 1: Is there any guidance pending with respect to judges directing perpetrators to attend DAPPS now that such programmes have been decommissioned? How is the quality of these court directed programmes overseen?
- 21.3** Answer 1: As you may be aware, current contracts for Domestic Abuse Perpetrator Programmes through the family court come to an end in March 2023. This will mean that from 1 April 2023 there will be no DAPP provision available to the family courts until a new offer is in place. To ensure that all DAPP programmes have been completed by this date, Cafcass have been unable to process any court ordered DAPPs, in any areas, for orders received after the 30 June 2022. In April 2022, the President of the Family Division issued guidance to the judiciary to communicate these operational changes. This guidance states that until an interim offer can be implemented, the family judiciary should consider other ways to manage these cases. In addition to the judicial guidance, Cafcass updated their own guidance for Family Court Practitioners in April 2022 to reflect the changes. This guidance states that, as of June 2022, Cafcass FCA's should no longer be making a recommendation to a DAPP. Families affected by domestic abuse should receive the best support possible, and the Ministry of Justice is working with providers and the domestic abuse sector to address the current lack of family court provision by developing interim arrangements, including potential new referral mechanisms, ahead of a full recommissioning process.



- 21.4** Question 2: For the Committee to provide an update on the transparency consultation launched by Mr Justice Mostyn and His Honour Judge Hess re standard RPOs and the publication of details heard or read out in court?
- 21.5** Answer 2: The proposal for a standard reporting permission order has been paused indefinitely by the creation of a financial remedy subgroup of the Transparency Implementation Group presided over by Judge Farquhar. That subgroup is considering the whole question of transparency and reportability of Financial Remedy cases. As the work of the sub-group does not fall within the FPRC's work I am unable to update you on its progress at this meeting. However, please note that there is a Transparency Implementation Group section on the judiciary website which includes a section for the Financial Remedies Court Sub-group. Please feel free to visit the site for further details.
- 21.6** Question 3: What plans there are to address the lack of sanction for service beyond 28 days/no extension in divorce applications?
- 21.7** Answer 3: There are no current plans to amend FPR r.6.6A and r.6.6B. This is because the rules on service of divorce applications were intentionally drafted within the context of the statutory framework of the Divorce, Dissolution and Separation Act 2020 ("the DDSA 2020") (with an extension of the 20 week minimum period by linking this period to actual receipt of the application by the respondent running contrary to Parliamentary and MoJ policy intention), with a view to striking a balance between the rules ensuring prompt service by the applicant and the rules imposing unduly harsh sanctions. Consultation responses in respect of draft new rules were also considered carefully by the Committee. Consequences of failing to complete the required step to serve within 28 days (as per FPR r.6.6A) and failing to apply for an extension of time to take the step to serve (as per FPR r.6.6B) may depend on whether any application has been made by the respondent once served, for example, to strike out. The court has a number of case management powers which it may exercise on an application by the respondent or of its own initiative, depending on the circumstances of a particular case. If the applicant fails to take the step required by rule 6.6A to serve but does apply for an extension of time under r.6.6B, if the court does not grant an extension of time order after considering the circumstances in rule 6.6B(4), the consequence would be that the application cannot be validly served thereafter without the leave of the court. MoJ Policy continues to monitor, alongside HMCTS, the operation of the new procedure rules relating to the DDSA 2020.
- 21.8** Question 4: Whether there are plans to amend/refine form C to consolidate the various obligations under paragraphs 10 and 11 of the Efficiency Statement and also the ongoing obligations under FPR 2010, r 9.14(5) and PD9A para 4.1?
- 21.9** Answer 4: MoJ Policy is working with the HMCTS (and will bring this matter to the FPRC if necessary) to ensure that Form C consistently sets out clearly directions in respect of the relevant rules within the Family Procedure Rules, as well as the requirements as set out in the Efficiency Statement dated 11 January 2022. HMCTS is listening to and considering feedback from practitioners and liaising with the judiciary in this regard.
- 21.10** Question 5: Whether there are any proposals to amend Part 9 of the FPR to formally incorporate the requirements of the Efficiency Statement?
- 21.11** Answer 5: The FPRC has previously considered the Efficiency Statement in the context of provision in relation to electronic bundles in Practice Direction 27A and concluded that the Efficiency Statement did not directly or indirectly contradict what is set out in PD27A on this issue, and as such there was no immediate need to amend PD27A. A wider analysis of the Efficiency Statement and its interaction with Part 9 of the Family Procedure Rules has not been conducted by or for the Committee. There are currently no plans formally to

incorporate requirements contained in the Financial Remedies Court Efficiency Statement dated 11 January 2022 into Part 9 of the Family Procedure Rules.

**21.12** Question 6: What is the process that the committee goes through when considering whether to amend the Family Procedure Rules? Does this come from the committee itself?

**21.13** Answer 6: The Family Procedure Rule Committee (FPRC) make rules of court that govern the practice and procedure followed in family proceedings in the High Court and Family Court. The FPRC have power under the Courts Act 2003 to make rules to ensure the family justice system is fair and accessible. Amendments to the Rules are usually made through twice-yearly 'negative' Statutory Instruments (SIs). These SIs are usually laid in December or January and June or July. The amendments to the SI would specify changes to clarify the procedure of the court either to improve efficiency within the system or in response to primary legislation or court judgments. The Committee has a priorities table and an action log to capture and track progress of this work. The amendments can be suggested by either the Committee or MoJ officials.

**21.14** Question 7: In the Council's most recent OFSTED report, it has been found that the Council requires improvement to recognise the diverse needs of children arising from their race, religion, ethnicity, and culture. As a woman of colour and a solicitor for 12 years, I respectfully believe that many other partner organisations need to do similar. I would like to know what actions are being taken by the Family Court to ensure this happens.

**21.15** Answer 7: The family justice system is a complex system, and I'm afraid I can speak only on the issue as it relates to the FPRC. From an FPRC point of view, we can advise that the Judicial Appointments Commission (JAC) launched a selection exercise in September 2022, to recruit Deputy District Judges. As part of this exercise the Judicial Office on behalf of the Judicial Diversity Committee ran a seminar to assist with implementation of the Judicial Diversity and Inclusion Strategy. The seminar aims to help applicants be better prepared to make an application and to receive up-to-date guidance and advice on the JAC's selection process. Furthermore, work has been undertaken in the recruitment of Diversity and Community Relations Magistrates (DCRMs) who are appointed by the Lord Chief Justice. DCRMs act as a conduit between the magistracy and the community and members of the public and contribute to a range of diversity efforts within the judiciary. The DCRMs play a crucial role in supporting the delivery of the Judicial Diversity and Inclusion Strategy.

## **ANY OTHER BUSINESS**

**22.1** The Committee raised the issue that the additional Bank Holiday to celebrate the Royal Coronation will clash with the Committee meeting detailed for 8 May 2023.

**ACTION POINT 16: Secretariat to adjust the meeting schedule for next year in light of the new Bank Holiday in May 2023.**

## **DATE OF NEXT MEETING**

**23.1** The next meeting will be held on Monday 5 December 2022 and will take place in person and remotely via MS Teams.

Simon Qasim – Secretariat  
November 2022  
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**November 2022 Minutes** – Family Procedure Rule Committee