

Approved

Minutes of the Civil Procedure Rule Committee

Friday 2nd December 2022, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via Video Conference.

Members attending

Lord Justice Birss (Chair)
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman KC
His Honour Judge Bird
District Judge Clarke
David Marshall (for Items 1 – 3)
Dr Anja Lansbergen-Mills (for Items 1 – 4)
Isabel Hitching KC
Tom Montagu-Smith KC
Virginia Jones
Ben Roe
Ian Curtis-Nye

Apologies

Members: District Judge Cohen. Officials: Helen Timpson (MoJ, Item 5).

Item 1 Welcome and Introductory Remarks

1. The Chair welcomed everyone attending, whether in person or remotely and relayed the following:
 - **New member representing the lay advice and consumer affairs sector.** The Chair was pleased to welcome and introduce Ian Curtis-Nye. Mr Curtis-Nye is a Trustee and Vice-Chair at Citizens Advice Reading and, by profession, a Costs Lawyer; a Partner and Divisional Manager at Lyons Davidson Solicitors, he has overall responsibility for the Injury division and legal costs teams. Mr Curtis-Nye has been involved in diversity and inclusion projects with both Lyons Davidson and Citizens Advice Reading and has extensive experience in consumer affairs across both the legal and lay advice sector.
 - **District Judge Cohen.** The Chair advised that DJ Cohen had, reluctantly, resolved to resign from the CPRC for personal reasons. DJ Cohen's term of office on the committee commenced in 2019 and he has made a variety of contributions, including as inaugural Chair of the Vulnerable Parties Sub-Committee. The Chair recalled how he has enjoyed and valued DJ Cohen's input in the context of the rules, and civil justice in general. All members and officials joined the Chair in expressing **THANKS** and good wishes.

The District Judge vacancy is expected to be filled, in the usual way, via an Expression of Interest exercise; it is hoped this will be completed in time for the new member to join the February or March 2023 meeting.

2. **Minutes:** The minutes of the meeting on 4th November 2022 were **AGREED**.

3. **Action Log:** The following topics were duly **NOTED**:

- **AL(21)79 PD 55C Possession Proceedings** – Lord Justice Males (and the possession data group) have asked whether the CPRC should revoke or truncate PD 55C (temporary housing possession provisions introduced in response to the pandemic), which still had effect in relation to certain cases until 30 June 2022. Following consultation with MoJ Legal, HMCTS and MoJ Policy. It was **RESOLVED** to **revoke** PD 55C because it was no longer required. **Action:** Drafting Lawyers and Secretariat to include in the upcoming PD Update.
- **AL(22)29 Vulnerable Parties: Domestic Abuse Protection Orders Pilot** – Lucy Atkinson (MoJ) was welcomed to the meeting and provided a brief general update on progress to introduce a multi-jurisdictional pilot scheme; the pilot sites were under consideration by the Senior Presiding Judge for England and Wales. Officials were also working with the Family Procedure Rule Committee on the necessary PD and expected to be in a position to engage further with the CPRC in Spring 2023. The Chair highlighted the need for practical considerations in relation to judges who were ticketed to sit in both civil and family courts; one possible solution being, in effect, one PD but in two parts to meet jurisdictional specific needs where necessary. In response to MoJ's enquiry as to the approval mechanisms for revised (civil) forms, it was **RESOLVED**:
 - that the sub-committee be mandated to carry out the detailed work, with referral to the Forms Sub-Committee for formal ratification under delegated powers.
 - to appoint Ian Curtis-Nye to the sub-committee, in place of Charlotte Rook who kindly stepped in to provide the lay advice perspective, pro tem, upon Lizzie Iron's term of office coming to an end. **THANKS** were recorded for Ms Rook's contributions to this important work. It was further **NOTED**, with thanks, that His Honour Judge Robinson is also working with the sub-committee, which is chaired by District Judge Byass on a co-opted basis.
- **AL(22)56 PD 510 Electronic Working Pilot Scheme** – Master Cook provided an oral update on the project to roll out CE filing and, in light of that, requested an extension of the existing PD (which expires on 6th April 2023) as more time is needed to review the replacement arrangements and engage in the necessary consultation. It was also **NOTED** that it may be necessary to co-opt jurisdiction specific members, for example from the Business and Property Courts (central and regional) and the Court of Appeal and this was **AGREED**. It was **RESOLVED** (i) to extend PD 510 for a further period of one year (to 6th April 2024) and (ii) if the changes can be brought in earlier, then revocation of the pilot PD can be considered at an earlier stage than April 2024.

Actions: (i) Master Cook to agree with the Chair, out-of-committee, the membership of the sub-committee to draft a replacement PD (ii) Drafting Lawyers and Secretariat to include the extension to PD510 in the upcoming PD Update (iii) Matter to return when ready and no later than November/December 2023.
- **AL(22)63 Small Claims Track Automatic Referral to Mediation** – This was last before the CPRC, substantively, in July 2022. It was confirmed that, the policy direction is still subject to Ministerial approval, however, it was prudent to put some preparatory steps in place and MOJ had requested that a CPRC sub-committee be provisionally established. This was **AGREED IN PRINCIPLE** and volunteers sought. The Chair observed that this was an important topic and raised some reasonably profound issues for civil justice. **Post Meeting Note:** District Judge Clarke and Ben

Roe have been appointed, in principle, to the serve on the sub-committee, when convened.

- **AL(22)82 Standard Disclosure in Workplace Claims (Annex C to the Personal Injury PAP) Consultation** – with thanks to the sub-committee and officials, it was noted that plans were in place for the focused consultation (agreed at the October CPRC) to likely be published for comments in December 2022, seeking responses by end January 2023.
- **AL(22)98 Damages and Money Claims Committee** – the Chair was pleased to confirm the **APPOINTMENT** of Virginia Jones and Ian Curtis-Nye. Additionally, it was duly noted that a string of PD Updates to align screens with the rules are in the pipeline. The first being the 151st PD Update, which came into effect on 16th November; **THANKS** were conveyed to Kate Fowkes for working at pace on the necessary drafting.

Item 2 Extending Fixed Recoverable Costs (FRC) CPR(22)59

4. Mr Justice Trower introduced the matter and provided a report on progress since the November CPRC meeting. Co-opted members of the Sub-Committee, District Judge Simon Middleton and Andrew Parker were welcomed to the meeting and contributed to the discussion, as did Robert Wright (MoJ Policy).
5. **THANKS** were conveyed for the helpful comments received, out-of-committee, from His Honour Judge Bird, District Judge Clarke and Nicola Critchley, respectively.
6. The report comprised the latest iteration of the proposed revised Part 26 (Case Management – Preliminary Stage) and PD 26; Part 28 (The Fast Track and Intermediate Track) and PD 28 together with drafting for Part 45 (Fixed Costs) but which was still under active consideration. The report was duly **NOTED** and discussed. The main points ventilated were in relation to: the exclusionary definition in CPR 26.9(10) relating to actions against the police; the temporary exclusion of legal aid housing possession cases; whether standard directions should remain annexed to the PD or removed and made available online; clarity as to the interplay with, for example, the Business and Property Courts jurisdiction; as well as some other practical and drafting points. The revised amendments to Part 44 concerning Qualified One-Way Costs Shifting (QOCS) following the Supreme Court case of *Ho -v- Adekun* [2021] UKSC 43 (further to the October 2022 meeting, see paras 34 – 40 of those minutes) were also reviewed and discussed.
7. **It was RESOLVED to:**
8. **NOTE** the following:
 - the implementation timetable for the FRC reforms has been put back from April 2023 to October 2023; this was recently announced by the Parliamentary Under-Secretary of State for Justice, Lord Bellamy KC. Nonetheless, the intention remains to publish the draft rules which will implement the reforms at the earliest opportunity;
 - the Chair welcomed the greater detail on the normal cases for the different complexity bands;
 - the proposed revised drafting of the exclusionary definition in CPR 26.9(10) relating to actions against the police may be refined further;
 - the temporary exclusion of legal aid housing possession cases is likely to be dealt with slightly differently in CPR 26.9(10), (11) and in CPR 45.43 as, unlike the other exclusions, these are currently routinely allocated to the fast track. They should

continue to be so, but without FRC for so long as the delay continues. The precise extent of this is subject to Ministerial decision;

- drafting has not yet been reviewed by the s.2(7) Sub-Committee; this will follow as part of the ongoing s.2(7) programme, but will not be reached before the FRC reforms come into effect;
- although Parliament's Joint Committee on Statutory Instruments (JCSI) has previously raised the suitability of the phrase, "normally", in a legislative context, its use here is not new. It currently forms part of the rules (in the context of track allocation etc) and thus, new wording is not being introduced;

9. **APPROVE** that:

- standard directions will no longer be annexed to the PDs, but rather be located centrally online as all other prescribed forms are;
- notwithstanding the relocation of standard directions, they remain under the auspices of the CPRC and thus any changes to them (or new versions created), including model orders and any similar products devised by the CPRC, are included within the ambit of the powers delegated to the Forms Sub-Committee.

10. **APPROVE IN PRINCIPLE, subject to final drafting:**

- the revised Part 26 (Case Management – Preliminary Stage) and PD 26; Part 28 (The Fast Track and Intermediate Track) and PD 28 and the reforms be duly scheduled for October 2023 in-force;
- the proposed revised amendments to Part 44 concerning Qualified One-Way Costs Shifting (QOCS). This is a standalone amendment unconnected with the FRC reforms. The drafting requires final casting and consideration of two additional points raised out-of-committee and include the proposal for a transitional provision. Subject to final drafting out-of-committee, this is to be incorporated into the imminent winter CPR Update for April 2023 in-force, otherwise it will need to return to the CPRC and be scheduled into a later Update cycle.

11. **Actions:** (i) Secretariat to (a) update the Forms Sub-Committee's Terms of Reference/Delegated Authority (to include standard directions/model orders etc) for clarificatory purposes (b) programme in time for FRC at the February meeting (ii) In consultation with the Sub-Committee, Drafting Lawyers and MoJ Policy to finalise drafting on (a) QOCS (by 13th December) for incorporation into the winter CPR Update as part of the April 2023 in-force cycle (b) Part 26, PD 26, Part 28 and PD 28 for incorporation into the appropriate CPR Update for October 2023 in-force.

Item 3 Section 2(7) Sub-Committee

12. This item comprises six elements: three are consequential for reforms already approved (CPR Parts 14, 15 & 16) , one consists of final proposals following consultation (Part 21) and two are proposals for consultation (Parts 22 & 23).

Part 14 Admissions: consequential arising from reforms CPR(22)69

13. It was **RESOLVED** to **DEFER** this matter, pending consultation with the Commercial Court (CC) and Circuit Commercial Court (CCC) judiciary. **Action:** Chair

Part 15 Defence and Reply: consequentialial arising from reforms CPR(22)63

14. Katie Fowkes (MoJ Legal), had prepared a suite of modest amendments in consequence of the reforms to CPR Part 15, and to whom **THANKS** were conveyed. The proposed amendments comprise two minor cross reference changes, the same change but in two different rules. It was also **NOTED** that there are numerous references to Part 15 across the CPR, but the prevailing view was that the majority do not need an amendment; two exceptions being to r.58.10 and r.59.9.
15. It was **RESOLVED** to **APPROVE IN PRINCIPLE, subject to consultation with the CC and CCC judiciary**, the amendments as drafted.
16. **Action:** Chair to provide copies of amendments to the lead CC and CCC judges for review; subject to a positive response, the amendments can be programmed into an update cycle.

Part 16 Statements of Case: consequentialial arising from reforms CPR(22)64

17. The suite of modest amendments prepared by MoJ Legal were **APPROVED** as drafted.
Action: Drafting Lawyers and Secretariat to include in the imminent CPR Update.

Part 21 Children and Protected Parties: post-consultation proposals CPR(22)65

18. Senior Costs Judge Gordon-Saker was welcomed to the meeting and contributed to the discussion, in particular on the proposed amendments to r.21.12, on which it was **AGREED** to retain the current (pre-consultation) drafting, but with the addition of, “or deputy” inserted in response to consultation feedback.
19. Mr Justice Kerr explained that the consultation closed on 24th November 2022 and attracted five responses, comprising in excess of 25 comments and extending to some 30 pages. The responses represent both claimants and defendants, as well as others: the Association of Personal Injury Lawyers (APIL), the Forum of Insurance Lawyers (FOIL), the Forum of Complex Injury Solicitors (FOCIS), Stewarts Law and MoJ Legal. Masters Cook and Sullivan have also been consulted, the Official Solicitor, Court of Protection and Costs Office were also notified of the consultation, and further judicial comments were received under separate cover. **THANKS** were expressed to everyone for their input; each was considered in turn with some points adopted. In doing so, it was **NOTED** that (i) some points made by respondents raised wider points as to scope and proposed costs reforms which may be better suited for consideration by the Civil Justice Council as they are not within the remit of the simplification project (ii) the Senior Costs Judge was due to meet with FOCIS and hoped to be in a position to address some of the costs related points, reporting back to the Committee as necessary.
20. The discussion also highlighted the following points, which were **AGREED**:
 - the suite of proposed drafting revisions by MoJ legal were duly adopted;
 - the proposed new r.21.5(6) be re-cast to include, “unless the court directs otherwise”;
 - the proposed new r.21.6(6) (generated by way of a legacy PD provision instituted in the interests of the public purse) should be re-cast to substitute, “any” for “their” to make it clear that it refers to the Official Solicitor;
 - the proposed new r.21.9(6) be re-cast to include, “stay or strike out” as being more reflective of modern practice and in response to consultation feedback;

- the proposed new r.21.10(3)(f) be re-cast to read, “an account of the facts on which the claim is based and of claimed loss and damage;” to cover a wider range of cases, in response to consultation feedback;
- the proposed new r.21.10(7) be re-cast “Where settlement of a claim by or on behalf of...”
- the proposed new r.21.11(7) be re-cast to improve clarity;
- the proposed r.21.11(9)(a) attracted comment as part of the consultation, with one respondent body raising a concern that the increase to £100,000 would mean that fewer claimants can apply to the Court of Protection for appointment of a Deputy. Master Cook explained the practical rationale which suggested the concern was misplaced. It was explained that the purpose of this provision was to enable the court to avoid the expense of appointing a Deputy or applying to the Court of Protection where the damages awarded were modest. This sum has been fixed at £50,000 for a considerable period of time. Management by the court (Court Funds Office) is a light touch inexpensive alternative to the Court of Protection route. The increase to £100,000 gives more scope to reduce costs for protected beneficiaries and was seen as leading to fewer applications to the Court of Protection, not more. Consequently, no post-consultation drafting revision was made;
- the proposed new r.21.12(7)(h) be re-cast to substitute, “confirmation” for “an explanation”

21. It was **RESOLVED to APPROVE, subject to the above points and to final drafting**, the reformed CPR Part 21 Children and Protected Parties and the revocation of PD 21 in consequence.
22. **Actions:** (i) Kerr J to provide Secretariat/Drafting Lawyers with perfected drafting for review and incorporation into the imminent CPR Update (ii) Senior Costs Judge to report back to CPRC following meeting with FOCIS if necessary.

Part 22 Statements of Truth: pre-consultation proposals CPR(22)66 (a) and (b)

23. Isabel Hitching KC presented the matter. The reforms propose retaining a slimmed down PD; relocating mandatory provisions from the PD into the substantive rules, adopting gender neutral text and other revisions in the interests of clarity. It was **NOTED** that the sub-committee considered changing the term ‘verify’ to ‘confirm’; but on balance have retained ‘verify’. If the term ‘confirm’ was to be adopted, then there would need to be amendment not just of this Part, but of other rules/forms. Once the text is finalised, paragraph numbering is to be reviewed so that it runs consequentially. The proposed reforms were discussed in detail. It was **AGREED**:
- the proposed new r.22.1(7), being a legacy provision within PD 22, be re-cast to incorporate Roman numerals under sub-paragraph (7)(b) and to amend sub-paragraph (7)(b)(i) thus, “the document has been read to the person signing approving it;” and the necessary like revision to be made to PD 22 at new paragraph 2.4;
 - court forms may require revision in light of the new r.22.1(7) where the statement of truth is to be signed by a person who is unable to read or sign it other than by reason of language alone;
 - any further amendments in consequence of the Renting Homes (Wales) Act 2016 (see item 7 herein) to be considered and reflected (as necessary) in the drafting, prior to publishing the Part 22 proposed reforms for consultation;

24. It was **RESOLVED** to: **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 22 and PD 22 **which are also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
25. **Actions:** (i) Isabel Hitching KC to take account of the changes in relation to Wales, as necessary and provide, to the Secretariat, perfected drafting for consultation by 20th December 2022 (ii) Secretariat to facilitate publication as part of the (online) rolling consultation facility, as soon as practicable (iii) Master Cook to consider any implications for court forms in parallel with the consultation.

Part 23 General Rules about Applications for Court Orders: pre-consultation proposals CPR(22)67

26. Mr Justice Kerr set out the proposed reforms. In summary, the proposals consist of:
- changes to the rules and specifically to amend the definition of a “hearing” in r.23.1 and, in turn, to r. 39.1 so that the wording is the same;
 - revised PD 23A, with proposed amendments to the currently lengthy and out-dated parts which deal with telephone hearings and video conferencing, to bring them up to date;
 - relocation of a reformed PD 23B, because it relates to specific types of proceedings and not to proceedings generally: the first part of PD 23B concerns scientific tests to determine parentage (under the Family Law Reform Act 1969, before the advent of DNA tests) and should become a new PD 49G under Part 49 (Specialist Proceedings). The second part of PD 23B concerns applications in proceedings under s.55 of the National Debt Act 1870 (transfer of unclaimed stock to a person by the Registrar of Government Stock) should either be dispensed with altogether or, if the consultation process indicates that it needs to be retained, become a new PD 49H.
27. A discussion ensued. Although the emphasise of the proposed revision to r.23.1 was considered to be right, Kerr J undertook to revisit the wording to improve the grammar in advance of publication for consultation. It was explained that the rationale underpinning some of the other proposed revisions were that they were covered by Part 3 and general case management powers, meaning it was not necessary to accommodate, expressly, the current lengthy text within Part 23. A drafting revision was prompted by comments from District Judge Clarke, in relation to PD 23A, paragraph 1, to include the words, “more senior judge...” was **AGREED IN PRINCIPLE**.
28. It was **RESOLVED** to: **APPROVE IN PRINCIPLE**, subject to the above points and to final drafting, the proposed reformed CPR Part 23 with the supplementing PDs also reformed: a revised PD 23A and the remaining parts of PD 23B being relocated to supplement Part 49 (Specialist Proceedings) **which are also FIT FOR CONSULTATION**, using the (online) rolling consultation facility.
29. The Chair invited HMCTS to consider the proposed reforms and to submit any comments as part of the consultation exercise. The judiciary were also encouraged to submit any comments as part of the consultation rather than direct, to ensure they were considered at the appropriate juncture.
30. **Actions** (i) Kerr J to provide to the Secretariat perfected drafting for consultation by 20th December 2022 (ii) Secretariat to facilitate publication as part of the (online) rolling consultation facility, as soon as practicable (iii) HMCTS to consider any operational impacts of the proposed drafting reforms and submit comments as part of the consultation exercise.

Item 4 Lacuna Sub-Committee (LSC) CPR(22)60

31. Master Dagnall introduced the item, explaining that there were two topics for consideration, both of which had potentially considerable practical implications.
32. **LSC2022/17** District Judge Clarke presented the matter, explaining that the possible lacuna concerned the application of sanctions for late filing of costs budgets, specifically the sanction under r.3.14 and whether it applies to all costs or only future costs. The issues having been highlighted by the unreported, county court, case of *Hardy -v- Skeels*. Following discussion, it was concluded that the matter was not urgent and given the weight of other work, the ongoing review of costs generally by the Civil Justice Council and the potential of wider policy implications, no immediate action would be taken. It was **RESOLVED** (i) the matter be duly noted (ii) to reserve the matter for further review following conclusion of the Civil Justice Council's current review of costs. **Action:** (i) Chair to discuss with Master Stevens (ii) Secretariat to note on action log as item of possible future business following CJC' costs review.
33. **LSC2022/19** Tom Montagu-Smith KC referred to the judgment in *R (Tax Returned Ltd and ors) -v- Commissioners for HMRC [2022] EWHC 2515 (Admin)* which identified issues concerning service on multiple email addresses and the issue of consent. It was held that where multiple email addresses have been specified for service, no valid option to serve by email exists. In addition to the LSC identifying that this judgment raised points requiring review, various stakeholders had also been in touch to raise issues in practice.
34. The initial plan was for the Service Sub-Committee to consider it, but the LSC now feel the matter requires more urgent action, and this was **AGREED**.
35. The discussion ventilated views that the decision raised concerns that litigants may be taken by surprise and that the fundamental effect of the decision appears to be that a party can agree to service by email, specify that emails must be sent to more than one email address and then object to service when those instructions are complied with precisely. It would be unfortunate if that were the effect of the Rules. There may be very good reasons to serve by email and email service is to be encouraged; something will be seen to have gone wrong where rules of court consider as invalid a method of service which has been both consented to and effective in bringing the material to the party's attention. However, the distinction between proceedings and documents is relevant and there should be some limit on the number of email addresses which can be specified. The suggestion of expressly providing for, "...any 2 email addresses identified" was not intended to stop more than two email addresses being used were appropriate, but a level of control was necessary. PD 6B Service out of the Jurisdiction, was considered to be unaffected.
36. It was **RESOLVED** to **APPROVE, subject to final drafting**, amendments to PD 6A Service within the UK, paragraph 4.1, but re-cast with the second sentence of the draft amendment to paragraph (1)(b) to be put in a separate paragraph, together with other minor revisions.
37. **Actions:** In consultation with the Sub-Committee, Drafting Lawyers and Secretariat to incorporate into the imminent PD Update.

Item 5 Online Procedure Rule Committee CPR(22)70

38. Isabel Clarke (MoJ Policy) was welcomed to the meeting and provided an update on progress with implementing the new Online Procedure Rule Committee (OPRC), as provided for by the Judicial Review and Court Act 2022. It was explained that the OPRC is intended to support a digital justice system through its multi-jurisdictional (Civil, Family and Tribunals) rule-making powers. However, the types of proceedings for which the OPRC can make rules need to be specified in Regulations, which are yet to be made.

Alongside making rules for online court services, the OPRC is intended to set data and behaviour standards in relation to pre-action online dispute resolution. The Lord Chief Justice has confirmed the judicial members to serve on the OPRC and the public appointments process for the external members is ongoing and not anticipated to be complete before Spring 2023.

39. The Chair observed that there will be close liaison with the CPRC as implementation advances and a works programme is developed.

40. The report was duly **NOTED**.

Item 6 Open Justice: PD 51Y Video or Audio Hearings CPR(22)68

41. The Chair expressed thanks to all involved in preparing this item.

42. It was explained that PD 51Y was introduced as a Covid-19 pandemic related measure. At the March 2022 meeting, the Committee decided to allow the PD to expire, but to extend the operation of one element - namely, the first line of paragraph 3 - for a further 12 months (until 25th March 2023). This was to allow time for primary legislation (the Police, Crime, Sentencing and Courts Act 2022) to be enacted and to consider the matter further, including any wider policy implications. Since then, some observers, including a blogger, raised the view that the PD's meaning was ambiguous.

43. A general update was provided at the July 2022 meeting and the matter has been duly considered. The time is now right to revoke the remaining provision of PD 51Y, because its incorporation into the rules is not required in order for remote hearings to be public hearings. The general principle being that a hearing that anyone can attend is a public hearing and thus there is no need for the provision to remain in force.

44. It was **RESOLVED** to **REVOKE** the remaining provision of PD 51Y.

45. **Action:** Drafting Lawyers and Secretariat to incorporate into the imminent PD Update.

Item 7 Renting Homes (Wales) Act: consequentials CPR(22)61

46. Parag Soneji (Government Legal Department) was welcomed to the meeting.

47. A suite of proposed drafting solutions, in consequence of the introduction of the Renting Homes (Wales) Act 2016, were presented. Each was discussed in turn. **THANKS** were conveyed to His Honour Judge Jarman KC for his input in preparing the matter for Committee consideration.

48. It was **RESOLVED** to **APPROVE, subject to final drafting:**

- amendments, throughout, where necessary, to the legislative reference thus, "Renting Homes (Wales) Act 2016";
- adopt gender neutral language, throughout;
- amendments to PD 16 Statements of Case at paragraph 1.2(2), as drafted, in order to cover both a "possession claim" and a "Renting homes possession claim";
- amendments to Part 22 Statements of Truth and the supplementing PD, as drafted. It was further **NOTED** that the Committee is content that there is no express provision requiring the filing of a certificate in relation to any Renting Homes (Wales) claims that are in fact brought in the High Court;

- amendments to Part 24 Summary Judgment, as drafted;
- amendments to Part 26 Case Management – Preliminary Stage, to include an amendment to the casting of the new sub-paragraph at 26.6(1)“(c)”;
- further amendments to Part 26 to reflect the introduction of the new Intermediate Track as part of the upcoming Fixed Recoverable Cost (FRC) reforms;
- amendments to PD 26 as drafted by adding words, “both as defined” to make it clear that, “demotion claims” and, “prohibited conduct standard contract order claims are both defined by r.65.11; the amendment at paragraph 10.1(1a) to be re-cast viz “claim~~s~~”;
- amendments to Part 27 The Small Claims Track and PD 27A to reflect terminology used in the Renting Homes (Wales) Act 2016, such as the word, “dwelling”;
- amendments to Part 40 Judgments, Orders, Sale of Land Etc, as drafted;
- amendments to Part 45 Fixed Costs, including the addition of, “prohibited conduct” within the title of Table 3;
- amendments to PD 60 Technology and Construction Court Claims, as drafted;
- **not to amend** the terms, “writ of possession” and, “warrants of possession” within the enforcement related provisions of the CPR, because they are not being altered in the context of the Renting Homes (Wales) Act 2016;
- **not to adopt** the proposed amendments (regarding the insertion of, “dwelling (Wales)”, to the title within Part 83, nor the consequential proposed to r.83.8A(4)(b)(i) and (ii).

49. **Actions:** (i) Drafting Lawyers and Secretariat to incorporate into the imminent CPR Update (ii) Costs Sub-Committee, Drafting Lawyers and MoJ Policy to note and adopt the related above points concerning the upcoming FRC (Intermediate Track) reforms.

Item 8 Civil Procedure (Amendment No.2) Rules 2022: proposed amendments following report by the Joint Committee on Statutory Instruments (JCSI) CPR(22)62

50. The item follows the November meeting, at which the MoJ’s response to the JCSI report was duly Noted. Alasdair Wallace (MoJ Legal) presented the proposed drafting options in response to the points raised by the JCSI, which were discussed.

51. It was **RESOLVED to APPROVE:**

- **no action** at this stage in relation to the point concerning court forms at rule 4(2), so that its utility (or otherwise) can be kept under review.
- **amendment to rule 15.7:** “Part 20 applies to a defendant who wishes to make a counterclaim. Where a defendant serves a counterclaim the defence and counterclaim should normally must, other than for good reason, form one document with the counterclaim following the defence.”
- **amendment to rule 54.35** because the JSCI pointed out that this rule applies rule 54.16 - 54.20 to the environmental review procedure, but the effect of rule 54.16 is reproduced for the environmental review procedure by rule 54.32(2) and (3), so rule 54.35 creates duplication. The options considered were to leave rule 54.35 alone and

omit paragraphs (2) and (3) of rule 54.32, or to leave rule 54.32 alone and amend rule 54.35 so it no longer applies rule 54.16. The latter approach was seen as a shorter and simpler solution, thus: **54.35.** “Rules 54.10 and ~~54.16~~ 54.17 – 54.20 shall apply to the environmental review procedure, except that—

(a) references to “permission to proceed” shall be disregarded; and

(b) the reference in rule 54.19 to “the decision to which the claim relates” shall be read as referring to “the matter to which the claim relates.”.

- **amendment to rule 56.5** because r. 56.5(1)(b)(iv) refers, as part of the definition of a “Renting Homes (Wales) claim”, to claim brought in the same proceedings as a claim “under rule 56.5(a) to (c)”. That was accepted to be an error, as a hangover from a slightly different drafting structure, and the correct reference should be to a claim referred to in the three paragraphs immediately above paragraph (iv). The amendment is: “**56.5.**—(1) In this Section of this Part —

(a) “the 2016 Act” means the Renting Homes (Wales) Act 2016;

(b) “Renting Homes (Wales) claim” means a claim or application under the 2016 Act other than a claim—

(i) for possession;

(ii) for a prohibited conduct standard contract order under section 116(2) of the 2016 Act;

(iii) to which the Pre-Action Protocol for Housing Disrepair Cases applies; or

(iv) brought in the same proceedings as a claim ~~under rule 56.5(a) to (c)~~ referred to in paragraphs (i) to (iii);

and includes an appeal under section 78(3) of the 2016 Act;

(c) “the claimant” means the person making the Renting Homes (Wales) claim, irrespective of whether it is a claim or application under the 2016 Act.”

52. **Action:** Drafting Lawyers/Secretariat to incorporate into the imminent CPR Update.

Item 9 Upcoming Civil Procedure Amendment Rules SI and PD Update content

53. The Chair provided the indicative timetable and anticipated content of the next mainstream CPR Update. Subject to approval by the MR and Ministerial concurrence, the plan is to publish the amendments in early February in line with the 6th April 2023 common-commencement date. **Action:** Secretariat and Drafting Lawyers to produce instruments for signing in advance of the indicated February laying date.

Item 10 Any Other Business & Close

54. **Cape Intermediate Holdings Ltd -v- Dring [2019] UKSC 38:** This matter was last noted at the June 2022 meeting. Following further consideration, the Chair advised that, given the cross jurisdictional implications flowing from the Supreme Court’s judgment (which likely go beyond the ambit of rules of court), a wider working group should be established. The proposal had been raised with Lord Justice Baker with the expectation of it being aired at the Family Procedure Rule Committee. Subject to approval, this new group can be established with a wider remit than the CPRC’s existing sub-committee. It was **RESOLVED**, in principle, to dissolve the existing sub-committee, in favour of the wider working group and to seek volunteers to join the new group. It was also **NOTED** that officials from MoJ (Policy and Legal), Judicial Office, HMCTS and the Departmental Records Officer have also expressed an interest in this topic and are willing to contribute to future work. **Actions:** (i) Members to submit nominations to join the cross-jurisdictional working group, to the Secretariat/Chair by 13th January 2023 (ii) Secretariat to maintain a watching brief on developments.

55. **National Security Bill and possible CPR amendments:** Alasdair Wallace (MoJ Legal) provided a brief update on the above Bill’s passage through Parliament. It was duly **NOTED** that the Bill is anticipated to receive Royal Assent in time for implementation in May 2023. The legislation contains provisions that will automatically impact the CPR

(possibly to CPR Part 80) by way of amendments to be made by the Lord Chancellor. Potential further CPR implications, in consequence, may be required, and can be considered by the Committee in due course, if necessary. **Action:** Home Office/MoJ Legal to keep the Secretariat apprised of developments and to confirm if any consequential amendments are required.

56. **One to One meetings between Chair and members:** The Chair explained his plan to institute one to one meetings with individual members over the course of each year, in addition to the annual appraisal process. **Action:** Judicial Office & Secretariat to co-ordinate.
57. **Chair of the Lacuna Sub-Committee:** In the interests of natural succession planning and following a recent discussion, out-of-committee, with Master Dagnall, the Chair sought a volunteer to take on the Chairmanship of the Lacuna Sub-Committee by the end of 2023. **Action:** Members to submit nominations, to the Secretariat/Chair by 3rd March 2023.
58. **Service Sub-Committee Membership:** The Chair confirmed, with thanks, that Master Cook is duly appointed to the Service Sub-Committee and will work with Tom Montagu-Smith KC to draft an outline works programme before agreeing the final plan with the Chair for consideration and adoption by the full Committee in due course.
59. **Date of Next Meeting:** It was confirmed that there was no urgent business to be transacted during recess and thus the next meeting was the February meeting, as planned.

C B POOLE
December 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
Andrew Currans, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Lucy Atkinson, Ministry of Justice (Item 1)
Robert Wright, Ministry of Justice (Item 2)
District Judge Simon Middleton (Item 2)
Andrew Parker (Item 2)
Senior Costs Judge Gordon-Saker (Item 3)
Isabel Clarke, Ministry of Justice (Item 5)
Parag Soneji, Government Legal Department (Item 7)
David Hamilton, Ministry of Justice (Item 7)