



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In QB1M, Royal Courts of Justice
and remotely via Microsoft Teams
At 10.30 a.m. on Monday 5 December 2022

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Mostyn	High Court Judge
Her Honour Judge Raeside	Circuit Judge
Her Honour Judge Suh	Representing District Judge
District Judge Branston	District Judge
District Judge Birk	District Judge
Michael Seath	Justices' Clerk
Fiona James	Lay Magistrate
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Melanie Carew	Children and Family Court Advisory Support Service
Bill Turner	Lay Member
Mrs Justice Knowles	Invited Guest

Invited Guests

Mr Justice MacDonald	For H v Adoption Agency Working Group
Mrs Justice Judd	For H v Adoption Agency Working Group

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from His Honour Judge Godwin, Graeme Fraser and Tony McGovern.
- 1.2 The Chair announced that this will be Mr Justice Mostyn's final meeting. Members recorded their thanks and appreciation for his contribution toward the work of the Committee.

MINUTES OF THE LAST MEETING: NOVEMBER 2022

- 2.1 The Committee agreed that the minutes of 7 November were an accurate record.

ACTIONS LOG

- 3.1 MoJ Policy reported that 13 actions were recorded from the November meeting with a further 21 actions taken forward from previous meetings which will be addressed either at this meeting or the following meeting in February 2023.

PRIORITIES TABLE AND PD UPDATES

- 4.1 MoJ Policy updated the Committee on the changes to the table since the previous meeting. It was agreed that Item 24 on the table (whether to factor in without prejudice offers as a matter of “conduct” when deciding whether to make costs orders) could be removed.
- 4.2 The Committee agreed to publish the Priorities Table. It was agreed for the Priorities Table to be reviewed in February and signed off for publication in March 2023.

ACTION POINT 1: The Priorities Table to return in February for tier 3 items to be reviewed. Priorities Table to be signed off and ready for publication in March.

MATTERS ARISING

Web Inaccuracies

- 5.1 MoJ Policy reported that two inaccuracies have been flagged since the last meeting. These relate to a change to the wording on r4.4(1A) and PD36N and PD41B. A few issues had been raised during a Red Book review which will be considered before the end of the year.

Information Disclosure and Immigration Proceedings

- 5.2 MoJ Policy highlighted the issue of information disclosure of documents from family proceedings to the Home Office in immigration proceedings. The Committee were reminded of the concerns of the Home Office that disclosing court documents could amount to a criminal offence under section 97 Children Act 1989. The Committee were informed that the Home Office are planning to seeking advice from counsel on this issue. MoJ policy will follow up and provide an update as appropriate.

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

Practice Direction 27A/PFD E-Bundle Guidance/Efficiency Statement

- 5.3 HMCTS stated that bundles need to be uploaded to the Family Public Law digital service to ensure that everyone, including Cafcass, have a copy of the bundle for the hearing. HMCTS are aware that various software solutions are being used to create bundles and it was important for consistency and for accurate data collection to continue to use the Family Public Law digital service to upload those bundles.

- 5.4 The Committee referred to PD 27A and noted that the comparison shown at a previous meeting was useful as it showed there were no inherent contradictions between the PD and other Guidance.
- 5.5 The Committee were informed that the judges responsible for the Guidance had indicated there was no appetite to change, or consolidate, their Guidance. The Committee agreed for this item to return in February to consider amendments to PD27A to ensure that parties, in particular Litigants in Person, preparing the bundle know that there is other guidance to consider beyond that in PD27A.

ACTION POINT 3: Practice Direction 27A/PFD E-Bundle Guidance/Efficiency Statement to return as a substantive agenda item for February 2023.

PD36Y - Temporary Modifications made in light of/following Covid-19

- 5.6 MoJ Policy provided the Committee with an update following the request made at the November meeting to provide an overview of the data gathered in respect of local arrangements put in place via the flexibilities provided in PD36Y. The Committee were informed that a questionnaire had been circulated to Designated Family Judge (DFJ) areas, senior legal managers and justices' legal advisers across England and Wales. 39 out of 43 DFJ areas had responded.
- 5.7 In relation to the flexibilities allowed regarding the Child Arrangements Programme (CAP) MoJ Policy advised that 20 DFJ areas are using the 1 Track Model or variation of such model; 8 DFJ areas are now using the 2 Track Model or a variation of such model; 1 DFJ area uses the 1 Track Model and the CAP provisions; 1 DFJ area uses both the 1 Track and the 2 Track Model; 7 DFJ areas are using CAP provisions and 2 DFJ areas are using the Private Law Reform Investigative Approach pilot pathfinder provisions.
- 5.8 The Committee were informed that a number of CAP-using areas have not been able to implement a PD36Y model due to a lack of authorised legal advisers. However, they plan to review this with their DFJs in the new year.

ACTION POINT 4: Substantive paper on the future of PD36Y to be presented to the Committee in February 2023.

Fast Track Proceedings

- 5.9 MoJ Policy stated that the Fast Track Working Group would next be meeting towards the end of January to consider further operational and resource issues relating to a proposed new fast-track procedure for small money cases.

Age of Marriage Legislation

- 5.10 MoJ Policy stated that amendments to the Family Procedure Rules (FPR) required as a result of the age of marriage being raised to 18 by the Marriage and Civil Partnership (Minimum Age) Act 2022 will be progressed through the next FPR amending SI in January.

Voice of the Child Working Group

- 5.11 MoJ Policy gave an update on the Nuffield Family Justice Observatory workshop that took place in November in a Private Law Advisory Group (PrLAG) meeting, which discussed ways to improve the voice of the child in proceedings (early engagement, confirming

outcomes and video resources). The PrLAG agreed to take forward three priority actions and will have a further update to the PrLAG (or its successor Group) in six months.

- 5.12 It was agreed for an update on the PrLAG work to be provided to the Committee in February.

ACTION POINT 5: The item on Voice of the Child to return in February 2023 for an update on PrLAG work.

Practice Direction 12F (International Child Abduction)

- 5.13 MoJ Policy stated that officials are considering the resource and drafting requirements for this work and will return in March for an update.

ACTION POINT 6: MoJ Policy to return in March to update the Committee on the progress of this work.

Family Justice Council – Draft guidance on covert recordings

- 5.14 The Committee were informed of the Family Justice Council (FJC) led consultation which is seeking views from stakeholders on draft guidance by the FJC Working Group on covert recordings to encourage good practice in relation to overt and covert recordings of children and professionals.

Adoption: online service: extension to further courts: amendments to PD36ZB

- 5.15 The Committee were informed that the Adoption project is likely to expand the existing number of courts piloting the online application process. The President confirmed that he would be content to make any necessary amendments to PD36ZB without first coming back to the Committee.

STANDING ITEMS

ONLINE PROCEDURE RULE COMMITTEE

- 6.1 MoJ Policy updated the Committee on the Online Procedure Rule Committee (OPRC) recruitment process. A range of candidates had been received and interviews were expected to take place in early January 2023 with a view to having the roles filled by March 2023.
- 6.2 The Committee were informed that no formal work programme had been drawn up, however, the OPRC are working out details to have a road map in place.

DOMESTIC ABUSE ACT IMPLEMENTATION

a) Domestic Abuse Protection Orders (DAPO)

- 7.1 MoJ Policy stated that the Minister has agreed to launch the DAPO pilot in spring 2024. MoJ Policy advised that they will take forward agreement of the pilot court sites with senior Judges and the Minister before Christmas. The Working Group are continuing to work on the FPR Practice Direction with the intention that will be shared with the Committee in February/March 2023. The Committee agreed that the application form for the DAPO pilot be considered by the Domestic Abuse Working Group rather than the FPRC Forms Working Group.

- 7.2 The Committee asked whether timeframes had been drawn up so the work sits alongside that of the Private Law Online Digital System. MoJ Policy stated that no decision has been made as to whether they will be in a position to digitise DAPO in time for the pilot.
- 7.3 The Committee were informed that His Honour Judge Robinson had been invited by Lord Justice Birrs to join the DAPO Cross-Jurisdictional Working Group.

b) Cross-examination

- 7.4 MoJ Policy provided an update on the number of Qualified Legal Representatives (QLR) registered for the cross-examination work. A total of 393 were registered which met around 98% of the target. 58 were registered in Wales, and there were 7 cases requiring QLR appointment.
- 7.5 MoJ Policy stated that they will work to encourage more training and have been in conversation with the Family Law Bar Association and the Inns of Court College of Advocacy.
- 7.6 The Committee queried the difficulty in finding a QLR, MoJ policy highlighted that this may have been a timing issue. HMCTS stated that the majority of QLRs had been required in private law cases but HMCTS will share a culminative total if required.

ACTION POINT 7: MoJ Policy to provide an update on QLRs in February 2023.

ACTION POINT 8: DAPO to return for an update in February/March 2023.

SUBSTANTIVE ITEMS

PRIVATE LAW EARLY RESOLUTION/DEMAND REDUCTION

- 8.1 MoJ Policy provided the Committee with an update on the progress of the programme of work to support earlier resolution of private family law children proceedings and financial remedy disputes. This included details of the final set of proposals the Private Law Early Resolution Working Group ("the Group") had agreed, and their recommendation to seek the Committee's view as to whether or not to consult.
- 8.2 MoJ Policy asked the Committee to consider the Working Group's recommendation that no change be made to Rule 3.10 in relation to when the court reviews MIAM compliance in financial remedy cases, despite a change having already been agreed for private law children cases. **The Committee agreed this point.**
- 8.3 MoJ Policy asked the Committee to consider the Working Group's recommendation that Rule 3.4 should be amended to reflect that the court could encourage parties to consider non-court dispute resolution (NCDR) as a means of resolving the disputes in the natural gap in proceedings between hearings or during an adjournment, in private law children cases as well as in financial remedy cases. **The Committee agreed this point.**
- 8.4 MoJ Policy asked the Committee to consider the Working Group's recommendation that there should be no changes for provisions on costs in private law children cases. **The Committee agreed this point.**
- 8.5 MoJ Policy asked the Committee to consider the Working Group's recommendation that the FPR/PDs should be amended so that the court has a discretion to factor in as a matter of conduct a failure to undertake a court-ordered MIAM and/or a failure to engage with NCDR when the court has encouraged the parties to engage with it. **The Committee agreed this point.**

- 8.6 MoJ Policy asked the Committee to consider the Group's thinking on how to determine whether a party has engaged with NCDR. The Group recommended that this point go out to consultation as it was keen to seek views from the sector (particularly mediators and other NCDR providers) about how this could be practically managed. **The Committee agreed that this point should be managed through consultation.**
- 8.7 The Committee thought that this may cause an issue for NCDR providers who haven't been engaged in the process to report if NCDR did not happen.
- 8.8 MoJ Policy asked for the Committee's view in relation as to whether there should be a pro-forma which could be used to determine parties' position in relation to NCDR. The Group had some concerns about how practically a pro-forma would be provided to the court and the need to ensure that HMCTS staff and the judiciary are not burdened as a result. The Group recommended that this point specifically be included in any consultation. **The Committee agreed that this point be included in a consultation but voiced concern that a pro-forma would restrict drawing out other potentially relevant information.**
- 8.9 MoJ Policy asked the Committee to confirm the position as discussed in October that MIAM exemptions regarding the respondent not being willing to engage or being uncontactable (r3.8(1)(i) and r3.8(2) of the FPR) should not be amended, especially bearing in mind the view that the aim of a MIAM is best served when attended by both parties. **The Committee confirmed that the exemptions should remain but that the point should be included in a consultation.**
- 8.10 MoJ Policy asked for the Committee's view in relation to Rule 3.9 which makes provision about the conduct of MIAMs and to consider whether to amend Rule 3.9(2) to require the MIAM provider to 'discuss' other forms of NCDR or to 'assess the suitability' of other forms of NCDR.
- 8.11 The Committee discussed whether MIAM providers should be discussing and recommending other forms of Dispute Resolution not just mediation, although it was recognised that there was potential for a conflict of interest as the MIAM provider would want to encourage mediation. The Committee thought that there could be consideration for a professional other than mediator to provide a broad range of options to those going through separation/resolution dispute.
- 8.12 The Committee discussed whether there should be more of a proactive discussion between the MIAM provider and the parties about the advantages and disadvantages of forms of NCDR. However, it was noted that not all Mediators have information about alternative forms although this could be managed through additional training. **The Committee agreed that the point in relation to Rule 3.9 should be raised in consultation, with a "firmer" starting proposal that the MIAM provider should "assess suitability" of different forms of NCDR, as well as noting the alternative of "discussing" different forms of NCDR.**
- 8.13 MoJ Policy spoke to the point discussed by the Group in relation to potential benefits of implementing a system in financial remedy cases where parties are required to attend some form of early neutral evaluation (ENE), or to receive legal advice from a single lawyer, early on in the proceedings. The Group were, in particular, keen for views to be sought on ENE and single lawyer models as means of diverting cases from court. However, these points were not in the remit of the Group. MoJ Policy noted they were keen to look into this matter and intend to pick it up in the new year. MoJ has resourcing issues and so would support members of the Group or Committee discussing the matter in the meantime. MoJ noted that the proposed Government consultation would make significant proposals in this space. The Committee noted that HHJ Hess is drawing together a small group to understand the "lie of

the land” regarding single lawyer models. **The Committee agreed that a general question on ENE and on single lawyer models be included in the consultation to gather additional information.**

- 8.14** MoJ Policy finally sought the Committee’s view as to whether to consult on the early resolution proposals linked to encouraging engagement with NCDR and making the MIAM requirement stronger. It was noted that the Government are conducting a separate consultation looking more widely at early resolution. The intention is to return in February with a draft consultation paper in relation to the Committee’s proposals.

ACTION POINT 9: MoJ Policy to provide a draft consultation paper for the February meeting on the final set of proposals put forward by the Private Law Early Resolution Working Group.

INDEPENDENT DOMESTIC VIOLENCE ADVISOR(IDVA)/INDEPENDENT SEXUAL VIOLENCE ADVISOR (ISVA)

- 9.1** MoJ Policy provided an update on the work progressed with the Domestic Abuse Working Group on the issue of IDVA and ISVA attendance at court. As part of this discussion the Committee were asked for views in relation to suggested amendments to current rules and Practice Directions and a proposed new draft Practice Direction (PD 27C). The Domestic Abuse Working Group agreed that for the Rule/PD changes, referencing “IDVAs” and “ISVAs” would sufficiently capture those providing support in a professional capacity, and that the definitions included in the draft Victims Bill should be used given these will become the statutory definitions once the Bill passes.
- 9.2** The Committee agreed that the rule changes should be included in the next FPR amending SI, for commencement on 6 April 2023. The Working Group will be asked to progress the drafting of the supporting guidance possibly using the template for MacKenzie friends as a guide.
- 9.3** The Committee asked that paragraph 1.3 of PD27C be amended to reflect that it should refer to “legal representative” not “legal advisor” as the latter could be read to mean the court legal advisers.
- 9.4** The Committee agreed that the table to PD12G on the disclosure of information from proceedings be amended at line 2.1 as appropriate to provide that it would not be a potential contempt of court for parties to disclose information from proceedings to an IDVA or ISVA.

ACTION POINT 10: The item on IDVA/ISVA Guidance to return in February for a verbal update and as a substantive issue in March 2023.

POSSIBLE LIMITS ON LEGAL FEES

- 10.1** MoJ Policy spoke to the Costs Working Group report (which was finalised on 18 October) on possible limits on legal fees in financial remedies case. It was noted that any proposal to cap legal fees would require primary legislation. The Committee noted that the Private Law Early Resolution Working Group was conducting separate work in relation to costs in financial remedies cases.
- 10.2** The Committee agreed for this item to be taken out from the priorities table, but that it could return to the Committee at any point if required.

ACTION POINT 11: Secretariat to remove this item from the Priorities Table.

FPR AND PD AMENDMENTS CONSEQUENTIAL UPON THE DEATH OF HER MAJESTY THE QUEEN

- 11.1** MoJ Legal and Policy asked the Committee to agree to Statutory Instrument and Practice Direction Update documents which reflected various references to 'Her Majesty' and the 'Queen's' in the Family Procedure Rules and accompanying Practice Directions. The Committee agreed with proposals, subject to MoJ Legal clarifying one minor drafting point.

NOTIFICATION OF PART 4 FAMILY LAW ACT 1996 ORDERS TO THE POLICE: PILOT PRACTICE DIRECTION 36ZA

- 12.1** MoJ Policy asked for the Committee's agreement to extend pilot practice direction PD36ZA for a further year, from the current expiry date of 28 February 2023.
- 12.2** The Committee agreed to the proposal but asked whether consideration had been given to rolling the pilot out on a wider basis. MoJ Policy agreed to return in February 2023 with any update.

ACTION POINT 12: Notification Part 4 Family Law Act 1996 orders to the police to return for an update in February 2023.

DEED POLL NAME CHANGES

- 13.1** MoJ Policy provided a proposed timetable for implementation of the Enrolled Deed Poll Name Change reforms. MoJ Policy proposed to update on progress in January 2023 by way of providing a note to the Chair.
- 13.2** The Committee asked whether progress has been made in relation to the difference between the court fees that would be payable in respect of a change of name for a child as opposed to for an adult. MoJ Policy confirmed that discussions were continuing but no significant progress has been made as the disparity between the two costs stemmed from using two court processes for the child's case, thus incurring two separate fees. The Committee asked whether their concern over this point could be escalated.

ACTION POINT 13: Deed Poll Name Changes to return for an update in February 2023.

DRAFT FAMILY PROCEDURE (AMENDMENT) RULES 2023

- 14.1** MoJ Policy and Legal provided an update on the next FPR amending SI. The Committee were content with the draft SI and agreed that the provisions for IDVA/ISVA and the Rule amendments consequential upon the death of HM the Queen should be added to the draft.

ACTION POINT 14: MoJ legal and Policy to add IDVA/ISVA provisions and Rule amendments consequential upon the death of HM the Queen to the SI which was laid on the 23 January.

DRAFT PRACTICE DIRECTION NO.9 of 2022

- 15.1** The Committee were updated on plans to progress PD Update No 9 of 2022. It was highlighted that the new PD6C will be put into the next round of PD updates following PD Update No 9 of 2022.

CONTESTED FINANCIAL REMEDY DIGITAL PORTAL: AMENDMENTS TO PD36N

- 16.1** HMCTS spoke to the issue of extending the pilot PD underpinning the online contested FR system from 31 December 2022 to 31 December 2023. Amendments to the PD were also proposed to reflect the operational reality as to how an application or other document is served via the online system, and to mandate use of the FR contested online system by legal representatives. It was anticipated the provision mandating use of the online system would come into force on 31st January 2023, subject to judicial agreement.
- 16.2** The Committee referred to some regional issues with administration but were content on the whole with the proposed amendments, including those to mandate use of the online system by legal representatives.

DISCLOSURE BY GOVERNMENT DEPARTMENTS – PRACTICE DIRECTION 6C

- 17.1** The Committee considered a proposal for a new PD6C and provided a steer on questions from the draft.
- 17.2** The Committee indicated that the PD should apply ‘where the court makes an order, having the power to do so, or makes a request...’ for disclosure of information. The Committee were content for the PD to apply in the circumstances set out in the draft, noting these are wider than the specific cases referred to in the current PD6C. The Committee were content with the proposed wording about the information to be provided to the DWP when a request or order for disclosure is made, including the gender-neutral wording about previous marriages.
- 17.3** It was agreed for contact details for HMRC to be included in the new PD6C. It was agreed that a line be added to say HMRC require an order of the High Court before they will disclose information. A cross-reference to PD29C (ability to transfer to the High Court) should be included.

PRIVATE LAW INJUNCTION ONLINE SYSTEM – AMENDMENTS TO PD36ZD

- 18.1** HMCTS referred to discussion from the October and November meetings regarding 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 16th January 2023, for both legal representatives and unrepresented parties.
- 18.2** HMCTS noted that they have addressed previous concerns and asked the Committee to approve Practice Direction amendments to underpin the piloting of an end-to-end digital service for Section 8 Children Act 1989 and Part 4 Family Law Act 1996 applications from 16th January 2023, on the basis that access to the online system by legal representatives and/or unrepresented parties in specified courts will not be permitted until this roll-out of the system is agreed by the President of the Family Division.
- 18.3** The Committee discussed the notification system for emails serving documents are delivered and queried whether service could also be effected by text/SMS.
- 18.4** MoJ Legal noted that some minor changes (around keeping the option for the court to “hand” papers to parties) would be made in the final version of the PD amendments.

- 18.5** The President of the Family Division was content to proceed with PD amendments in PD Update No. 9 of 2022, on the basis that the system will not be rolled out without his agreement, and that roll out would be in limited courts initially.

H v ADOPTION AGENCY WORKING GROUP

- 19.1** Mr Justice MacDonald presented a paper on behalf of the H v Adoption Agency Working Group which summarised the work to date and recommendations for the Committee to consider. The Committee noted the content of the report and the proposal for Practice Guidance, possibly within a Practice Direction. The Committee asked for this item to return back to the Working Group to undertake the drafting with the intention that this is brought back to the Committee in April 2023.

ACTION POINT 15: H v Adoption Agency Working Group to return in April with a draft of proposed Practice Guidance, within a Practice Direction.

COMMITTEE ALL DAY MEETING REVIEW

- 20.1** MoJ Policy informed the Committee that a questionnaire will be sent out to gather Committee views on the October extended meeting with a view to finding out what worked well, what didn't work well and how often the all day meetings should be held.

ACTION POINT 16: Secretariat to circulate a questionnaire to Committee Members on the October full day meeting.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 21.1** MoJ Policy informed the Committee of the CPRC work on simplifying the CPR. The Committee stated that they will look to see if there is anything that can be learned from the CPRC exercise. It was highlighted that this work could link with the Online Procedure Rule Committee.

FORMS WORKING GROUP UPDATE

- 22.1** MoJ Policy reported that the table of work reflects the issues which will be discussed at the next Forms Working Group detailed for 19 January 2023.

FPRC WORKING GROUPS

- 23.1** MoJ Policy reported that updates will be made to the Voice of the Child Working Group and the Forms Working Group to reflect a recent addition to both groups.

DRAFT FEBRUARY 2023 AGENDA

- 24.1** MoJ Policy stated that the draft February 2023 agenda would be updated following this meeting.

ANY OTHER BUSINESS

25.1 a) Jade's Law

MoJ Policy informed the Committee on the background to a petition and recent Westminster Hall debate in relation to Parental Responsibility of those imprisoned following a conviction for murder of the other parent (Jade's Law). The Minister had indicated that he would refer to the FPRC on questions around how applications (e.g, for Special Guardianship Orders or for suspension of parental responsibility) could be made as simple as possible. The Committee pointed out that any question of "automatic" suspension of parental responsibility should be a matter for Parliament.

- 25.2** The Committee requested a paper for the February 2023 meeting clarifying what matters the Committee was being asked to consider.

ACTION POINT 17: Matter to return to the Committee in February to explain what is being asked of the Committee.

DATE OF NEXT MEETING

- 26.1** The next meeting will be held on Monday 6 February 2023 and will take place in person and remotely via MS Teams.

Simon Qasim – Secretariat

December 2022

simon.qasim3@justice.gov.uk