



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE

In person at QB2M, Queens Building, Royal Courts of Justice
And remotely via Microsoft Teams
At 10.30 a.m. on Monday 6 February 2023

Present:

Sir Andrew McFarlane	President of the Family Division
Mrs Justice Theis	Acting Chair
Lord Justice Baker	Court of Appeal Judge
Mr Justice Keehan	High Court Judge
Mr Justice Peel	High Court Judge
Her Honour Judge Raeside	Circuit Court Judge
His Honour Judge Godwin	Judicial member for Wales
Her Honour Judge Suh	Circuit Court Judge
District Judge Branston	District Judge
District Judge Birk	District Judge
Michael Seath	Justices' Clerk
Fiona James	Lay Magistrate
Poonam Bahri	Barrister
Rhys Taylor	Barrister
Melanie Carew	Cafcass
Robert Edwards	Cafcass Cymru
Graeme Fraser	Solicitor
Mrs Justice Knowles	Invited Guest

Announcements and Apologies

1. The Committee welcomed Mr Justice Peel as a new member of the Family Procedure Rule Committee ('the Committee') and Mr Justice Keehan, who will become the Acting Chair from March 2023.

Minutes of the previous meeting – 5 December 2022

2. Aside from a minor amendment to Paragraph 5.6 the Committee approved the draft minutes as a true record of the December 2022 meeting.

Action Point 1: Secretariat to amend the minutes of the December 2022 meeting and publish them on the Committee's webpages.

Actions Log

3. The Secretariat reported that 17 actions had been taken forward from the December 2022 meeting along with a further 9 actions from previous meetings. 14 of the actions from the December 2022 meeting and 5 of the additional points were discussed at the February 2023 meeting.

Matters arising

Web Inaccuracies

4. The Secretariat noted that no further inaccuracies had been identified since December 2022.

Family Procedure (Amendment) Rules 2023

5. MoJ Legal reported that the Family Procedure (Amendment) Rules 2023 had been laid before Parliament on 23 January 2023. The bulk of the provisions come into force on 6 April 2023, with those relating to the removal of procedure for consent to marriage coming into force on 27 February 2023.

Practice Direction Update No.1 of 2023

6. MoJ Legal confirmed that Practice Direction Update No. 1 of 2023 had been signed by both the President of the Family Division ('the President') and Lord Bellamy. The provisions will come into force at various times, as listed in the Update itself.

Independent Domestic Violence Advisers and Independent Sexual Violence Advisers

7. MoJ Policy confirmed that the relevant changes, as discussed by the Committee in previous meetings, are due to come into force on 6 April 2023 as part of the Family Procedure (Amendment) Rules 2023.
8. The Domestic Abuse Working Group is preparing a short guidance note to accompany the changes and aim to have it finalised alongside the changes to the Rules.

Practice Direction 36ZA – Family Law Act 1996 Police Notification

MoJ Policy gave an update on the exercise the Home Office are currently undertaking to map notification processes from courts to the police across a range of civil orders in the

VAWG space, as the first step towards identifying a potential longer-term solution. The next update will be provided at the June FPRC meeting.

Action Point 2: MoJ Policy to bring a substantive verbal update to the Committee's June 2023 meeting.

Voice of the Child

9. Mrs Justice Knowles confirmed that the Nuffield Family Justice Observatory (NFJO) are developing of video material to give children and young people information about how court processes work. Once finalised the material will be hosted on the Family Justice Young People's Board (FJYPB) website.

Action Point 3: Secretariat to schedule a substantive update from Mrs Justice Knowles on the Voice of the Child for the Committee's July 2023 meeting.

Deed Poll Name Changes

10. MoJ Policy confirmed that implementation of the relevant changes would be delayed until a review into the fee structure of applications to change a child's name by enrolled deed had been completed. MoJ Policy also noted that an article outlining the planned new procedure would be published on the Judiciary's webpages in the near future.

Action Point 4: Secretariat to schedule a further update on the issue for the Committee's April 2023 meeting.

Action Point 5: Secretariat to circulate relevant article to Committee members for reference.

Service of Orders at Refuges

11. MoJ Policy reported that the Domestic Abuse Working Group had considered the issues involved and had provisionally agreed an approach to making the relevant changes to the Family Procedure Rules ('the Rules'), but had also decided to await the President's judgment in an ongoing case in the Family Division of the High Court before taking any substantive steps.

Action Point 6: Secretariat to schedule a progress update on the issue for the Committee's April 2023 meeting.

Fast Track Working Group update

12. MoJ Policy reported that the Fast Track Working Group met in the week commencing 30 January 2023 to discuss the issues involved. A paper will be provided at the next Committee meeting.

Action Point 7: Item to return to the Committee for a substantive update and discussion in March 2023.

Case Management and Intimate Images

13. MoJ Policy reported that the Domestic Abuse Working Group met to discuss options for amending the Rules and Practice Directions in January 2023 and that they will continue to discuss potential amendments with a view to updating the Committee further in March 2023.

14. MoJ Policy advised that the timeframe for delivery is expected around July 2023 pending resource capacity and other priority work.

Action Point 8: Secretariat to schedule a further update on the issue for the Committee's March 2023 meeting.

Priorities Table and PD Updates

15. The Committee discussed the Priorities Table, both in the context of ensuring it is fit for publication and to ascertain whether any changes might need to be made.

16. As a result of the discussion, the timelines for some existing priorities were amended. It was agreed that some items currently on the table should be removed, albeit they will be held on a separate list, to potentially be revived if and when Committee and MoJ resources allow.

Action Point 9: Secretariat to update the Priorities Table to reflect the Committee's feedback.

STANDING ITEMS

Domestic Abuse Act Implementation

Cross-examination – Qualified Legal Representatives Update

17. MoJ Policy gave an update on the operation of the Qualified Legal Representative (QLR) system and noted that the feedback received from courts so far had been mixed, with some areas recording positive experiences and others noting that there were often lengthy waiting times before they were able to secure a QLR. HMCTS confirmed details about the content of staff job cards setting out procedures for contacting QLRs.

18. The Committee reflected that very few Financial Remedy practitioners seemed to have signed up to be QLRs so far.

Action Point 10: MoJ Policy to explore whether they can provide any figures on how many QLRs are Financial Remedy practitioners.

Action Point 11: MoJ Policy to explore training opportunities to ensure robust training.

Domestic Abuse Protection Orders

19. MoJ Policy gave an update on the next steps for this work and the plans for evaluating the planned pilot.

Online Procedure Rule Committee

20. MoJ Policy noted that recruitment campaigns for the Online Procedure Rule Committee members were currently in progress and that whilst this progressed the 'shadow Committee' would be meeting before the Committee's March 2023 meeting to make progress on the more pressing issues.

Action Point 12: MoJ Policy to give another update at the March meeting.

SUBSTANTIVE ITEMS

Private Law Early Resolution Working Group

21. MoJ Policy introduced the item and thanked the Committee's Early Resolution Working Group for its work on the consultation paper. The Committee gave feedback and suggested small amendments to the consultation paper. The Committee agreed that the consultation paper should be issued after the wider proposed Government consultation was issued. The Committee agreed sequencing was important, with the Government consultation being issued first, followed by the FPRC consultation, and that the two documents would complement each other. The Committee also agreed that the Committee's consultation should be a public consultation on its webpages, rather than a targeted stakeholder consultation, and that it should last for 8 weeks.
22. Members were particularly interested in the 'Single Lawyer Models' and 'Early Neutral Evaluation', which are referred to briefly in the consultation paper and in relation to which a paper had been submitted to the Committee (to be considered under AoB). The Committee agreed that it would want to progress this work and that following a substantive discussion at a future meeting it should be added to the Priorities Table.

Action Point 13: A new Working Group to consider the issue should be established, with Mr Justice Peel as the Chair.

Action Point 14: Members who are interested in joining the new Working Group should make themselves known to the Secretariat as soon as possible.

Action Point 15: Secretariat to schedule a substantive item on Single Lawyer Models at the April or May 2023 meeting, with an explanatory paper to be provided by the new Working Group.

Temporary Modifications made following Covid-19

23. MoJ Policy introduced the item and outlined three options for next steps in relation to the flexibilities introduced in Practice Direction 36Y given that it is due to expire in April 2023.
24. Members felt it would be useful to understand which models are currently being used in different areas under Practice Direction 36Y.

Action Point 16: MoJ Policy to circulate list of the models being used under Practice Direction 36Y in different areas.

25. The Committee favoured replacing Practice Direction 36Y with a new Practice Direction that maintained the substance of the flexibilities, but introduced a new rationale for them given that the pandemic was no longer an immediate consideration.
26. Members also noted the need for a robust evaluation before making decisions about making provisions permanent. Due to this and the desire to ensure work on Practice Direction 36Y kept pace with the activity around the Private Law 'pathfinder' Pilots members agreed that replacement provisions should last until February 2025.

Action Point 17: MoJ Legal to prepare a draft pilot Practice Direction to replace Practice Direction 36Y, with an expiry date of February 2025.

Action Point 18: Secretariat to schedule an item to consider the proposed changes at the March 2023 meeting.

Action Point 19: Any members who have suggestions for what should be the stated purpose of the new Pilot Practice Direction to send them to MoJ Legal.

Mediation Vouchers

27. MoJ Policy gave an update on the uptake of the Mediation Voucher Scheme. The Committee agreed that PD36V should be extended for a further two-year period.

Action Point 20: Secretariat to schedule an item on the issue for the Committee's February 2024 meeting.

PD27A/ e-bundles

28. MoJ Legal introduced the item and outlined a number of options for amending Practice Direction 27A so that it properly reflects the existence of other guidance on e-bundles.

29. The Committee discussed the options, but agreed to instead consider amendments to paragraph 5.3 of PD27A.

Action Point 21: Secretariat schedule an item on the issue for the Committee's April 2023 meeting.

Action Point 22: Members who have suggestions for addressing this work to send them to MoJ Legal.

Parental Responsibility (Jade's Law)

30. MoJ Policy introduced the item and noted that it stemmed from a Westminster Hall debate in November 2022 about a petition which proposed the automatic suspension of Parental Responsibility in cases where one parent murders the other. The Committee noted that any such automatic suspension would require primary legislation. The Committee was invited to consider any procedural changes which could expedite the progress of any applications made in relation to children in such cases.

31. The Committee agreed that this type of situation could cut across the most serious public and private law cases, so work should be progressed on the matter.

32. Members agreed that one option could be for this type of case to be initially allocated for consideration by a High Court Judge [in the family court. The Committee noted that there may be that there are cases in the system that could be suitable vehicles for a judgment outlining potential changes in approach.

Action Point 22: Secretariat to schedule an item on the issue for the Committee's May 2023 meeting.

PD41D – public law online – mandating use by legal representatives

33. The Committee agreed with the changes that would amend PD41D to mandate the use of the online service by legal representatives. The Committee noted that it was currently unclear whether a position statement and a bundle must be uploaded to the online service, or could be filed by another means. The current drafting of Practice Direction 27A (bundles) added to the confusion and members agreed it needed to be modernised. The Committee also discussed concerns about whether bundles generated using certain third-party software could be uploaded to the online service.

Action Point 23: HMCTS to clarify the position regarding bundles created using third-party software.

Action Point 24: MoJ, with Committee members, to consider whether PD amendments are needed to clarify the need to upload bundles to the online service.

Open Meeting Feedback

34. The Secretariat reported that the feedback to the survey they had circulated following the November 2022 Open Meeting had been broadly positive, although some attendees felt that sharing the papers in full might help to provide them with additional context.
35. The Committee discussed how to make future open meetings easier to follow and whilst members felt there may be sensitivities involved with sharing the full papers they agreed that more could be done to highlight previous sets of minutes to attendees in advance and provide additional context to the items on the agenda.

Action Point 25: Secretariat to share minutes for the three meetings that proceed future open meetings in advance.

Action Point 26: Secretariat to consider how to provide greater context about the items under discussion to future open meeting attendees.

Action Point 27: Secretariat to schedule item on the issue for the Committee's June 2023 meeting.

All Day Meeting Feedback

36. The Secretariat confirmed that the majority of respondents to their survey had found the all-day meeting, held in October 2022 to be useful. Respondents found that the extended meeting time was useful for considering items in greater depth, but also noted that additional consideration could be given to wellbeing, such as making provision for more breaks due to the longer running time.

Action Point 28: Secretariat to schedule the next full day meeting for October 2023.

ADDITIONAL ITEMS

Other Procedure Rule Committee

37. The Secretariat had liaised with the secretariats of the other rule committees in advance of the meeting, but no issues had been raised.

Forms Update

38. HMCTS noted the proposed changes to the FL401 and FL451 forms. The Committee approved the changes.
39. HMCTS mentioned that currently there was no reference to recording gender on the FL401 form, but there is on other forms, and asked for the Committee's view on whether this was a deliberate or accidental omission. The Committee were unsure but asked for officials to ascertain what the situation was in other jurisdictions.

Action Point 29: The Secretariat and HMCTS to discuss what other Rule Committees are doing in regard to including questions about gender on forms.

FPRC Working Groups

40. The Committee noted that some minor changes were needed to the membership of various groups and that the new Working Group on Single Lawyer Models should be added.

Action Point 30: Secretariat to update Her Honour Judge Suh's title so that it is consistent across all Working Groups.

Action Point 31: Secretariat to add the new Single Lawyer Models group to the Working Group list.

March 2023 Agenda

41. The Secretariat noted that they will update the draft Agenda so that it reflects the discussions that took place in the February 2023 meeting. Committee agree for the next meeting to start at 11 o'clock.

Any Other Business

Publication of Committee Materials

42. Mr Justice Mostyn had contacted Mrs Justice Theis to suggest that the report from the Costs Working Group regarding possible limits on legal fees, which was discussed at the December 2022 meeting, should be published.
43. Members felt that the Committee's discussions did benefit from keeping its considerations privileged and that reversing this in relation to previously prepared materials now may be unfair to members who weren't expecting their views to be made public, but that it would be useful to consider whether publishing materials would be appropriate for future products.

Action Point 32: Mrs Justice Theis to notify Mr Justice Mostyn of the Committee's decision.

Chairing

44. The Committee thanked Mrs Justice Theis for her work on the Committee and her leadership during her time as Chair.

Date of Next Meeting

45. The next meeting will be held on 6 March 2023, starting at 11am. The meeting will take place in person and remotely via MS Teams.