



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**In QB1M, Royal Courts of Justice**  
**and remotely via Microsoft Teams**  
**At 11.00 a.m. on Monday 3 April 2023**

**Present:**

<b>Sir Andrew McFarlane</b>	President of the Family Division
<b>Lord Justice Baker</b>	Court of Appeal Judge
<b>Mr Justice Peel</b>	High Court Judge
<b>Her Honour Judge Raeside</b>	Circuit Judge
<b>His Honour Judge Godwin</b>	Circuit Judge - Judicial member for Wales
<b>District Judge Foss</b>	District Judge
<b>District Judge Branston</b>	District Judge
<b>District Judge Birk</b>	District Judge
<b>Michael Seath</b>	Justices' Clerk
<b>Poonam Bhari</b>	Barrister
<b>Rhys Taylor</b>	Barrister
<b>Melanie Carew</b>	Cafcass
<b>Robert Edwards</b>	Cafcass Cymru
<b>Graeme Fraser</b>	Solicitor
<b>Bill Turner</b>	Lay Member

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1** The Committee welcomed District Judge Foss as a new member of the Committee to take over as the District Judge member from Her Honour Judge Suh.
- 1.2** The President thanked HHJ Suh for her contribution to the work of the Committee since joining on 1 August 2017. HHJ Suh has contributed to a variety of FPRC Working Groups and members provided their thanks and appreciation for her contribution to the work of the Committee.
- 1.3** Apologies were received from Mr Justice Keehan, Mrs Justice Knowles, Her Honour Judge Suh, Fiona James and Tony McGovern.

## **MINUTES OF THE LAST MEETING: MARCH 2023**

- 2.1 The Committee approved the minutes from the March 2023 meeting.

**ACTION POINT 1: Secretariat to publish the March 2023 minutes on the FPRC webpage.**

## **ACTIONS LOG**

- 3.1 MoJ Policy reported that 24 actions were recorded from the March meeting.

## **MATTERS ARISING**

### **Web Inaccuracies**

- 4.1 MoJ Policy reported that further work was required to ascertain whether any inaccuracies had been raised since this issue was reported on at the March meeting.

### **Disclosure from Family Proceedings to Home Office and Immigration Tribunals**

- 4.2 MoJ Policy informed the Committee that they are awaiting an update from Home Office and will report back to the Committee when there are any developments.

**ACTION POINT 2: MoJ Policy to report back to the Committee on receipt of any updates from Home Office.**

### **Deed Poll Name Changes**

- 4.3 MoJ Policy provided an update on the proposed reforms to the process for enrolling a deed poll to change a child's name in the High Court, which would involve introducing an earlier step of seeking a specific issue order from the family court. The Committee previously expressed ongoing concern about the level of the two court fees this would involve, compared to the single fee for enrolling a deed poll for the change of name of an adult. MoJ Policy said that the review of fees that would address the Committee's concerns was due to be completed at the end of May, and an update would be provided following that. An article on the judicial intranet had been published on the reforms, together with reference material for the family judiciary.

**ACTION POINT 3: MoJ Policy to return to the Committee in June with an update.**

### **PD Update No. 2 of 2023**

- 4.4 MoJ Policy informed the Committee that PD Update No. 2 of 2023 has been signed by the President and Minister and the provisions are now in force.

### **Early Resolution: Government Consultation Update**

- 4.5 MoJ Policy confirmed that the Government consultation on supporting earlier resolution of private family law arrangements was published on 23 March and had received 70 responses

in the first week. MoJ Policy informed the Committee that the FPRC consultation on early resolution has also been published.

- 4.6 The President asked whether the FPRC consultation could be placed on the MoJ website alongside the Government white paper and whether a link could be placed in the white paper to cross-reference the FPRC consultation. The Chair asked for MoJ to look into this and to get back to the Chair.
- 4.7 The Committee asked for the FPRC consultation to be shared with them.

**ACTION POINT 4: MoJ Policy to look into whether the FPRC consultation could be placed alongside the Government white paper online.**

**ACTION POINT 5: MoJ Policy to look into whether a link could be placed in the white paper to the FPRC consultation; and to report back to the Acting Chair with an update.**

**ACTION POINT 6: MoJ Policy to share the FPRC consultation document with the FPRC members and stakeholders.**

### **Service of Orders at Refuges**

- 4.8 MoJ Policy informed the Committee that the Domestic Abuse Working Group held an initial discussion of the workstream and had provisionally agreed that the creation of a standalone rule would be the best way of addressing this issue. The Working Group had agreed to await the President's judgment in the case of Re: P before taking any substantive steps on the workstream. The President's judgment in the case has now been handed down and the Working Group discussed the issue on 22 March 2023.
- 4.9 MoJ Policy reported that the Working Group will now look at options to enable interim changes to be in place ahead of summer recess. This issue will return to the Committee in June. In addition, MoJ raised the potential for a standalone Rule, which the Committee may wish to consult on. This work will be taken forward by the Working Group once initial changes are in place.

**ACTION POINT 7: Item to return in June with updates and in July for decision.**

### **PRIORITIES TABLE AND PD UPDATES**

- 5.1 MoJ Policy reported that at the February and March meeting the Committee discussed items on the priorities table ahead of publication. The Committee agreed that they were content to sign off the updated priorities table for publication on the Committee's website alongside the minutes.

**ACTION POINT 8: The Priorities Table be published on the FPRC webpage.**

### **STANDING ITEMS**

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

- 6.1 MoJ Policy informed the Committee of the progress of the OPRC. It was highlighted that the appointment for the non-judicial members is progressing and the team aim to have all

appointments confirmed in April. Officials have a preparatory meeting with the judicial members on 3 April where they hope to agree plans for the first few months.

**ACTION POINT 9: Item on OPRC to return to the Committee in May for a detailed update.**

## **SUBSTANTIVE ITEMS**

### **DOMESTIC ABUSE PROTECTION ORDERS (DAPO)**

- 7.1** MoJ Policy invited the Committee to review a further version of the DAPO Pilot Practice Direction and agree the proposed consultation document and list of consultees.
- 7.2** The Committee asked whether the issue on boundaries and in particular the County of Gwent had been considered. MoJ Policy said that this issue had been agreed with reference to specific Police forces rather than County considerations. The courts which fall within the police force boundaries have been agreed in principle with the Senior Presiding Judge.
- 7.3** The Committee asked whether consideration could be given to including bailiff organisations within the consultation, in relation to the impact of service provisions on bailiffs, given the shortage of bailiffs and the out of hours service they provide. MoJ Policy agreed to look at whether enforcement officers could be included within the consultation. HMCTS agreed to provide the appropriate contacts.
- 7.4** The Committee asked MoJ to give consideration to the role Cafcass are expected to play in the appointment of a litigation friend. MoJ Policy clarified that the intention was not to involve Cafcass in this role. MoJ Policy agreed to include an additional question on this in the consultation.
- 7.5** The Committee asked whether paragraph 4 of the Consultation document could be amended to change 'senior judiciary' to 'experienced judiciary'.
- 7.6** The Committee considered the list of consultees and asked for the Children's Commissioner for Wales to be added to the list.
- 7.7** MoJ Policy reported the consultation is a targeted stakeholder exercise lasting 8 weeks. The intention is to provide a quick update in June or July with a substantive return to the Committee in October.
- 7.8** The Committee did not raise any objections to the recommendation not to proceed with a previously proposed amendment to FPR 6.5(2), as outlined in paper 7.

**ACTION POINT 10: MoJ Policy to consider if enforcement officer organisations could be included in the consultation.**

**ACTION POINT 11: MoJ Policy to include an additional question in the consultation on the provisions for appointment of a litigation friend and intentions not to involve Cafcass in this role.**

**ACTION POINT 12: MoJ Policy to amend the consultation paper to read 'experienced judiciary' rather than 'senior judiciary' and to add the Children's commissioner for Wales to the stakeholders list**

**ACTION POINT 13: Domestic Abuse Protection Orders to return in June for a brief update and then in October as a substantive item.**

## **PD27A/E-BUNDLES**

- 8.1** MoJ Legal provided an update in respect of the work undertaken following the February 2023 Committee meeting. Detailed consideration of FPR PD 27A has been undertaken and options were presented for modernising FPR PD27A. The Committee were asked to consider whether to insert in the relevant places cross-references to judicial Guidance on e-bundles or to amend PD27A to incorporate into it the content of the General Guidance on Electronic Court Bundles of 29.11.21.
- 8.2** The Committee were advised that MoJ Policy considered that the second option would be preferable as it will mean that all of the relevant procedural requirements in relation to electronic bundles can be found in one place (the PD), rather than the reader having to also cross-refer to judicial guidance.
- 8.3** Members of the Committee raised various additional practical issues in relation to court bundles, including local variances in practice and problems when one or more of the parties is acting in person. The Committee agreed that the issue was of importance owing to the problems that can arise in court, including slowing up the process, when bundles are not prepared properly.
- 8.4** Once the Committee has considered these matters at the June meeting, a timeline for next steps, including any consultation the Committee wishes to undertake, could be agreed upon, in light of the Committee's priorities.
- 8.5** It was agreed that the small group working with MoJ officials on this workstream should include a public law solicitor member.

**ACTION POINT 14: The team who considered PD27A to refine option 2 for the June meeting as per Committee's steer.**

**ACTION POINT 15: A policy paper to be prepared by the team who considered this issue to be presented for discussion at the June meeting highlighting issues raised in relation to bundles.**

**ACTION POINT 16: The Committee to suggest a volunteer public law solicitor to assist with this work**

## **ONLINE APPLICATION FOR AN ADOPTION ORDER: UPDATE AND PD PROVISION**

- 9.1** HMCTS discussed the system where post-placement order applications for an adoption order can be created and submitted to the court online. The procedure for this online system is underpinned by pilot Practice Direction 36ZB (PD36ZB) and that PD lists out the "early adopter" courts in which the system is in use. The Committee were asked to agree a permanent new PD41E to provide legal underpinning for the procedure under the online system. The online system will be kept under regular review and HMCTS will continue to have regular meetings with the Implementation Working Group and Project Board, where feedback on the digitalisation process will be taken forward and addressed. Feedback to the Committee will also be provided.
- 9.2** The Committee agreed that the new PD41E be taken forward for formal signature. PD41E, once finalised, will be submitted to the President of the Family Division and the Minister, in PD Update No.3 of 2023 in time for it to come into force on 18 May 2023.

**ACTION POINT 17: MoJ Policy and Legal to finalise PD41E and submit it to the President and the Minister for formal signing.**

## **SINGLE LAWYER MODELS**

- 10.1** The Committee were advised that the Working Group considering Single Lawyer Models had met once. Work on a draft proposal for a pilot scheme had begun, but the Working Group and Ministry of Justice require time to consider this further.
- 10.2** The Committee proposed that this item be added to the priorities table under tier 3 and to the October 2023 Committee meeting agenda.

**ACTION POINT 18: Secretariat to add this item to the Priorities Table under tier 3.**  
**ACTION POINT 19: Single Lawyer Models to return in October as a substantive item**

## **FORWARD PLANNING AND UPCOMING MEETINGS**

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

- 11.1** MoJ Policy informed the Committee that the Civil Procedure Rule Committee ("CPRC") have laid their latest SI which is part of their ongoing project to simplify the Civil Procedure Rules 1998 ("the CPR"). MoJ Policy will give detailed consideration to the CPR SI and will revert to the Committee if they consider there are any issues that would need to be raised as potentially relevant to the Family Procedure Rules 2010.

**ACTION POINT 20: Secretariat to give detailed consideration of the CPR SI and revert to the Committee as needs be.**

## **FORMS WORKING GROUP UPDATE**

- 12.1** MoJ Policy reported that the table of work reflects the issues discussed at the last next Forms Working Group meeting on 19 January 2023. The Secretariat will set up a Working Group meeting ahead of the next Committee meeting

**ACTION POINT 21: Secretariat to arrange a further meeting of the Forms Working Group.**

## **COMMITTEE WORKING GROUPS**

- 13.1** MoJ Policy reported that the table reflecting the current position on working groups has been amended. The Committee asked to add additional members to the Fast Track Working Group and the Forms Working Group.

**ACTION POINT 22: Secretariat to add the additional members to the Fast Track Working Group and the Forms Working Group.**

## **DRAFT MAY 2023 AGENDA**

- 14.1** The Committee were informed that the May 2023 agenda will be updated following this meeting.

## ANY OTHER BUSINESS

### 15.1 a) Deprivation of Liberty (DoL)

MoJ Policy advised that the Director at the Nuffield Family Justice Observatory (NFJO) wrote to the Acting Chair in March asking if the Committee may wish to consider amendments to procedures relating to applications for orders for deprivation of liberty of a child ("DoL").

15.2 The Committee agreed that a proposal that the C66 application form be amended slightly is a relatively straightforward task and that this exercise could be managed via the work of the Forms Working Group.

15.3 The Committee noted that other proposals were more complex and could potentially be outside the Committee's remit. The Committee raised the point that separate work looking at DoL is already in place and proposed that links could be made including waiting for conclusions from the DoL National Court review.

15.4 MoJ Policy pointed out that consideration of the Priorities Table and wider priorities will need to be given if the Committee is minded to take forward work on DoL. Also, further thought will need to be given to whether any proposed reforms are within the Committee's rule-making powers. It was noted that the Department for Education have the policy lead on secure accommodation in relation to DoL so would need to be involved with any proposed reforms.

**ACTION POINT 23: C66 amendment to be referred to the Forms WG.**

**ACTION POINT 24: Committee to consider whether further action is necessary in October once the DoL National Court review concludes.**

### b) Cape v Dring

15.5 The Committee discussed issues raised in Cape v Dring [2019] UKSC 38 regarding what documents people can obtain from the court once proceedings have concluded. Lady Hale made a particular request for the various rules committees to look into this point. The CPRC propose to take this forward alongside colleagues from the Committee. Lord Justice Bean will lead the CPRC sub-committee and has asked for volunteers from this Committee to join.

The Committee noted that the position on access to court documents could be very different in family proceedings to that in civil proceedings but agreed that it would be good to be involved with the CPRC's work in this area.

**ACTION POINT 25: Committee members to contact the Acting Chair if they would like to be part of the CPRC sub-Committee.**

## DATE OF NEXT MEETING

16.1 The next meeting will be held on Tuesday 9 May 2023 and will take place in person in QB2M, Royal Courts of Justice and remotely via MS Teams.

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