Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting
Friday 12th May 2023 (conducted remotely via video conference).

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)
Lord Justice Birss, Deputy Head of Civil Justice
Mr Justice Kerr
Mr Justice Trower
Master Cook
His Honour Judge Jarman KC
His Honour Judge Bird
District Judge Clarke
David Marshall
Isabel Hitching KC
Ben Roe
Virginia Jones
Ian Curtis-Nye

Apologies

Dr Anja Lansbergen-Mills (maternity leave - congratulations were conveyed); Tom Montagu-Smith KC (abroad on business); Mr Justice Swift (Item 3).

Item 1 Welcome from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, MR, Chair of the Civil Procedure Rule Committee (CPRC), was pleased to open the annual public meeting, extending a warm welcome to all in attendance and to the CPRC's newest members: Virginia Jones (solicitor member); Ben Roe (solicitor member) and Ian Curtis-Nye (member representing the lay advice sector).

2. Thanks were conveyed to everyone who supports CPRC activities voluntarily. Special thanks were given to Mr Justice Kerr whose term of office comes to an end in the summer. Kerr J has made a huge contribution to CPRC business since 2016. Some significant examples include the work he led reforming Part 39 in the context of open justice; Brexit preparations, the wholesale reform of the rules on Contempt, rapid work during the Pandemic and, over the past couple of years, his drive and determination chairing the s.2(7) Sub-Committee working to simplify the CPR. Thanks were also extended to Mr Justice Trower, for his leadership of the Fixed Recoverable Costs Sub-Committee, which has been meeting on an almost weekly basis over, at least, the last year. Master Dagnall, was also thanked for his continued support, in a co-opted capacity (either as chair or member) of various sub-committees; in particular, the Lacuna Sub-Committee and Housing Possession Sub-Committee.

3. Thanks were further extended to Carl Poole for running a dedicated and efficient secretariat. Because of this collective effort, the MR considered the work of the CPRC and its members to be in incredibly, "good heart".

4. The MR spoke of future reforms, focusing on the Digital Justice System (DJS) and the creation of the Online Procedure Rule Committee (OPRC) which is being established pursuant to the Judicial Review and Courts Act 2022. He set out the OPRC's statutory membership, scope (being multi-jurisdictional across Civil, Family and Tribunals) and the anticipated timescale for its inaugural meeting. The OPRC will be chaired by the MR. He also observed a level of misapprehension about the new OPRC and addressed those

concerns, remarking that the OPRC will work very differently from the traditional rule committees and will need to take time before it has powers to make rules. Close working with the current rule committees will be essential and wide-ranging consultation is inevitable. In essence it is the rule committee for the DJS, which is transformational because it is intended to introduce digital procedures which do not currently exist in the current court processes, such as pre-action and the third party pre-action space (for example Ombudsmen). The OPRC will not take over the CPRC, it will work collaboratively with the CPRC.

5. Lord Justice Birss observed that the establishment of the OPRC represents an exciting time and he is very grateful for the MR's support.

6. The MR handed the chair to Birss LJ, Deputy Head of Civil Justice, but remained in the meeting.

Minutes

7. The minutes of the meeting on 31st March 2023 were **AGREED.**

Introductions

8. Steve Jarman (MoJ) was introduced. Mr Jarman is the new Deputy Director for Civil Justice and Law Policy at MoJ; although he attends Civil Justice Council meetings, it is not customary to attend the CPRC meetings because a senior member of his team (Amrita Dhaliwal) represents MoJ Policy.

Action Log and any matters arising not covered by later items

9. The following topics were duly **NOTED:**

- **AL(22)29 – Domestic Abuse Protection Orders (DAPO) Pilot PD.** This follows the update at the last CPRC (Item 2 in minutes of 31st March 2023 meeting), to confirm that the Family Procedure Rule Committee's (FPRC) focused consultation was issued on 5th April and is intended to also gain comments from civil court users. The deadline for responses is 8th June 2023, to be sent to the FPRC Secretariat. The indicative timetable, subject to the consultation, is for the draft pilot PDs (for both civil and family) and any revisions to court forms to be considered and approved in time for an anticipated implementation of April 2024.

- **AL(22)63 – Automatic Referral to Mediation.** The MoJ consultation closed in October 2022 and since then MoJ have been reviewing the responses and considering the development of draft proposals. As yet, the Government's response has not yet been published. Subject to that, officials expect to commence work with the CPRC sub-committee (comprising District Judge Clarke and Ben Roe, plus additional co-opted member/s) in due course. Once that work is underway, further reports to the CPRC will be programmed in.

- **AL(22)103 – HMCTS estate reform: housekeeping amendments.** A suite of "housekeeping" amendments needed in consequence of a business change within HMCTS (to establish a National Civil Business Centre (NCBC)) is expected to require an ad-hoc PD Update being promulgated in the coming weeks, to reflect these changes in the CPR.

- **AL(22)121 – Open Justice: UKSC judgement Cape Holdings-v-Dring**. A cross-jurisdictional (Civil, Family and potentially Tribunals) working group is being established to consider the points raised by this Supreme Court judgment, regarding

access to court documents by non-parties. It will be chaired by a Lord Justice of Appeal.

This topic also has a wide-ranging policy and operational context beyond pure rule-making considerations and thus will require work across various teams. For example, the MoJ's **Open Justice Call for Evidence** (CfE) was published on Thursday 11th May https://www.gov.uk/government/consultations/open-justice-the-way-forward.) The CfE covers the following topics: listings; remote observation, livestreaming, and broadcasting; the single justice procedure; publication of judgments and sentencing remarks; access to court and tribunal documents; data access and reuse (including Artificial Intelligence); public legal education. The deadline for responses is 7th September. MoJ are keen to encourage as diverse and wide range of responses as possible.

- **AL(23)133 CPR 5.3 (e-signatures)** – this was last before the CPRC in February this year, following initial consideration by the Industry Working Group on Electronic Execution of Documents (co-chaired by Fraser J and Law Commissioner Prof Sarah Green). A drafting proposal has been developed and is almost ready for consultation; the scope of that consultation is to be determined, but expected to be published online in due course. The matter will return to the CPRC following completion of the consultation process.

- **Civil Justice Council's (CJC) Costs Review.** The final report was published (on the CJC website) on Wednesday 10th May. The working group was set up in April 2022 to consider four aspects of the civil costs regime. The group was chaired by Birss LJ and tasked to review and make recommendations related to: (i) guideline hourly rate (ii) costs budgeting (iii) pre-action and digitisation (iv) consequences of the extension of fixed recoverable costs. Further work required on these topics is likely, such as introducing a "budget light" pilot scheme. However, next steps will be considered by the CJC soon. The CPRC (and MoJ) will also consider in due course.

  THANKS were expressed to everyone involved but particularly so to His Honour Judge Bird, the CPRC member of the working group.

Item 3 Judicial Review CPR(23)23

10. Liam Walsh (MoJ) was welcomed to the meeting and presented the matter.

11. The proposal is to amend the CPR to include a provision for a claimant in Judicial Review (JR) proceedings to file a Reply to the defendant's Acknowledgement of Service (AOS) and to introduce a seven-day deadline for the Reply to be submitted; with a condition that any Reply be limited to three-pages in length.

12. The proposal is an outstanding procedural reform flowing from the 2020/21 Independent Review of Administrative Law (IRAL) chaired by Lord Faulks KC. The government's 2021 consultation sought views on inviting the CPRC to include a formal provision for this additional procedural step which was supported by 80% of respondents.

13. It was **NOTED** that the President of the King's Bench Division and Mr Justice Swift (Judge in charge of the Administrative Court) had been consulted and were broadly supportive. Stating that, under the current provisions, claimants are often uncertain when to file a Reply and whether it will be considered by the court. Clarification of the position would, therefore, be helpful in bringing greater certainty to the process. However, restrictions are needed to ensure that claims are not unduly delayed and to avoid a proliferation of unnecessary documents. In particular, making clear that a Reply is not necessary in every

case and that claimants should consider carefully whether one is needed, as is set out in the current Administrative Court Guide.

14. A discussion ensued which endorsed these points. Overall, the view was to guard against any procedural steps which may slow down the JR process. MoJ's view was that the proposed seven-day time limit was intended to serve as a control measure in this regard.

15. The question of whether it may be helpful to give examples of situations where a Reply might be appropriate, and if so, where, was also raised. This will need to be considered as part of the drafting exercise. A further point of detail to be considered, is that, currently, there is no provision that requires the party serving an AoS to tell the court when and how they did so and, therefore, when the countdown for filing a Reply begins.

16. His Honour Judge Jarman KC was concerned with the impact on the courts due to the likelihood of additional, unnecessary, Replies being submitted, if the rules provided for Replies in the way proposed. He considered there to be a risk of additional time and delayed throughput of work. MoJ reiterated the policy intention that a Reply was not required in every case and would consider how best to reflect this in the drafting.

17. It was **RESOLVED** to **agree in principle, subject to final drafting** to:

    - amend the CPR to include a provision which provides for a Judicial Review (JR) claimant to file a Reply to the defendant's AOS; any such Reply to be filed within a seven-day deadline and limited to three-pages;

    - The following points are to be considered as part of the drafting exercise, with input from Swift J and HHJ Jarman KC:
        - a Reply was not required in every case;
        - whether examples of situations where a Reply might be appropriate, could be provided, and if so how (for example via guidance);
        - a provision that requires the party serving an AoS to tell the court when and how they did so, so that it is clear when the seven-day time limit for filing a Reply commenced.

18. **Actions:** (i) In consultation with Swift J and HHJ Jarman KC, MoJ to produce final drafting for consideration by the CPRC (ii) matter to return to CPRC when ready (provisionally for the 6th October 2023 meeting) (iii) MoJ/HMCTS to consider the operational implications and revert to the CPRC (in consultation with the Secretariat) as to any consequential amendments to court forms etc.

Item 4 Section 2(7) Sub-Committee:

19. Mr Justice Kerr presented the matter. The item comprised two elements. Each was discussed in turn.

Part 23 (General rules about applications for court orders) – post consultation proposals CPR(23)24

20. It was explained that this was previously discussed at the last meeting on 31st March 2023. Thanks were reiterated to the six (three public and three internal) respondents to the public consultation which commenced on 13th January 2023 and closed on 24th February 2023. Various unresolved points from the 31st March meeting were remitted to the sub-committee, which have now been addressed.

21. A further action from the last meeting was to consult the Registrar of Government Stock to see if provisions in PD 23B, concerning applications in proceedings under s.55 of the National Debt Act 1870 etc were still needed. No comments have been received. It was,

therefore, proposed to delete that part of the PD in the interests of brevity. If such applications were required, the intention was that the general provisions of CPR Part 8 would be engaged.

22. The discussion centred on the reformed rule 23.8 (applications which may be decided without a hearing) which contains new sub rules (2), (3), (4) and (5). Kerr J explained that the amendments should also be aligned in rule 3.3. The aim of the amendments are to provide certainty and ensure Article 6 compliance regarding access to justice. District Judge Clerk and HHJ Bird raised various points of detail. The Chair raised whether the matter should be deferred to the next meeting. However, further discussion led to a drafting solution being formulated in committee. In essence, by revising rule 23.8(4) to accommodate the word "considered" and to remove, "(a)" from "an application under paragraph 3(a) shall…". This led to a discussion concerning the retention of the "(a)" of "5(a)" in rule 3.3 as to whether it needed retaining or not. The discussion concluded with a view that it was unlikely to be material in this particular context (as it was with the removal of "(a)" from "3(a)" in rule 23.8(4)). However, it should be sense checked as part of the final drafting process.

23. It was **RESOLVED** to **APPROVE, subject to the above points and final drafting**:

- the reformed **Part 23 (General rules about applications for court orders)** and supplementing PDs, as tabled, except that:

- **rule 23.8(4) is revised** to read: "An application under paragraph (3) shall be considered at an oral hearing unless the court decides and states in an order that the application is totally without merit.";

- The **definition of a "hearing" in rule 23.1 is amended** and in consequence, so too is **rule 39.1 amended** so that the wording is the same in both (this endorses the resolution at the last meeting on 31st March 2023) to read: "'hearing' means the occasion on which ~~the making of~~ any interim or final decision is or may be made by a judge, at which a person is, or has a right to be, heard in person, by telephone, by video or by any other means which permits simultaneous communication";

- the text forming the last part of PD 23B is deleted (and not accommodated elsewhere in the CPR). The result of this is that **PD 23B is dispensed with**, because the first part of it is to be a new PD 49G (as agreed at the 31st March meeting);

- **rule 3.3** is amended, as tabled, except that rule 3.3(7) **is revised** to read: "An application under paragraph (5)(a) shall be considered at an oral hearing unless the court decides and states in an order that the application is totally without merit.".

Part 24 (Summary Judgment) – post consultation proposals CPR(23)25

24. The Part 24 reforms were first before the CPRC at the 3rd February meeting (and agreed in principle, subject to consultation).

25. The reforms are not intended to alter the substantive law in any way or current practice. In summary, the amendments consist of the revocation of PD24 (importing some provisions into the rule) and some re-ordering of the current provisions within the exiting Part 24, to improve usability. Other changes consist of: removing reference to specific enactments (because of changes in primary legislation), cross referencing and signposting which is no longer necessary and more concisely expressed text. It may be that authors of the Court Guides adopt guidance previously in the PD.

26. Although the rule itself is lengthened by the incorporation of some PD provisions, the overall length of the reformed Part 24 is reduced in length (by around 58%) by virtue of there being no supplementing PD and this was duly **NOTED**.

27. No public responses were received during the consultation period (which closed on 28th April 2024). However, Chief Chancery Master Shuman raised a concern related to summary judgment in claims for specific performance for the sale etc of land; their special status are preserved by the new rules 24.4(3) and 24.5(2). The Chancery Masters regard the continuation of these timing carve outs as essential. The only point which has arisen is that the abandonment of the PD (moving the weight of what was para 7 of the PD into Part 24 itself) presents an issue on the timing for any respondent's evidence. Historically this point has been dealt with by an explanatory note at the end of para 7.3 of the PD which the reforms remove. Trower J explained the position. Essentially, there needs to be a further carve out so that rule 24.5(3) does not apply to claims for specific performance for the sale etc of land, because these applications are always intrinsically very urgent and there is rarely a genuine defence. A respondent's right to rely on evidence, should they chose to do, is preserved by 24.5(1)(f) and the flexibility of no specific time period for the respondent's evidence is appropriate in the circumstances. It was suggested that the opening words of 24.5(3) could read: "If a party wishes to rely on written evidence at the hearing other than in a claim falling within rule 24.4(3), they must file and serve copies of such evidence on every other party at least …" Isabel Hitching KC thanked CCM Shuman and indicated the sub-committee's support.

28. It was **RESOLVED** to **APPROVE, subject to the above points and final drafting**:

    - the reformed **Part 24 (Summary Judgment)**, as tabled, except that **rule 24.5(3) is revised** to read: "If a party wishes to rely on written evidence at the hearing, other than in a claim falling within rule 24.4(3), they must file and serve copies of such evidence on every other party at least: [etc]";

    - PD 24 (The summary disposal of claims) is dispensed with.

29. **Actions:** In consultation with Kerr J, Drafting Lawyers and Secretariat to incorporate the reforms into the summer CPR Update, due to be published in July as part of the October in-force cycle

Item 5 PD 49A Applications under the Companies Acts etc CPR(23)26

30. Mr Justice Trower presented the matter, which had been prepared in consultation with Chief Insolvency and Companies Court (ICC) Judge Briggs and duly discussed.

31. It was explained that PD49A was introduced before the creation of the Business and Property Courts (B&PCs), i.e. before PD 57AA was introduced and before the introduction of electronic filing. It has not been fully reviewed since. This means there are parts of it which are no longer relevant and it, therefore, needs updating. However, it was acknowledged that a wholesale review will take some time and require a sub-committee, comprising co-opted members and consideration of the interplay and compatibility with the Insolvency Rules.

32. Nevertheless, one modest amendment was particularly pressing. The amendment intends to address one of the significant practical ramifications of the prescriptive way in which PD 49A para 5(1) is drafted, i.e. that claims relating to the same matter can arise both under the Companies legislation and pursuant to causes of action to which PD 49A does not apply. Where that occurs, it has been necessary for litigants to issue more than one originating process (sometimes in two separate lists in the B&PCs: the Business List and Companies List) to deal with the same substantive matter. This has led to administrative complexity, unnecessary delay and unjustified additional cost. The

proposed drafting solution allows for Part 7 claims, meaning that the normal basis for determining whether to proceed under Part 7 or Part 8 will apply.

33. It was **NOTED** that the ICC User Committee supports the amendment and the Chancellor of the High Court have approved the suggested change.

34. It was **RESOLVED** to:

- amend PD 49A para 5(1) thus:

  "Proceedings to which this practice direction applies may be started by a Part 7 claim or a Part 8 Claim form, as appropriate……."..

- make any consequential amendments, such as PD 49A para 16 (takeovers – enforcement by the court) to be deleted as it does no more than provide for the alternative means of starting proceedings in the specific context of claims under s.995 Companies Act 2006.

- **Establish a sub-committee to conduct a wholesale review of PD49A to bring it up to date**. Membership to comprise: Trower J and, subject to consultation with the Chancellor, the Chief ICC Judge and two or three co-opted members, one of whom may be from the Insolvency Rules Committee.

35. **Actions:** (i) Drafting Lawyers/Secretariat to incorporate the amendments into the summer CPR Update, due to be published in July as part of the October in-force cycle (ii) Trower J to update the Chancellor and agree co-opted members, in liaison with the Chair and Secretariat (iii) sub-committee to advise Secretariat when the matter is ready to return.

Item 6 Lacuna Sub-Committee (LSC) CPR(23)27

36. Master Dagnall presented the matter, which comprised the following topics, which were discussed:

37. **LSC2023/2** concerns the Court of Appeal judgment in R(Isah) v Secretary of State [2023] EWCA Civ 268 in which the CPRC is invited to consider the matter. The potential lacuna being that the rules only allow for the judge who orders the summary assessment of costs to take place, to carry it out. Following some limited and informal (internal) consultation, the LSC consider that amendments are appropriate in principle and to provide flexibility. This was **AGREED.** However, it was acknowledged that the matter may be complex with points of principle arising. The Chair sought volunteers to consider the matter, but in the alternative, the matter would be referred to the Costs Sub-Committee to consider when time allowed. **Post Meeting Note:** Ian Curtis-Nye to consider in the first instance and report back to the CPRC when ready.

38. **LSC2023/3** concerns security for costs and the Hague Convention. Tom Montagu-Smith KC had intended to present it. Given his unplanned absence, it was proposed to defer the matter to the next meeting and this was **AGREED. Action:** Secretariat to allocate time in June.

39. **LSC2023/4** concerns the Court of Appeal judgment in Owen v Black Horse Limited [2023] EWCA Civ 325 and claimants who attends a small claim hearing by legal representative only. Following careful consideration, the LSC does not propose any amendments and considers that the decision makes the law clear. It was **RESOLVED** to (i) **NOTE** the judgment and the LSC's report (ii) **REFER** the matter to the s.2(7) Sub-Committee to consider when it reaches CPR Part 27 (possibly later in 2023) so as to consider some clarification within the rules. Additionally, there may also be merit in wider consideration to the permutations occasioned by CPR 27.9 (non-attendance by parties at a final hearing

in the fast track) and possible consideration by the Civil Justice Council if there are wider policy issues at play.

Item 7 Public Question Forum CPR(23)28

40. Thanks were expressed to everyone who submitted questions, which were duly answered (as set out below).

	Question	Answer
1	**Part 36 Offers** Keeping in mind the seemingly different approaches taken in *AF v BG [2009] EWCA Civ 757* (in which the court held that the defendant's offer to settle the counterclaim constituted a claimant's Part 36 offer, and it made no difference that the counterclaim had not yet been pleaded because a Part 36 offer could be made at any time, including before proceedings were commenced), *Hertel and another v Saunders and another [2018] EWCA Civ 1831* (in which the Court of Appeal upheld a judgment of Morgan J where he concluded that an offer relating to a proposed amendment to a claim was not a valid Part 36 offer), *Calonne Construction Ltd v Dawnus Southern Ltd [2019] EWCA Civ 754* (in which the court confirmed the validity of a Part 36 offer made by the defendant which covered the claim and an as-yet unpleaded counterclaim) and *Warburton v Chief Constable of Avon and Somerset [2023] EWCA Civ 209* (in which the Court of Appeal held that a defendant's Part 36 offer to settle "the whole of the claim" should be construed as relating only to the pleaded claims and not the additional claims set out in the claimant's draft amended particulars of claim): can the CPR be amended to clarify whether a Part 36 offer may apply to an as yet unpleaded claim or counterclaim after proceedings have been commenced?	Birss LJ explained that the caselaw suggests there is room for improvement within the rules. If the issue is one of clarification, then it should be something which can be considered by the s.2(7) Sub-Committee, as part of its review of Part 36. However, if there are wider issues and policy implications, then it will need to be added to the Cost Sub-Committee's work programme to be considered in due course.
2	**Open Justice** Does the CPRC intend to address the questions of principle and practice raised in *Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38* (as urged by Lady Hale), and as repeated by Nicklin J in *Hayden v Associated Newspapers Ltd [2022] EWHC 2693*, in which	Please see the update under the Action Log reports under Item 2 of the minutes (above).

	he said that he could: "only echo the urging by the Supreme Court [in *Dring*] that there are important questions of principle and practice relating to what records are kept by the Court and access to them in the interests of open justice" (paragraph 68, judgment). In particular, does the CPRC intend to provide a definition of "records of the court"? In *Dring*, the Supreme Court interpreted "records of the court" as meaning "those documents and records which the court itself keeps for its own purposes", emphasising that it could not refer to "every single document generated in connection with a case and filed, lodged or kept for the time being at court" (*Dring*, paragraph 23). However, the post-*Dring* introduction of CE-File has potentially generated additional complications, since, as Nicklin J pointed out, there is no practical limit to the documents that can be retained electronically, and it is common for electronic trial bundles to be uploaded to CE-File. Those will contain not only documents falling within PD 5A.4.2A, but also items such as witness evidence for trial, expert reports and the key documents in the claim. So, how should documents that amount to "records of the court" be identified?	
3	**County Court and First Tier Tribunals** It would be helpful to know the current status of this pilot scheme for unopposed LTA 1954 lease renewal claims, and if any further developments are anticipated.	Birss LJ advised that work is currently ongoing with the aim of introducing a new pilot for the flexible deployment of Judges in the County Court and Property Tribunal. Please see the minutes of the 3rd March 2023 CPRC meeting (Item 7) for further information: CPRC: 3 February 2023 minutes (publishing.service.gov.uk) Currently there is no formal pilot under the CPR.
4	**Disclosure** PD 57AD took effect on 1 October 2022, implementing on a permanent basis the procedures that previously operated under the Disclosure Pilot Scheme (PD 51U). • Are there any plans to consider extending the ambit of PD 57AD to	The MR acknowledged that this question has various elements to it. At present there are no plans to extend PD 57AD beyond the Business & Property Courts. If it was, then a consultation would be likely. Equally there are no plans to review Part 31, other than the review expected by the

	cover claims outside of the Business and Property Courts (B&PC)? • Alternatively, are there any plans to review CPR 31, PD 31A and PD 31B? • As another point we have raised previously, should signposting wording noting the application of PD 57AD in the Business and Property Courts, be added in CPR 31?	s.2(7) Sub-Committee as part of its ongoing review to simplify the rules (which is not considering substantive issues of policy). Signposting should be used sparingly; too many signposts mean too much tiresome cross referencing; too few signposts can promote repetition and duplication, which we aim to eliminate. Given that most B&PC users are professionals who know the rules, there is no forceful justification to introduce a sign post in this instance.
5	**Court Bundles** Currently, there is limited guidance regarding court bundles in the CPR. That is found in PD 32 ("Evidence"), which might not be the most intuitive place to look. The guidance is headed "Agreed bundles for hearings", which seems to be of general application, but subsequently refers to trial bundles. This guidance is supplemented by detailed guidance in each of the court guides. In the interests of ease of accessibility, might it be helpful to seek to agree general guidance for bundles, applicable across all divisions, and for that to be set out in the CPR (for applications, trial, and covering hard copy and paper bundles)?	Birss LJ acknowledged the point, but explained that to try and produce a general PD is not realistic, given the breadth of civil justice and the variety of jurisdictions in civil. The context of digital reforms also need to be considered.
6	**Online CPR** We have regularly found errors in the updating of the online CPR to reflect changes introduced through SIs. In some cases, the revised wording has not been accurately copied and, in other cases, wording has been added in the wrong place. We have a degree of sympathy for the individuals updating the online rules given the somewhat "cryptic" nature of the SIs. This is a point we have raised before but might it now be appropriate, when publishing SIs, also to provide tracked changes versions of revised rules. That could possibly be provided with electronic versions of the SI only, or included in the Explanatory Memorandum. If that posed difficulties, it might be provided on a more informal basis. The Disclosure Working Group very helpfully provided tracked changed versions of the rules	Birss LJ acknowledged that, given the pace of change and some inherent difficulties related to the drafting conventions for SIs and Update instruments, that sometimes there are challenges with transposing the amendments online. However, if errors are identified, they will be acted on as soon as possible. Consideration is being given to this issue and it is hoped that a wider use of keeling schedules, for example, may assist. It was also hoped that the recent early publication of the draft rules for extending fixed recoverable costs, was useful.

	as they were being amended, which was invaluable. This approach would benefit practitioners and, as the nature of the changes (and the revised wording) should be clearer, might also assist in terms of ensuring that the online CPR (which should be completely reliable, as the definitive source) is completely accurate.	
7	**Revision of Court rules: numbering** We wondered if an interesting discussion point for the CPRC might be the approach to re-numbering when amending court rules. For example, recent changes meant that PD 3E (which practitioners were very familiar with as the provision on Costs Management) was renumbered as PD 3D. Might it have been preferable to leave PD 3D in place for numbering purposes (simply stating "no longer in force") thus avoiding the need to re-number PD 3E?	Birss LJ explained that renumbering is a topic to be considered on balance and, currently, is a product of wider implications with the s.2(7) Sub-Committee work which is simplifying the rules overall. Indeed, the s.2(7) Sub-Committee, did consider this, but concluded that the balance came down in favour of having streamlined rules/PDs (the numbers of which users will get used to) rather than ones marked as obsolete 'no longer in force'.
8	**Court Forms** The minutes of the February 2023 open CPRC meeting refer to forthcoming changes to court forms aimed at bringing paper forms (which are published online) up to date with accessibility requirements (in particular, to test for compatibility with screen readers). The minutes indicate that there will be no more Word.doc forms online, and forms will be in PDF format. • Will these forms be easily editable and will they include expandable text boxes? • What is the anticipated timescale for this work to be completed?	Master Cook explained that the committee was duty bound to make the accessibility changes pursuant to, for example, the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018. This work is well under way and Master Cook, as Chair of the CPRC's Forms Sub-Committee, meets regularly with officials leading the project. Master Cook also confirmed that forms will (and some already have) been produced so that they can be easily editable and will include expandable text boxes. Moreover, CPR 4.3 provides that a form may be varied by the court or a party if required by the circumstances of a particular case. There is no fixed timetable, but the project is being approached in a way that aims to prioritise the most heavily used forms. A general update can be provided to advise that HMCTS are meeting regularly with Master Cook, as Chair of the Forms

		Sub-Committee, and are working on modernising the forms web pages. The answer to the first point is "yes". The answer to the second point is that there is no fixed timetable for this work, due to competing priorities.
9	**OPRC** The approved minutes of the December 2022 CPRC meeting provided an update on progress with implementing the new Online Procedure Rule Committee (OPRC), noting that it is intended to support a digital justice system through its multi-jurisdictional (Civil, Family and Tribunals) rule-making powers and to set data and behaviour standards in relation to pre-action online dispute resolution. The minutes record that the Lord Chief Justice had confirmed the judicial members to serve on the OPRC and that the public appointments process for the external members was ongoing. The Chair observed that there would be close liaison with the CPRC as implementation advanced and a works programme was developed. • Have there been any developments/are there any thoughts regarding how the CPRC and OPRC might work together? • Is there a target date for finalising initial Online Procedure Rules? • Is it anticipated that this work might impact on the CPR?	Expanding on the MR's comments at the start of the meeting (see Item 1 above), he explained: Cooperation between the OPRC and the existing rule committees will be very important. No decisions have yet been taken as to what form this will take but it will be an early discussion point once the OPRC is formed. Before the OPRC is able to make initial rules for online services, Parliament will be required to approve which types of proceedings these will cover via secondary legislation. It is anticipated that this is likely to happen in early 2024. However, a fixed date does not exist at this stage. The relationship between the Civil Procedure Rules and the Online Procedure Rules will need to be carefully considered. It is anticipated that this will form part of early discussions of the OPRC once the committee is in place. The OPRC is not expected to operate as the traditional rule committees do. For example, its governance will be more functionality based (setting data and technology standards for exmpale) and cover Civil, Family and Tribunals. Extensive public information and consultations are expected as matters develop.
10	**County Court Pilot Schemes** There are currently two pilot schemes in the County Court for issuing court proceedings online: the Damages Claims Pilot (under PD 51ZB) and the Online Civil Money Claims Pilot (under PD 51R). Both pilots are in the process of development and are the subject of regular practice direction updates.	HHJ Bird reiterated the importance of the work, from an access to justice perspective. He explained that a lot of work is taking place at pace and yet there is still much to do; the technical infrastructure and changes generally, need to be introduced gradually for operational reasons.

	• Is there a current timeframe within which it is envisaged that the pilots will be extended to provide an end-to-end online process?	The precise timetable for the pilot provisions governing the online civil money claims and damages claims services to be fully reformed is not yet fixed. Overall, it is tied into the national HMCTS Reform Programme, which is currently extended until March 2024.
11	**CE-File** Use of CE-file is now mandatory for professional users in the High Court, Court of Appeal and Senior Courts Costs Office. Is it possible that there might be harmonisation of court systems such that CE-File is replaced by a different system?	Master Cook explained that there are currently no plans to replace CE-File with any other system for the Courts mentioned. The pilot practice direction PD 51O is being actively reviewed by a sub-committee with the aim of bringing it in to the mainstream rules when the pilot PD comes to an end, which is currently April 2024.
12	**Compulsory Mediation** Following consultation, the government has confirmed that it will introduce new rules requiring compulsory mediation for all claims with a value of up to £10,000 this year. We understand that the government intends to expand compulsory mediation to cover higher value claims in due course. • Is there any information that can be shared about the timing of these proposals.	Please see the update under the Action Log reports under Item 2 of the minutes (above).
13	**Fees** In relation to the result in Aldred v Cham [2019] EWCA Civ 1780, when does the CPRC intend to correct the dysfunction caused by the impact of this matter on the recoverability of fees, such as translator and interpreter fees and other disbursements?	Trower J explained that the Costs Sub-Committee on fixed recoverable costs (FRC) considered this issue and the ramifications of the judgment in Aldred v Cham. The draft FRC rules, which have recently been published, address this issue. Stakeholders are encouraged to familiarise themselves with the draft rules if not already done so. Please see in particular draft rules 45.58(f), and 45.59(a)(i).
14	**Fixed Costs** Does the CPRC's commitment to review the levels of fixed costs 18 months after the implementation of the extended fixed costs regime for civil justice suggest the committee agrees that costs and other civil justice associated fees and standards should be	Trower J recognised that the UK is experiencing a high period of inflation and said that the levels of the new FRCs will be kept under review, as set out in MoJ's public notice published on the CPRC website: frc-public-notice-updated.pdf (justice.gov.uk)

	regularly reviewed to protect their sustainability against the impact of inflation?	Plans to review associated fees and standards will be dealt with separately.
15	**Fixed Costs** The planned extension of fixed costs in October 2023 represents a significant source of concern for many Counsel (and their Chambers) who currently or have previously occupied the lower multi-track space and whose colleagues gained experience here before moving on to more complex cases, and who foresee a desertion of the space by Counsel as a result of a lack of fee ringfencing, a lack of abated brief fees and a reduction in their likely recoverable costs. Has the wider impact on Counsel provision for consumers in these been assessed, and have or will any changes be made to the original proposals to protect the important consumer service that Counsel provides for cases below £100,000?	Trower J explained that Jackson LJ did not consider the issue of brief fees in his 2017 report, to which the proposed FRC changes will give effect. However, the MoJ is open to exploring the issue of brief fees and officials will engage with the Bar Council, in the near future, about any potential rule changes that could be made.
16	**PAPs** In light of the Civil Justice Council's interim report published on 15 November 2021 in relation to the pre-action protocols (PAPs), does this Committee have any comment on if /when there might be any further developments related to reform of PAPs (including the Practice Direction - Pre-Action Conduct and Protocols)?	The MR provided an update on the work of the Civil Justice Council's (CJC) ongoing PAP review, led by Prof Andrew Higgins. The CJC's review, which started before the Digital Justice System project, has been looking at all aspects of PAPs including their purpose, whether they are working effectively in practice and what reforms, if any, are required. The CJC has been particularly interested in looking at how PAPs are working for litigants with limited means; the costs associated with PAP compliance; the potential of PAPs in online dispute resolution, and the potential for PAPs to be streamlined. It is complicated work; the Belsner case is also relevant and it is important that changes provide for a coherent fit in the context of future – digital – reforms. Work for the CPRC may follow in consequence, but as yet there is no fixed timetable for CPRC consideration.
17	**Trial Witness Statements**	The MR explained that he had discussed this with the Chancellor of the High

	In view of the number of reported cases in which judges have identified non-compliant witness statements prepared under CPR PD 57AC where a party is legally represented in the last two years, is there a case for strengthening the legal representative's certificate of compliance (para 4.3), such as, for instance, by removing the words 'I believe' in point 3 to make it a stronger assertion?	Court. In some cases, the changes are still bedding in and some cases, which started before the PD came in are only now reaching court. Essentially this was a culture change. Improvements are being made and it is important that judges encourage that.
18	**Trial Witness Statements** Should a senior member of the judiciary be asked to deliver a talk on why compliance with CPR PD 57AC matters further to underline the point to practitioners? (We envisage a talk similar to the Chancellor's talk on the disclosure scheme in the Business and Property Courts in January this year.)	The MR acknowledged the point and will give it further consideration.
19	**FRC** If not published by the time this meeting occurs, when is it envisaged that the rules for the commencement of fixed recoverable costs in most claims up to £100,000 in value will be published?	This is no longer relevant because the draft FRC reforms have now been published.
20	**FRC** When those rules are published, will the proposed 35% uplift to fixed costs where a 'winning' Part 36 offer was not accepted apply to a claimant's offer as well as to a defendant's offer?	Trower J explained that the MoJ's policy focus has primarily been on the successful claimant, as per Jackson's 2017 report recommendations. That said, FRC clearly benefits both claimants and defendants since it enables both to make more informed decisions about whether to litigate or to settle. The MoJ is not currently looking to apply a 35% uplift to defendants.
21	**OPRC** When is it anticipated that the Online Procedure Rule Committee (OPRC) will start to draft rules for online claims?	This relates to earlier questions and the MR's opening remarks at the start of the meeting (please see Item 1 above). The MR reiterated that before the OPRC is able to make initial rules for online services, Parliament will be required to approve which types of proceedings these will cover via secondary legislation. The earliest this is anticipated to be is early 2024.
22	**OPRC** Will there be a liaison or reporting role between the OPRC and this Committee?	This is answered in Q.9 above.

23	**OPRC** Is it envisaged that draft rules drawn up by the OPRC will be circulated for consultation with the legal profession and other stakeholders as is the current practice of this Committee in its modernisation work?	This relates to earlier questions and the MR's opening remarks are the start of the meeting (please see Item 1 above). The MR emphasised that the Judicial Review and Courts Act includes a requirement for the OPRC to "consult such persons as they see appropriate" when making rules. It will be for the OPRC to determine how they intend to fulfil this duty; but the expectation is to consult widely.
24	**Disclosure Pilot Scheme** At the outset of the Disclosure Pilot Scheme, there was some indication that the new rules would eventually be pushed out beyond the Business & Property Courts. With the introduction of PD57AD and CPR 31 remaining in place, are we likely to see the PD57AD regime applied beyond the Business & Property Courts? If not, is there a reason why?	This is answered by Q. 4 above.
25	**Disclosure Pilot Scheme** PD57AD was preceded by a pilot which sought widespread feedback and went through numerous iterations before being finalised. Did this pilot work well and what can be learnt from it? In addition, was there a reason why PD57AC did not go through a similar pilot process?	The MR did consider the pilot to have worked well, but has taken some time to bed down and influence cultural changes. The origins of the work were during his period as Chancellor of the High Court, and feedback from representatives of the GC100 (the general counsel and company secretaries working in FTSE 100 companies). Future reviews are probably likely.
26	**Simplification** Is the CPR now in need of a serious slim down and some significant consolidation, going beyond the tidying up exercise that was recently undertaken?	Kerr J said that the short answer is, yes, the CPR is in need of a serious slim down and that is why the CPRC is in the process of giving it just that. His report in early May 2021 proposed a slim down, including merger of some rules with practice directions, elimination of repetition and dispensing with some unnecessary practice directions. This led to the appointment of the Section 2(7) Sub-Committee, which he chairs. The other members are Isabel Hitching KC and Ben Roe. It is named after the provision in the Civil Procedure Act 1997 stating that the CPR

		Committee "must, when making Civil Procedure Rules, try to make rules which are both simple and simply expressed." The first phase of the project envisaged in the May 2021 report was to simplify, modernise and reduce the length and complexity of Parts 1 to 30. These are, broadly, the generic parts governing civil litigation generally, rather than specific types of proceedings. Two years on, the first phase is nearing completion. The committee has addressed and publicly consulted upon unwarranted complexity in those parts of Parts 1-30 in need of slimming down and we have modernised them, for example by replacing provisions about telephone hearings and fax machines with shorter provisions about video hearings. The work is continuing; currently still considering addressing Parts 14, 22, 23 and 24 and yet to overhaul Part 25, which is next. Parts 26 to 29 have been amended for the purpose of introducing the new extended fixed recoverable costs regime, which has been done by a different subcommittee chaired by Trower J. Kerr J did not view the work as a tidying up exercise. It is much more than that. It is doing exactly what section 2(7) of the 1997 Act requires the CPRC to do. The use of clear and simple language is particularly important from the perspective of litigants in person who, increasingly, have to navigate the rules without legal advice or representation.
27	**Fees** To me at least it seems clear that the correct position is that the normal fee for issuing a claim will be payable when issuing a counterclaim or Part 20 claim and that a reduced fee of £59 will be payable only when adding or substituting defendants to existing claims. The problem is probably threefold: 1) reportedly CE-file prompts you to pay a different fee (£59) so that you have to go to the court with a cheque and ask them to cash it in	Birss LJ explained that this was outside the ambit of the CPRC and required input from MoJ Fees Policy.

	order to pay (what I, at least, understand to be) the correct fee; 2) the listing office/those working there appear to believe and do advise that the correct fee is in fact only £59; and 3) the rules could probably be a touch clearer, given the confusion that seems to exist.	
28	**Fundamental dishonesty and QOCS** One prevalent issue at the moment is cases where fundamental dishonesty is alleged by a Defendant but ultimately unsuccessful. This is placing pressure and stress upon Claimants themselves and the rules presently allow for such allegations to be made without fear of sanction for the alleging party. Is there any appetite to toughen up the rules around fundamental dishonesty and bring in sanctions where such allegations are made? There are cases where FD allegations may be relevant but the routine nature in which they are raised is an increasing concern, particularly in the context of the recent QOCs changes.	Birss LJ acknowledged the point and felt it required further consideration, before a response could be provided.
29	**Costs** Under CPR 47.15(5) the cap on Provisional Assessment has remained static at £1,500.00 plus VAT since its inception nationally in April 2013 (some 10 years ago). Given that hourly rates have been reviewed and altered, reflecting amongst other things inflation, will the CPRC specifically look at the issue of the Provisional Assessment cap? Reflecting the increased hourly rates, practitioners are now asked to do the same level of work but with reduced time to do it in. This is of particular importance as case law demonstrates that the cap is immovable, even where an indemnity costs award is made.	Trower J explained that there is no immediate policy plan to review, however it could be added to the Costs Sub-Committee's work programme to be considered in due course.
30	**QOCS** Is the CPRC aware of any plans to expand Qualified One Way Costs Shifting? It has been intimated in the past that there may be extensions to QOCs to claims including actions against the Police and other public authorities, discrimination cases under the Equality Act 2020, human rights cases, housing disrepair, professional negligence claims (particularly those arising from personal injury claims), judicial review and private nuisance.	Trower J explained that currently, the MoJ do not have plans to expand QOCS to these types of cases. QOCS are considered to be working well. He drew attention to the amendments on QOCS taken forwards in the recent (April) SI, following the MoJ consultation in 2022: cprc-qocs-consultation-response.pdf (publishing.service.gov.uk)
31	**FRC**	

	The issue of recovery of the agency element of medical report fees in fixed costs cases remains uncertain. We now have conflicting judgments with the County Court decision of Powles v Hemmings finding that such an uplift is not recoverable (on the basis it forms part of the fixed costs) and Ms Clair Wilkinson-Mulvanny v UK Insurance Limited where the District Judge said there was no rule disallowing the recovery of an agency uplift. This is becoming an increasingly fraught battleground and any clarity on the issue would be welcomed, particularly given the upcoming extension to fixed costs which will see the issue arise in an increasing number of claims.	Trower J acknowledged this was a technical point and recognised the conflicting judgments, which have also been noted by MoJ as an ongoing issue. On balance it was not considered appropriate for the Government (nor the rule committee) to comment on the issue - a final judgment should be determined by the Courts via an authoritative judgment.
32	**Costs** Under PD 47 14.1, Provisional Assessment applies to claims where the amount of costs is £75,000.00 or less. This has led to some debate with the White Book commenting that they interpret this as a sum which is net of VAT. Our experience is that some Courts agree with this approach, however, others do not. Is this an issue the CPRC has considered and do they hold a view on whether the £75,000.00 cap for Provisional Assessment is net or gross of VAT?	Trower J explained that this is something which has been discussed within the CPRC's Costs Sub-Committee but this is not something which has (yet) occupied the full CPRC. The MoJ is not actively considering this. However, it could be added to the Costs Sub-Committee's work programme to be considered in due course.
33	**Costs** In **McGreevy v Kiramba** [2022] EWHC 2561 (SCCO) (26 September 2022) the Court held that Part 36 where Section IIIA of Part 45 applies, would limit a Claimant's costs to the those prescribed in the relevant tables and crucially there would be no right to seek a larger sum by reference to CPR 45.29J. Is this an intentional construct or a lacuna in the rules? If the latter is this an issue which is or will be looked at?	Trower J explained that the MoJ currently has no plans to review this issue. The Costs Sub-Committee may decide to review in due course.
34	**Costs** Is the Committee able to provide an update on the costs group headed by LJ Birss which it referred to at the last open meeting? Is it able to give an insight into its scope and when it may report?	This is answered under Item 2 above: the report of the CJC's Costs Review has now been published: Civil Justice Council Costs Review – Final Report - Courts and Tribunals Judiciary
35	**Fee remission**	Birss LJ explained that this was outside the ambit of the CPRC and required input from MoJ Fees Policy.

	Has their been any indications received by the Committee from the Ministry of Justice on the issue of fee remission? The recovery of Court Fees where remission is not investigated remains a contentious issue and non-binding decisions have been made supporting either side.	
36	**Costs budget** Does the Committee have a view over the approach to the preparation of Costs Budgets in case where judgment has been entered. We have been advised in some cases that the Costs Budgets should only include incurred quantum costs (even where no order for costs has been made with respect to liability costs). There is no guidance in the rules as to the correct approach but we know that the case of *Page* held that a partial or incomplete budget would be viewed as non-compliant and thus the court fee only sanction could apply. It would be assistive if a view could be given on this so a consistent approach can be taken.	Birss LJ recognised the point. It will be added to the Costs Sub-Committee's work programme to be considered in due course.

Item 8 Any Other Business from Committee members & Close
With no other business to be transacted, the meeting was called to a close, with thanks to everyone for attending.

C B POOLE
May 2023

Attendees:
Carl Poole, Rule Committee Secretary
Peter Clough, Secretariat
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andrew Currans, Government Legal Department
Katie Fowkes, Government Legal Department.
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Terry McGuinness, Judicial Office
Faye Whates, HM Courts & Tribunals Service
Liam Walsh, Ministry of Justice
25 public observers