



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In QB1M, Royal Courts of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Tuesday 9 May 2023

Present:

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

Invited Guest:

Mrs Justice Knowles	High Court Judge
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ANNOUNCEMENTS AND APOLOGIES

- 1.1 The Acting Chair expressed thanks to Lord Justice Baker for Chairing the April meeting.
- 1.2 Apologies were received from District Judge Foss and Tony McGovern.

MINUTES OF THE LAST MEETING: MARCH 2023

- 2.1 The Committee asked that the draft minutes be amended to reflect that it had been proposed that a Public Law Solicitor be included on the PD27A/Electronic Court Bundles Working Group.
- 2.2 Subject to the point above, the Committee approved the minutes from the April 2023 meeting.

ACTION POINT 1: Secretariat to arrange for the April 2023 minutes to be published on the FPRC webpages.

ACTIONS LOG

- 3.1 MoJ Policy reported that 25 actions were recorded from the April 2023 meeting with a further 24 actions taken forward from previous meetings.

MATTERS ARISING

Web Inaccuracies

- 4.1 MoJ Policy reported that a number of expired Part 36 Practice Directions had been identified as still showing on the Justice website. These were raised with the MoJ Web Team and have subsequently been removed.

Case Management and Intimate Images

- 4.2 MoJ Policy informed the Committee that they will be exploring options with the Domestic Abuse working group in May to discuss the policy position. The intention is that MoJ policy will aim to have a paper for the Committee to consider in either the June or July Committee meeting.

ACTION POINT 2: MoJ Policy to return in either June or July for an update.

Police Disclosure Orders

- 4.4 MoJ Policy stated that policy options are being considered to incorporate the feedback from consultation responses. MoJ Policy will discuss a timeline with MoJ legal and will provide the Committee with an update in July.

ACTION POINT 3: MoJ Policy to return to the Committee in July with a timeline for next steps.

Permission to Appeal

- 4.5 MoJ Policy informed the Committee that the Permission to Appeal (PTA) Working Group met on 3 May where the discussion focussed on key issues relating to PTA provisions in Family Proceedings, including the position of Circuit Judges and the fact that there is no permission filter from appeals of decisions of lay justices in the family court. The Chair of the PTA

Working Group agreed to speak to the Chair of the Civil Procedure Rule Committee (CPRC) to discuss various issues. The Committee were informed that the next Working Group meeting will take place on Wednesday 14 June 2023.

- 4.6 The WG had queried which Judges are now Nominated Financial Remedy Court Circuit Judges following the amendments to the FPR which came into force in April 2023. It was agreed that a list of the Nominated FRC Judges will be circulated to members of the WG.
- 4.7 The Committee noted that some District Judges (DJ) sitting in the Central Family Court also sit as District Judges of the Principal Registry of the Family Division (DJ PRFD). It was confirmed that appeals from a decision of a DJ PRFD sitting in the family court lie to a judge of High Court judge level sitting in the family court, whereas appeals from decisions of other DJs sitting in the family court (including the Central Family Court) lie to a circuit judge sitting in the family court.
- 4.8 In relation to the fact that there is no PTA filter for appeals from decisions of lay justices in the family court, the Committee agreed with the WG's proposal that the WG should contact Designated Family Judges to seek views on whether this absence of a PTA filter is problematic or not.

Discussion about DJ PRFD and TOLATA

- 4.9 The Committee discussed issues about the limited continuing role of deputy DJs sitting in the PRFD and about TOLATA applications. It was agreed that these issues would be discussed further at the July meeting

ACTION POINT 4: The Chair of the PTA Working Group to speak with the Chair of the CPRC before the next PTA WG meeting.

ACTION POINT 5: The Committee to send the PTA Working Group a list of nominated FRC CJs before their next meeting.

ACTION POINT 6: Chair of the PTA Working Group to contact Designated Family Judges to seek views on whether the lack of a PTA filter from decisions of lay justices in the family court is problematic.

Closed Material Proceedings

- 4.10 MoJ Policy referred to the previous discussion at the March FPRC meeting, where the Committee agreed to proceed with the Rule proposal regarding having a Closed Material process in family proceedings. MoJ Policy confirmed that they have discussed the proposal with Home Office and National Security Services.
- 4.11 MoJ Policy agreed to liaise with MoJ legal on the draft Rules and timetable, and to return with an update in July.

ACTION POINT 7: MoJ Policy to return to the Committee in July for an update.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy asked the Committee whether they were content for the Priorities Table to be published alongside the April minutes. The Committee agreed for Tiers 1 to 3, and the PD annex, to be published.
- 5.2 The Committee queried the timetable for the Voice of the Child item and suggested for this item to return in July for an update in relation to the work of the group chaired by Mrs Justice

Knowles. It was agreed this would be reflected consistently in the Priorities Table and actions log.

ACTION POINT 8: MoJ Policy to amend the timeline for the ‘voice of the child’ item to return to the Committee in July in the Priorities Table and actions log.

ACTION POINT 9: The Secretariat to publish the Priorities Table once amended.

STANDING ITEMS

ONLINE PROCEDURE RULE COMMITTEE

- 6.1** MoJ Policy informed the Committee that progress in establishing the Online Procedure Rule Committee (OPRC) is ongoing. The final stages of the public appointment process for the non-judicial members are moving forward and an announcement will follow later this month. The Committee were also informed that work is underway in developing thinking for the supporting sub-committee structure of the OPRC which it is hoped will cross the jurisdictions of Family, Civil and Tribunals.
- 6.2** The first meeting of the OPRC is scheduled for 26th June 2023.

SUBSTANTIVE ITEMS

DOMESTIC ABUSE ACT IMPLEMENTATION – CROSS-EXAMINATION (QUALIFIED LEGAL REPRESENTATIVES)

Courts issues in appointing Qualified Legal Representatives (QLRs)

- 7.1** MoJ Policy reported on concerns received following regular reports from court staff in that there have been a number of difficulties in the court appointing a local QLR for proceedings, particularly in regional or remote areas and where the proceedings are being scheduled at short notice. The Committee agreed with these concerns and provided their own feedback from a number of areas who reinforced this view. The Committee said that this problem had been made worse by the fact that travel expenses are not reimbursed so it is difficult to encourage QLRs from outside of the area to travel to a remote or even neighbouring location.
- 7.2** MoJ Policy suggested that courts consider enabling non-local QLRs to conduct cross-examinations remotely. The Committee said that they were not in favour of remote hearings and stressed the importance of the QLR being in the room.

QLR Training

- 7.3** MoJ Policy reported that currently, there are QLRs on the register who have committed to undertaking the required training within six months (as required in the statutory guidance) but who have not been able to find training courses and have therefore asked HMCTS to be taken off the register after 6 months have elapsed.
- 7.4** MoJ Policy said that they have had consultations with legal professions about the availability of eligible QLR training. and are aware that the legal professional bodies face challenges that mean they are not all in a position to increase training availability.
- 7.5** The Committee again raised serious concerns in relation to the training delivered by the charity *SafeLives* and asked whether these could be raised with the Minister as they agreed

that this is a matter for MoJ Policy. However, the Committee recommended that tighter guidance and training could help to reinforce matters.

- 7.6 MoJ Policy said that eligible training is not limited as under the statutory guidance QLRs can also meet the eligibility criteria by undertaking 'specialist domestic abuse training on matters such as coercive and controlling behaviour, economic abuse, psychological abuse and post-separation abuse'.

Implementation challenges

- 7.7 MoJ Policy said that they have had reports that the new measure is proving challenging for courts and court staff to understand the extent of the QLR role. In order to overcome this, MoJ is currently developing a set of Q&As designed to help prohibited parties understand the limited role of the QLR and is considering developing additional tools to help courts and court staff get a functional understanding of the legislation and guidelines. MoJ Policy asked members for volunteers to help facilitate this tool.
- 7.8 The Committee raised further concerns over and above those previously flagged on the rates of pay and the lack of expenses. These related to what is covered under professional insurance and the potential for complaints to be made to the Bar Standards Board. The Committee agreed to take this point back to the Chair of the Family Law Bar Association.

ACTION POINT 10: The Committee to raise the issue of insurance with the Family Law Bar Association.

ACTION POINT 11: MoJ Policy to return to the Committee in July as a substantive item.

ONLINE SYSTEMS: PROPOSED PD AMENDMENTS TO REFLECT OPERATIONAL REALITY (PD36P – PLACEMENT, PD36ZD – PRIVATE LAW, PD41D – PUBLIC LAW)

- 8.1 HMCTS and MoJ Legal informed the Committee that they have reviewed PD36P (online Placement proceedings), PD36ZD (online Private Law proceedings) and PD41D (online Public Law proceedings) and that they were proposing relatively small amendments in order to bring these PDs in line with the operational reality, and to ensure a consistent drafting approach is taken where the same provision is included in more than one PD.
- 8.2 The Committee queried a reference to the court directing that a document be filed in hard copy and queried whether this would cover the court informally asking for such a document. It was agreed that nothing in the draft would preclude the court making an informal request. On that basis, the Committee indicated it was content with the draft PD amendments.
- 8.3 The Committee agreed that the PD amendments should be submitted to the President of the Family Division and then to the Minister for formal signing.

ACTION POINT 12: MoJ Policy and Legal to submit PD amendments to the President and then the Minister.

ADOPTION ONLINE SYSTEM

- 9.1 HMCTS provided an update on progress and the latest position regarding the adoption online system and presented a revised draft of the new PD41E (online adoption), plus the associated revocation of Pilot PD36ZB.

- 9.2** The Committee asked for assurances in relation to when applicants complete their application online and whether there is a danger of the release of personal information or of documents being uploaded to the wrong location on the online portal. HMCTS confirmed the security arrangements that are in place to avoid such events occurring. The Committee formally approved the amendments to PD41E and agreed that these be included in the next PD Update, ahead of their coming into force on 18 May.

ACTION POINT 13: MoJ to include the new PD41E in the next PD Update, to come into force on 18 May.

PARENTAL RESPONSIBILITY AND CHILD ARRANGEMENTS FOLLOWING IMPRISONMENT FOR MURDER OF THE OTHER PARENT

- 10.1** MoJ Policy said that at the February meeting, the Committee asked for an update on the progress of work addressing the issues raised in the Westminster Hall Debate on the 'Jade's Law' e-petition. This related to the Committee's suggestion of potential procedural changes (allocation to a judge of High Court level) and other identified options, which could expedite or otherwise adjust the progress of applications for special guardianship orders or to restrict the exercise of parental responsibility.
- 10.2** The Committee were presented with two options for consideration. Option 1 related to the Committee maintaining the view that cases should be initially allocated to a judge of High Court level, if appropriate, then an amendment to Part 2 of the Schedule to the Allocation and Gatekeeping Guidance – Private Law could be made to reflect that. Option 2 proposed that amendments could be made to the rules or relevant Practice Directions specifying that applications seeking special guardianship orders (SGOs) or certain section 8 orders should be listed for early case management, within a specified number of weeks. This would ensure that early directions can be given.
- 10.3** MoJ Policy reported that in conjunction with MoJ Legal the wider work has been considered and it was felt that detailed consideration of specific rule and practice direction amendments would benefit from the view of the Domestic Abuse Working Group.
- 10.4** The Committee recommended that the Domestic Abuse Working Group could also discuss the means to support accelerated hearings post allocation within their considerations.

ACTION POINT 14: MoJ to liaise with the Domestic Abuse Working Group on the issues discussed.

ACTION POINT 15: This item to return in July for an update

PRACTICE DIRECTION UPDATE No. 3 of 2023

- 11.1** MoJ Legal advised that this Update will include the amendments to PDs 36P, 36ZD and 41D, plus the revocation of PD36ZB and the insertion of new PD41E, as discussed earlier in the meeting. The Committee agreed with the proposal that PD Update No.3 of 2023 be submitted to the President and then the Minister.

ACTION POINT 16: MoJ to send PD Update No.3 of 2023 to the President and then Minister to sign ahead of the coming into force date of 18 May 2023.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 12.1** MoJ Policy Informed the Committee that meetings have taken place with counterparts from other jurisdictions and there are no significant issues to raise.

FORMS WORKING GROUP UPDATE

- 13.1** MoJ Policy reported that a meeting of the Forms Working Group has been scheduled for Thursday 18 May and that feedback will be provided at the June meeting.

FPRC WORKING GROUPS

- 14.1** MoJ Policy reported that following the request by the Committee at this meeting, HHJ Suh will be approached to see whether she is content to remain on the Domestic Abuse, the Closed Material Procedure and the Private Family Law Early Resolution Working Groups.
- 14.2** Further amendments to the listed membership of the Fast Track and PD27A Working Groups are needed. These will be made ahead of the June FPRC meeting

ACTION POINT 17: Secretariat to contact HHJ Suh to see whether she is willing to continue as a Working Group member and to amend the Working Group list

DRAFT JUNE 2023 AGENDA

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

ANY OTHER BUSINESS

a) Law Commission Surrogacy Report

- 16.1** MoJ Policy reported that they were notified of this report on 13 April. The Department with policy responsibility for the area covered by the project is Department of Health and Social Care. The Committee were informed that report included four recommendations which would require implementation through changes to the FPR. These relate to the court considering whether to make an order on parental responsibility at the first interim hearing in parental order proceedings, the allocation of surrogacy cases, the release of parental order reports and access to the parental order court file.
- 16.2** The Committee advised that it wished to be informed of any developments in terms of the Government response to the Law Commission Report. It was agreed that the matter should return for an update in October.

ACTION POINT 18: MoJ Policy to return to the Committee in October as a substantive item

DATE OF NEXT MEETING

- 17.1** The next meeting will be held on Monday 12 June 2023 and will take place in person in either QB1M or QB2M, Royal Courts of Justice and remotely via MS Teams.

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May 2023
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