



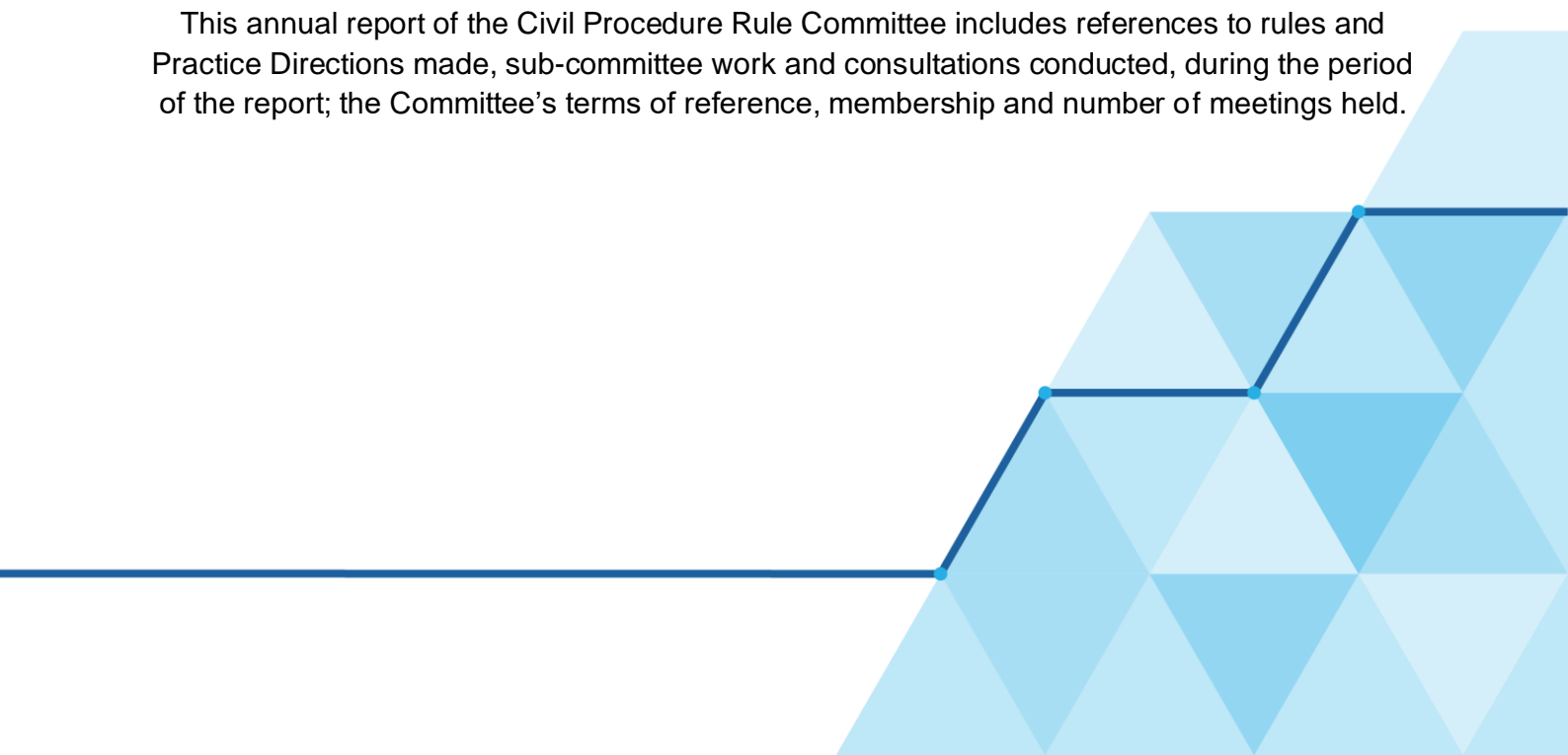
Ministry
of Justice

Civil Procedure Rule Committee Annual Report 2022-23

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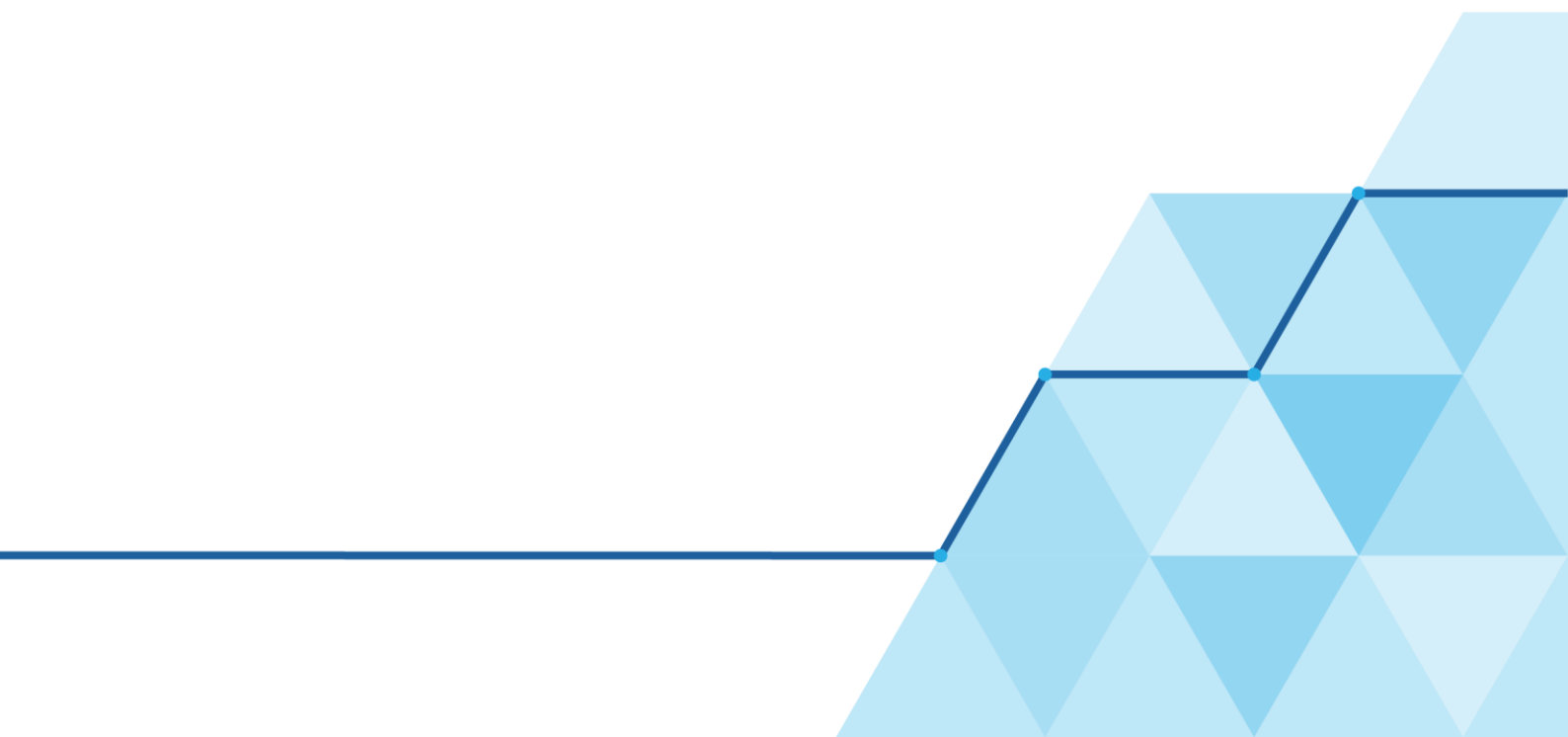
<https://www.gov.uk/government/organisations/civil-procedure-rules-committee>

This annual report of the Civil Procedure Rule Committee includes references to rules and Practice Directions made, sub-committee work and consultations conducted, during the period of the report; the Committee's terms of reference, membership and number of meetings held.





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Contents

Preface and Overview by Lord Justice Birss	1
Terms of Reference	4
Background & Committee Strategy	4
Membership	6
Remuneration & Member Interests	6
Meetings	7
Sub-Committees and Working Parties	7
New Rules, Statutory Instruments and Practice Direction Updates	8
Consultations	9
Simplifying the CPR	9
Future Business	10
Contact	11



Preface and Overview

On behalf of the very many people involved – members, officials and others – I am very pleased to introduce the latest Annual Report of the Civil Procedure Rule Committee (CPRC), covering the 2022-23 reporting period.

The civil jurisdiction is hugely varied and, in turn, so is the work of the CPRC. My role as Deputy Head of Civil Justice, provides a unique opportunity to work closely with colleagues and stakeholders across England and Wales. Part of this, is the privilege of chairing the rule committee on behalf of the Master of the Rolls (MR).

I readily acknowledge that all members fulfil their duties, as I do, in addition to full-time roles. The MR and I remain hugely grateful to everyone involved in committee business, in particular those who give up their valuable time and expertise so generously, on a voluntary basis, as part of our collective endeavour to fulfil the committee's important statutory functions: to try to make rules that are both, 'simple and simply expressed' and to do so with a view to securing a civil justice system that is, 'accessible, fair and efficient'. This is integral to the smooth operation of the civil courts.

I also value the input from non-committee members – both within the judiciary and from across government, as well as wider stakeholders – who have contributed to sub-committee activity, on a co-opted basis.

Keeping the Civil Procedure Rules (CPR) up to date and relevant is essential – for everyone engaged in civil justice, both lawyers and non-lawyers.

This has been a particularly memorable year, for a number of reasons. On 10th September, I was present, in my capacity as a Privy Counsellor, at the Accession Council at which the proclamation of HM King Charles III took place, following the passing of Her Late Majesty, Queen Elizabeth II. An historic and quite moving experience. In consequence of the change in Sovereign, various CPR related amendments were made at pace. Our Forms Sub-Committee also responded, without delay, issuing an out-of-committee resolution concerning the status and updating of CPR approved court forms.

Earlier in the year, I was delighted to support our first ever lay member recruitment webinar, as part of the campaign to encourage as wide and diverse a range of applicants as possible. The voice of front-line users is critical to our work. Members who represent the lay advice and consumer affairs sectors play a vital part in our deliberations and have a strong record of making a real difference. Up until October this year and over the past

six years, the principal representative of the lay advice sector has been Lizzie Iron. I have worked with Lizzie over many years and always found her to be a cheerful and independent exponent; her contributions to committee discussions are much missed. I pay tribute to her meritorious involvement in CPRC business and civil justice generally.

Our usual open meeting, in May, provides the opportunity to see the committee in session and it is a particularly popular fixture. I and all members very much welcome the public questions forum and this year was as full and stimulating as ever. Thank you to everyone who took the time to join the meeting and to contribute so positively. At the start of the meeting, the MR marked Mr Justice Kerr's outstanding contribution as a member of the CPRC since 2016. I endorse those sentiments wholeheartedly. Perhaps three of the most significant examples of Kerr J's work, include, first, the project he led on open justice, producing a reformed CPR Part 39. Secondly, the wholesale reform of the rules on Contempt, which condensed the previous rules from 38 to 10, dispensed with two Practice Directions (PD) and a Practice Guidance Note, thus creating a new uniform procedure, with a set of new, bespoke, court forms and thirdly, over the past couple of years, his drive and determination chairing the s.2(7) Sub-Committee working to simplify the CPR. Kerr J reaches the end of his extended term on the committee on 31st August 2023 and we are sorry to see him go. Equally, I wish to recognise District Judge Cohen's period of service, as he left the committee in December 2022. Particular thanks are expressed for his work as the inaugural Chair of the Vulnerable Parties Sub-Committee.

This year, three rule amending Statutory Instruments and 17 PD Updates have been made. Consistent with previous years, they covered a wide variety of work. This has included updates to the rules concerning Admiralty claims, Judicial Review and further provisions for vulnerable parties and witnesses, to list but a few. Additionally, amendments have also been made in response to primary legislation, for example, by introducing an appeals process in consequence of the Elections Act 2022. Caselaw developments have also called for rules to be reviewed, one such example is the amended PD 6A (Service in the UK), intended to address the effect of the decision in *R (Tax Returned Ltd) v Commissioners for HMRC [2022] EWHC 2515 (Admin)*, where it was held that a party who provides more than one email address for service, cannot be served electronically. This year also saw the remaining pandemic-related provisions in the CPR, revoked.

The continuing package of incremental enhancements to the pilot schemes governing the operation of the Online Civil Money Claims Pilot (under PD 51R) and the online Damages Claims Pilot (PD 51ZB) have also featured regularly.

The Judicial Review and Courts Act 2022, brings into force the provisions to create the Online Procedure Rule Committee (OPRC). It is chaired by the MR. In time, this new committee will provide the necessary governance for a digital justice system across the civil, family and tribunal jurisdictions, as it develops. Naturally, its progress and interaction with the CPRC will be closely followed.

A significant amount of work has also been undertaken by the Service Sub-Committee, chaired by Tom Montagu-Smith KC. Along with several co-opted members, the 21

jurisdictional gateways for service out of the jurisdiction were reviewed. This culminated in a suite of amendments under CPR Part 6 (and other rules) to allow for the circumstances in which the court may give permission for a claim to be served out of England and Wales. This included amendments to PD 6B and the introduction of an additional method to improve the process for service outside England & Wales. The reforms followed a focused consultation exercise and detailed liaison with the Lord Chancellor's Advisory Committee on Private International Law (PIL), chaired by Lord Mance.

The project to simplify the CPR has continued with unrelenting momentum. Drafting proposals have been published for consultation on a rolling basis, throughout the year. The project places into sharp focus the diversity of the civil jurisdiction. I am very proud of this work, led by Mr Justice Kerr, which is aiming to reduce the length and complexity of the CPR. You can read more about this below, in the main body of the report.

In November 2022, Lord Bellamy KC, civil justice minister, announced at the Civil Justice Council National Forum, that implementation of the extended fixed recoverable costs (FRC) regime would take place in October 2023. Work on finalising the new rules to implement these reforms has required a substantial effort. Mr Justice Trower chairs the sub-committee, which is made up of internal and external, as well as CPRC members. Everyone has devoted an enormous amount of time and energy to this important task. On 31st March 2023, the draft amendments were approved in principle and are currently before Parliament and due to come into effect on 1st October 2023.

At various points during the year, natural turnover has seen new members joining the committee. Virginia Jones and Ben Roe, two new solicitor members, joined in the summer, followed in the autumn by Ian Curtis-Nye, who is one of the two members representing the lay advice and consumer affairs sectors. In June 2023, the second lay representative, Elisabetta Sciallis, joined. Notwithstanding that her appointment falls outside the formal period of this report, given the passage of time between reporting and publication, it is right to acknowledge it here. In this vein, it is also pleasing to note that as this report reaches publication, our newest District Judge member, DJ Samantha Johnson (County Court at Liverpool) joins us; so I am also delighted to welcome her to the CPRC.

I am encouraged by the enthusiasm of our members – new and existing – and I look forward to another productive year ahead. Our work, as ever, will be proficiently managed by the secretary and most ably supported by a small team of MoJ drafting lawyers and other officials, to whom I reiterate my personal thanks for their skill and fortitude.

I hope you enjoy reading this report and find it informative.

Lord Justice Birss

Deputy Head of Civil Justice

Terms of Reference

The Civil Procedure Rule Committee is an advisory non-departmental public body sponsored by the Ministry of Justice. Its function is to make rules of court governing the practice and procedure in the:

- Civil Division of the Court of Appeal;
- High Court; and
- County Court.

Its power to make rules should be exercised with a view to securing that the civil justice system is accessible, fair and efficient and the rules are both simple and simply expressed.

The terms of reference are derived from the Civil Procedure Act 1997 (as amended by the Courts Act 2003, the Constitutional Reform Act 2005, the Crime and Courts Act 2013, the Anti-Social Behaviour, and the Crime and Police Act 2014).

Background & Committee Strategy

The Civil Procedure Rule Committee was established in 1997 to make rules of court (Civil Procedure Rules) to replace the previous Rules of the Supreme Court and the County Court Rules.

The committee's aim is to provide rules of court in line with the aims stated in Lord Woolf's 1996 report "Access to Justice".

Before making any rules, the committee is

- obliged to consult such persons as it considers appropriate and
- to meet (unless it is inexpedient to do so).

Rules are made into legislation by way of a Statutory Instrument. The committee aims to sign Statutory Instruments in June and December each year, to come into force in October and April respectively. The Civil Procedure Rules (CPR) are supplemented by Practice Directions (PD), and whilst these are not the direct responsibility of the committee, the committee is involved in their drafting because of their close relationship with the rules. However, both Statutory Instruments & Practice Direction Updates (as well as Pre-Action Protocols) may be made throughout the year.

The committee's strategy serves to achieve its statutory function and the Overriding Objective that the rules should be 'simple and simply expressed'.

Both the committee, and the team of officials and lawyers which support the committee, are a limited resource, and often overstretched. It is, therefore, necessary to be able to prioritise the work which the committee is asked to undertake. The following priorities apply:

- **Legislation (where necessary)**

Amendments to the rules driven by legislation are often required on a timetable outside the committee's control. It was, therefore, decided that these items should take precedence wherever necessary. However, this is subject to the caveat that amendments are required. Often, legislation which impacts civil justice will not require an amendment. The default position is that no amendment be made in response to new legislation unless absolutely necessary.

- **Modernisation**

This refers mainly to the incorporation of the scheduled rules into the main body of the Civil Procedure Rules. When the Civil Procedure Rules were made in 1998, not all of the Rules of the Supreme Court (RSC) and County Court Rules (CCR) had been transformed into Civil Procedure Rules. The remaining RSC and CCR were placed in 'schedules' to the Civil Procedure Rules to be incorporated at a later date, and thus became known as the Scheduled Rules. The incorporation of these remaining rules is now a regular feature of the committee's work.

- **Comprehensive Reviews**

These will often be led by the Ministry of Justice, but topics will be agreed with the committee and preferably focused around issues of concern to judiciary, practitioners and litigants. They will focus on a particular part or topic, and will include a full review of the drafting of that part, seeking to simplify language and procedure, and eliminate duplication (between the rule and the practice direction, for example).

Suggestions for amendments to be considered outside these three priority areas will either need to be held back for incorporation into an appropriate review, or pass a reasonably rigorous test for consideration based on urgency, scale of (potential) injustice, political imperative and scale of difficulties being encountered in practice.

Membership

During the period covered by this report, the committee was comprised of the following members:

- The Head of Civil Justice, Master of the Rolls, Sir Geoffrey Vos, Ex Officio
- The Deputy Head of Civil Justice, Lord Justice Birss, Ex Officio
- The Hon Mr Justice Kerr, High Court Judge (King's Bench Division) Member
- The Hon Mr Justice Trower, High Court Judge (Chancery Division) Member
- Master Cook, High Court Master (King's Bench Division) Member
- His Honour Judge Bird, Circuit Judge Member
- His Honour Judge Jarman KC, Welsh Judge Member
- District Judge Clarke, District Judge Member (with effect from February 2022)
- District Judge Cohen, District Judge Member (until December 2022)
- District Judge Johnson, District Judge Member (with effect from July 2023)
- Dr Anja Lansbergen-Mills, Barrister Member
- Ms Isabel Hitching KC, Barrister Member
- Mr Tom Montagu-Smith KC, Barrister Member
- Mr Brett Dixon, Solicitor Member (until January 2022)
- Mr David Marshall, Solicitor Member
- Ms Virginia Jones, Solicitor Member (with effect from July 2022)
- Mr Ben Roe, Solicitor Member (with effect from July 2022)
- Mr Masood Ahmed, Solicitor Member (until January 2022)
- Mr John McQuater, Lay Advice/Consumer Affairs Member (until April 2022)
- Ms Lizzie Iron, Lay Advice/Consumer Affairs Member (until October 2022)
- Mr Ian Curtis-Nye, Lay Advice/Consumer Affairs Member (with effect from October 2022)
- Ms Elisabetta Sciallis (with effect from June 2023)

Remuneration & Member Interests

The Chair and members are not remunerated for their service on the committee.

Members of the committee are permitted to submit reasonable claims for travel and subsistence expenses, which are administered by the Secretariat and paid by the Ministry of Justice; no claims have been submitted to the Secretariat during the period of this report. However, when committee meetings are held in person, the Ministry provides

refreshments for members in lieu of subsistence claims. For the period April 2022 to March 2023, this amounted to £854.43.

A register of member interests, for the period of this report, is held by the Secretariat; should you wish to view it, please contact the secretary via the means at the end of this report.

Meetings

The committee met nine times in the period covered by this report. Meetings did not take place in August 2022, September 2022 or January 2023. The committee meetings held in May 2022, November 2022, and February 2023 were all held in a remote format, via video conference facility.

Sub-Committees and Working Parties

The committee establishes sub-committees and working parties to consider the detail of the rules relating to specific projects and/or proposals and much of the initial work is conducted in this way. Generally, there are around 15 such committees operating at any one time. They include (listed in alphabetical order):

- **Access to court documents by non-parties** - to consider the Lacuna Sub-Committee referral regarding access to court documents by non-parties (prompted by the Supreme Court judgment in *Cape Intermediate Holdings Ltd v Dring* (for and on behalf of Asbestos Victims Support Groups Forum UK) [2019] UKSC 38
- **Appeals and Anti-Social Behaviour Injunctions (ASBI)** - to consider and make recommendations in response to the [Civil Justice Council's report on ASBIs](#).
- **Court Forms** – to consider changes to or new court forms.
- **Costs** - to consider cost related matters.
- **Damages and Money Claims (online reforms)** - creation of rules to support the online reformed services (principally the Online Civil Money Claims portal PD 51R, and Damages Claims portal PD 51ZB).
- **Fixed Recoverable Costs (a sub-group of the Costs Sub-Committee)** – to implement the proposed extension of fixed costs, including the introduction of a new Intermediate Track, flowing from the recommendations by Sir Rupert Jackson.
- **Housing & Possession Enforcement** - to maintain a general watching brief on Housing & Possession related matters.
- **Judicial Reviews (Part 54)** - to consider and make recommendations in response to the Independent Review into Administrative Law (IRAL).

- **Lacuna** - to consider possible gaps in the CPR as alerted by the judiciary / judgments and to review requests received from any interested party, including general enquiries received via the secretariat, to determine suitability as to whether it merits full committee consideration.
- **Mediation** – subject to government policy, to draft the rule changes required to provide for integrated mediation for small claims proceedings in the county court.
- **Open Justice** - maintain a general watching brief on open justice related issues.
- **Section 2(7) “simplification” Sub-Committee** - to review the CPR, over a phased programme in order to reduce and simplify the rules pursuant to the CPRC’s statutory duty under s.2(7) Civil Procedure Act 1997 to, ‘...try to make rules that are both simple and simply expressed.’
- **Service (Part 6)** – to consider issues regarding service, both in and outside the jurisdiction of England and Wales.
- **Vulnerable Parties** - to update the CPR in consequence of the civil provisions of the Domestic Abuse Act 2021 and to consider the Civil Justice Council’s report and recommendations, ‘Vulnerable Witnesses and Parties within Civil Proceedings’. Also, to oversee the introduction of a pilot scheme under PD 1A, in consequence of the Domestic Abuse Act 2021.
- **Workplace Claims (Standard Disclosure)** - to review Annex C (standard disclosure in workplace claims) to the Personal Injury Pre Action Protocol in response to the Health and Safety Executive’s report to the CPRC in November 2021.

New Rules, Statutory Instruments and Practice Direction Updates

This has been an exceptionally busy year. Three Statutory Instruments and 17 Practice Direction Updates (the 139th – 155th) have been made; these bring about a hugely diverse suite of [changes across the Civil Procedure Rules](#) and can be read online at [Civil - Civil Procedure Rules \(justice.gov.uk\)](#)

More details can also be found on the CPR and legislation websites at the following links:

<https://www.justice.gov.uk/courts/procedure-rules/civil>

<https://www.legislation.gov.uk/>

Consultations

The committee has the power to run consultations when evidence/opinions are sought during their consideration of the rules of court governing the practice and procedure in civil proceedings.

The committee consults, as it considers appropriate to the rules or amendments to rules in question, in a number of ways of differing degrees of formality, including specific correspondence with bodies considered appropriate to be consulted; involving representatives of interested organisations in the work of sub-committees reviewing particular aspects of the rules; inviting and reviewing suggestions and observations solicited by its members from among the groups from which each is drawn; and inviting and reviewing suggestions from relevant Government Departments and other authorities affected by rules of civil procedure.

During this period, the committee ran one public consultation, on Fixed Recoverable Costs, which covered proposed amendments to CPR Parts 26, 28, 36 and 45. The consultation also sought views on PDs 26, 28 and 45. The consultation also included related points on Qualified One-Way Costs Shifting (QOCS) and Vulnerability. It was published on 9th May and closed 20th June and informed the Civil Procedure (Amendment No. 2) Rules 2023, 156th Practice Direction Update and associated Pre-Action Protocol (PAP) Update, which is due to come into force in October 2023.

Simplifying the CPR

The committee has continued its project to try to simplify the rules; this being a statutory duty under s.2(7) of the Civil Procedure Act 1997. The work is conducted by a sub-committee chaired by Mr Justice Kerr which is approaching its task in a phased way. The project commenced in 2021 and is nearing completion of phase one, being a review of Parts 1 to 30 (broadly the generic parts of the rules). A rolling programme of consultation supports the work to simplify the CPR. It enables drafting proposals to be published, online, for comment before changes are introduced. This system has now been operating successfully for over 18 months.

Proposed amendments flowing from the simplification project are focused on drafting amendments rather than substantive changes, however, some proposed reforms do seek to relocate or dispense with provisions altogether.

For the period covered by this report, 14 CPR Parts have been reviewed in this way, thus: Part 7 (How to Start Proceedings (The Claim Form)), Part 8 (Alternative Procedure for Claims), Part 14 (Admissions), Part 15 (Defence and Reply), Part 16 (Statements of Case), Part 17 (Amendments to Statements of Case) and this consultation exercise included proposed revisions to Part 38 (Discontinuance), Part 20 (Counterclaims and

Other Additional Claims), Part 21 (Children and Protected Parties), Part 22 (Statements of Truth), Part 23 (General Rules about Applications for Court Orders), Part 24 (Summary Judgment), and Part 49 (Specialist Proceedings).

Further proposals will continue to be published, for [consultation](#), on an ongoing basis on [the CPR Committee webpages \(www.gov.uk\)](http://www.gov.uk)

Thank you to everyone who has submitted responses to date. Developments can be monitored by following progress via the minutes here: [About us - Civil Procedure Rule Committee - GOV.UK \(www.gov.uk\)](#) and subsequent CPR Updates.

Future Business

The committee's work programme and resulting amendments to the CPR are driven by many and often competing priorities. It is not always possible to identify, well in advance, the core topics to be considered. Primary or other legislation is often required on a timetable outside the committee's direct control or that of the Ministry of Justice (MoJ). Other topics focused around issues of concern to the judiciary, practitioners, litigants and other users will feature throughout. Issues such as urgency, scale of (potential) injustice, political imperative and the extent of difficulties being encountered in practice, all form part of the process to manage the programme of work to best effect.

Wherever possible, amendments to the CPR will follow the two common commencement dates of October & April. However, given the weight and urgency of some work, additional updates are to be expected.

Topics likely to drive the work programme for the ensuing year are expected to include a mixture of projects already started, alongside new strands of work; together they include the following (this list is not exhaustive):

- Simplification work across the CPR generally and the associated programme of rolling consultations
- Vulnerable Parties

HM Courts & Tribunals Service's Reform Programme, specifically, the online reformed services governed by PD 51R (Online Civil Money Claims) and PD 51ZB (Damages Claims Pilot)

- CPR Part 6 (Service)
- Pilot scheme for small claims under £1,000 to be resolved on paper (PD 51ZC)
- Extending Fixed Recoverable Costs and Costs matters generally, including form N260
- Part Transfer of Deeds Poll to the Family Division
- Standard Disclosure in Workplace Claims
- Mediation
- Access to court documents by non-parties (in response to the UKSC judgment in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38)
- Business as usual activity by the Lacuna Sub-Committee and Forms Sub-Committee

Contact

Any enquiries concerning the work of the Civil Procedure Rule Committee may be addressed to:

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