



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In QB1M, Royal Courts of Justice
and remotely via Microsoft Teams
At 11.15 a.m. on Monday 12 June 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 Foss	District Judge
District Judge Branston	District Judge
District Judge Birk	District Judge
Fiona James	Lay Magistrate
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
----------------------------	------------------

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Michael Seath and Tony McGovern.

MINUTES OF THE LAST MEETING: MAY 2023

June 2023 Minutes – Family Procedure Rule Committee

- 2.1 The Committee had a few amendments for the item on Permission to Appeal.
- 2.2 The Committee had a few amendments on the attendance list.
- 2.3 The Committee approved the minutes from the May 2023 meeting subject to the above amendments.

ACTION POINT 1: Secretariat to arrange for the May 2023 minutes to be published on the FPRC webpages, once amended.

ACTIONS LOG

- 3.1 18 actions were recorded from the May 2023 meeting.

MATTERS ARISING

Web Inaccuracies

- 4.1 Members raised that PD27B regarding the attendance of media representatives is out of date as it references 1991 Rules in contrast to the Red Book which has the most up to date information.
- 4.2 MoJ Policy reported that two minor drafting inaccuracies had also recently been raised and these will also be taken forward with the MoJ Web Team to be amended.

ACTION POINT 2: MoJ Policy to liaise with web team to resolve the issues ahead of the July meeting.

PD Update No.3 of 2023

- 4.3 MoJ Policy stated that PD Update No. 3 of 2023 was signed by the President and Minister in May. The provisions came into force on 18 May 2023.

PD36ZA – police notification

- 4.4 MoJ Policy reported that the Home Office have completed their initial mapping exercise which covers protection orders in the family space and discussions are in place to ascertain next steps. The intention is to return to the Committee when there is a more substantive update.

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

H v Adoption Agency

- 4.5 MoJ Policy informed the Committee that following the December 2022 FPRC, Mr Justice Macdonald is drafting the PD and the Adoption Working Group will reconvene once the draft is completed. MoJ officials will provide the Committee with a substantive update after the Working Group has met.

ACTION POINT 4: MoJ Policy to return to the Committee at a later date following the next Adoption Agency Working Group meeting.

Update - next open day and all-day meeting

- 4.6 MoJ reported that the next all-day meeting will be on Monday 9 October.
- 4.7 MoJ reported that the next open meeting will be on 6 November and will be held entirely online.

Deed Poll Name Changes

- 4.8 MoJ Policy referred to previous discussion in relation to the position regarding clarification of the fee structure for name change applications. The Committee had raised concerns about the significant imbalance between the fee paid by adult and child name change applicants, which will arise from there being a two-stage process in relation to children, compared to one for adults.
- 4.9 MoJ Policy reported that a meeting has been arranged between MoJ Fees Policy and the acting Chair of the Committee on 22 June and an update will be provided for the Committee in July as a matter arising.

ACTION POINT 5: Deed Poll Name Changes to be added to the July agenda as a matter arising.

Service of Court Documents at Refuges

- 4.10 MoJ Policy reported that they are continuing to liaise with the Domestic Abuse Commissioner and other domestic abuse/refuge sector organisations regarding their viewpoints and engagement on the proposals in relation to service of court documents on women residing in refuges, including the feasibility of any interim and long-term solutions. MoJ Policy and Legal are to meet with Women's Aid and other refuge providers in the week commencing 12 June 2023. An update clarifying the views of those in the sector towards any potential changes will be provided to the Domestic Abuse Working Group at the June meeting and a verbal update will be provided at the July Committee meeting.

ACTION POINT 6: Service of Court Documents at Refuges to be added to the July agenda as a matter arising.

PRIORITIES TABLE AND PD UPDATES

- 5.1 MoJ Policy reported that the Priorities Table had been amended since the last Committee meeting. Members approved the Priorities Table for publication and agreed for this to be published alongside the May minutes.
- 5.2 The Committee asked that the return date for the item on Fast Track proceedings be amended to July.

ACTION POINT 7: The Secretariat to publish the Priorities Table once amended.

STANDING ITEMS

ONLINE PROCEDURE RULE COMMITTEE

- 6.1** MoJ Policy informed the Committee that all six members of the Online Procedure Rule Committee (OPRC) are in place and that there would be an announcement on the GOV.UK webpage. The Committee asked for assurances that there was a female member on the OPRC, which were given.
- 6.2** The first meeting of the OPRC is scheduled for 26 June 2023 with a second one scheduled for 11 July 2023. The OPRC will look at forming sub-committees under which they will take forward specific working areas.
- 6.3** A substantive report back to the Committee will be provided at the July meeting.

ACTION POINT 8: The Secretariat to share the public announcement link on Gov.UK with the Committee

SUBSTANTIVE ITEMS

EARLY RESOLUTION: CONSULTATION OUTCOME AND NEXT STEPS

- 7.1** MoJ Policy provided the Committee with an update on the Committee's consultation on supporting the earlier resolution of private family law arrangements, which closed on 25 May 2023; and to which 37 responses were received. MoJ Policy also reported that the wider Government consultation on early resolution is due to close on 15 June 2023 and a formal response on that exercise is expected in the Autumn. The Committee asked for assurances that there would be consistency between both consultations.
- 7.2** MoJ Policy presented initial drafts of proposed amendments to Part 3 and to Part 28 of the Family Procedure Rules 2010 (FPR) and asked for the Committee's view on a number of points needed to take this issue forward with the intention of providing updated drafts of Part 3 and Part 28 FPR, together with draft Practice Direction amendments, at the next meeting on 3 July 2023.
- 7.3** The Committee discussed proposed amendments to rule 3.4 (adjourning to encourage NCDR) and the proposal to remove reference to the parties having to agree to attend NCDR. It was agreed that those words could be removed, but a PD or guidance would be needed to make clear that this does not amount to the FPR giving courts powers to mandate attendance at NCDR.
- 7.4** The Committee noted that r3.4 FPR currently refers to the ability to adjourn proceedings. Members were concerned that doing so could add to delays in proceedings. It was agreed that the rule should be amended so that courts would need to use "natural gaps" in proceedings as the time to encourage attendance at NCDR, noting that courts still have general powers to adjourn which could be exercised if appropriate.
- 7.5** The Committee discussed the proposed rule amendment regarding when the court would first consider the appropriateness of NCDR. The draft proposed this be at the first hearing, so that (for example) safeguarding checks could be completed first. Some members were concerned that this could add to delays. Officials were invited to consider this issue further.
- 7.6** MoJ Policy spoke to r3.8 amendments in relation to MIAMs. It was agreed that the FPR should not include a non-exhaustive list of types of NCDR, but that such a list should be

included in a Practice Direction. Subject to this point, the Committee agreed to the proposed draft changes to part r3.8 of the FPR.

- 7.7** The Committee discussed amendments to r3.9 and r3.10 of the FPR. Consideration was given to whether a MIAMs provider should be required to “assess” the suitability of different forms of NCDR at a MIAM. The majority view was that this word should be used. It was agreed that r3.10 FPR should be amended so that MIAMs compliance should be considered at the gatekeeping stage in Private Law children’s proceedings. In financial remedy proceedings, it should be considered at gatekeeping, if appropriate, and otherwise at the first hearing.
- 7.8** MoJ Policy introduced the draft Part 28 amendments, which would apply in financial remedy cases and mean that any failure, without good reason, to attend a MIAM or attend NCDR could be taken into account as a matter of “conduct” when deciding whether to make an order for costs. The Committee agreed with this proposal and considered that what amounts to a “good reason” should be a matter for judicial discretion, without FPR or PD provision seeking to define this.
- 7.9** The Committee noted that Schedule 1 Children Act 1989 are not within the “financial remedy proceedings” definition in Part 28 FPR, so would not be caught by the proposals discussed earlier. The Committee accepted this position, noting that rule 28.2 FPR would apply to Schedule 1 cases, so failure to attend a MIAM or NCDR could still be taken into account under that provision.
- 7.10** The Committee agreed to remove the MIAM exemptions which apply where a respondent is uncontactable or unwilling to attend (r3.8(1)(i) and r3.8(2)(a)(b)), meaning a standalone MIAM would need to be attended by the applicant where the respondent was not contactable, or not willing to attend.
- 7.11** MoJ Policy asked the Committee whether they wish to proceed with provision to ask the NCDR provider to provide the court with a document detailing factual information to determine NCDR attendance? The Committee expressed concerns about the current volume of paperwork but recognised the need for evidence. Officials were asked to reflect the flavour of the Committee’s discussion on this point in the next draft of FPR or Practice Direction amendments.
- 7.12** MoJ Policy asked about the proposal to introduce a pro-forma for each party to file with the court to indicate their position on attending NCDR. Concerns were again expressed about adding to the volume of paperwork, but members did see the benefit in requiring parties to file such information, meaning they would have to actively consider NCDR. The Committee requested that officials engage with HMCTS to consider the practicalities of the proposal and feedback to the July Committee meeting.

ACTION 9: MoJ Policy to update the Committee in July with further details on the consultation responses, and revised drafts of FPR and Practice Direction amendments.

ACTION 10: MoJ Policy to consider the impact of delays as discussed in relation to the draft new provision at r3.4(2a) and to report back to the Committee.

ACTION 11: MoJ Policy to discuss the proposed new proforma with HMCTS.

DOMESTIC ABUSE PROTECTION ORDERS (DAPOs)

- 8.1** MoJ Policy gave a brief update on the consultation responses on the DAPO Pilot PD. The consultation closed on 8 June 2023 and, to date, 17 responses were received although as a number of requests for extensions were also received that number is expected to rise. Work

will progress with the DAPO Cross-Jurisdictional Working Group as well as with MoJ Legal and an update will be provided, either in July or in October.

- 8.2 MoJ Policy also reported that the DAPO Cross-Jurisdictional Working Group has started working on the DAPO application form and is considering modifications necessary for the DAPO civil practice direction.
- 8.3 The Committee asked for assurances that the DFJ in each of the pilot courts be kept involved as matters progressed.

ACTION POINT 12: DAPO to return as an agenda item in either July or October.

RESOLVING CONFLICTS BETWEEN FPR AND “HIGH LEVEL” JUDICIAL GUIDANCE

- 9.1 MoJ Legal spoke to the paper, noting the value of judicial guidance but flagging concerns about conflicts between judicial guidance and Rules/supporting Practice Directions. MoJ suggested that the Committee could consider a number of proposed ways to address existing conflicts. MoJ Policy said that if the Committee are minded to progress this work, it will need to be done so alongside existing priorities.
- 9.2 The Committee agreed that the starting point should be that all provisions in an Act will take precedence over any conflicting provision in the Family Procedure Rules 2010 or in a Practice Direction which in turn will take precedence over any conflicting provision in judicial guidance. The Committee agreed that judicial guidance took on an additional importance over the global pandemic and noted that the Statement on Efficient Conduct of Financial Remedy hearings proceeding in the Financial Remedies Court below High Court Judge level serves a very useful purpose.
- 9.3 The Committee discussed options including considering all judicial guidance to identify conflicts with rule or PD provision, or addressing only the specific conflicts identified in the paper. The Committee also discussed the need for flexibility, which can be achieved by amending judicial guidance. The Committee queried whether rules could be expressed to be subject to judicial guidance. MoJ Legal noted there would need to be careful consideration of the FPR-making powers before taking any such step, as they provide for matters of practice and procedure to be in FPR or PDs, not in judicial guidance. Members asked about the possibility of “suspension” of the rules for the implementation of a pilot could be a way forward.
- 9.4 The Committee agreed that this exercise would require further consideration and asked MoJ Policy to return in July with a paper setting out options for next steps, and the associated timescales.

ACTION POINT 13: MoJ to consider options for taking work forward and put a timeline to the July Committee meeting.

PD 27A BUNDLES

- 10.1 MoJ Legal referred to discussion at the Committee meeting on 3 April 2023, where members highlighted several issues in respect of bundles including where PD27A is out of step with current practices and is difficult for litigants in person to work with. A number of amendments were put forward as a means to modernising the Practice Direction to reflect the prevalence of e-bundles, reflecting the thinking of the PD27A working group.

- 10.2** The Committee cited a number of examples, where DFJs are noting that Local Authorities are finding it difficult to follow and comply with the bundle directions. The Committee provided MoJ Legal with the names of a Circuit Judge and two public law practitioners who may be able to assist the Working Group in moving forward. The Committee also suggested that HMCTS be more directly included in this exercise to provide more understanding as to what can be provided in each court especially with an eye on the investment made on specific software systems.

ACTION POINT 14: FPRC Secretariat to contact the proposed contacts and to locate a contact in HMCTS.

ACTION POINT 15: PD 27A Bundles to be added to the October agenda.

PILOT PROPOSAL FOR READINESS AND EXPERT ASSESSMENT CHECKLISTS

- 11.1** MoJ and DfE Policy introduced an issue which they intend on returning to with a paper at the July meeting. The update related to an MoJ/DfE proposal to pilot readiness and expert assessment checklists in public law proceedings. The pilot builds on work done by both departments to look at ways of reducing delays in processing cases and improving outcomes for children.
- 11.2** MoJ and DfE Policy said that they are looking at piloting the introduction of the two checklists to be completed at the advocates meetings ahead of the Case Management Hearing (CMH) and Issues Resolution Hearing (IRH). They will be asking the Cafcass practitioner and the local authority social worker to agree and sign off the checklists jointly, so the judge has a joint view from the professionals involved in the case ahead of the hearing.
- 11.3** The Committee welcomed the introduction of this work and looked forward to a full presentation in July. They also offered to share their IRH checklist with the MoJ and DfE Policy teams.

ACTION POINT 16: The pilot proposal for readiness and expert assessment and checklists to be added to the July agenda as a substantive issue.

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 Secretariats from Other Procedure Rule Committees.
- 12.2** MoJ Policy stated that the Civil and Family joint Working Group regarding Cape v Dring [2019] is set to meet later this month and will be chaired by Lord Justice Bean.

FORMS WORKING GROUP UPDATE

- 13.1** MoJ Policy reported that the table which provided an update on current outstanding tasks. These have been put on hold until after the outcome of the consultation on MIAM exemptions is known to ensure that amendments to the C100 form in particular will not need to be undertaken twice.

FPRC WORKING GROUPS

- 14.1** MoJ Policy reported that following the request by the Committee at the May meeting, HHJ Suh agreed to remain on the following WGs: Closed Material Procedure, Transparency and the Private Family Law Early Resolution Working Groups.
- 14.2** Further amendments were raised by the Committee in relation to the listed membership of the Fast Track and PD27A Working Groups and these will be made ahead of the July FPRC meeting

ACTION POINT 17: Secretariat to amend the membership on the Fast Track and the PD27A Working Groups as appropriate.

DRAFT JULY 2023 AGENDA

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

ANY OTHER BUSINESS

- 16.1** No AOB was raised.

DATE OF NEXT MEETING

- 17.1** The next meeting will be held on Monday 3 July 2023 and will take place in person at QB1M, Royal Courts of Justice and remotely via MS Teams.

Simon Qasim – Secretariat
June 2023
simon.qasim3@justice.gov.uk