



Ministry of Justice

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

Present:

Sir Andrew McFarlane	President of the Family Division
Mr Justice Keehan	High Court Judge
Lord Justice Baker	Court of Appeal 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
Michael Seath	Justices' Clerk
Fiona James	Lay Magistrate
Rhys Taylor	Barrister
Poonam Bhari	Barrister
Graeme Fraser	Solicitor
Bill Turner	Lay Member

Invited Guest:

Mrs Justice Knowles	High Court Judge
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ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Mr Justice Peel and Robert Edwards
- 1.2 The Committee marked the final meeting for Her Honour Judge Raeside and District Judge Branston.

MINUTES OF THE LAST MEETING: JULY 2023

- 2.1 The Committee raised the issue as to how Safelives' training has been reflected in past minutes. The Committee confirmed that its view is that the Safelives training is excellent, but

that the Committee's concern is that it is not advocacy training, and that it is advocacy training that is needed for QLRs.

2.2 The Committee approved the minutes from the July 2023 meeting.

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

ACTIONS LOG

3.1 24 actions were recorded from the July 2023 meeting with a further 8 being carried forward from previous meetings.

MATTERS ARISING

- 4.1** MoJ Policy presented a paper which contained updates on the following issues:
- Web Inaccuracies.
 - PD36ZA – police notification.
 - Deprivation of Liberty (DoL).
 - H v Adoption Agency.
 - Parental Responsibility and Child Arrangements following imprisonment for murder of the other parent.
 - PD2C/ PD36ZE - Proposals for additional functions to be performed by JLA.
 - Deed Poll name changes update.
 - Service of Court Documents at Refuges.
 - P27A bundles.
 - PD Update No.4 of 2023.
 - Pilot proposal for readiness and expert assessment checklists.
 - Permission to Appeal.
 - Police Disclosure Orders.
- 4.2** A member of the Committee involved in the PD27A/e-bundles working group provided an update on the Public Law expert contributing to the work on PD27A bundles.
- 4.3** The Committee were content with officials producing a paper summarising the key points for matters arising going forward, rather than speaking to each item at a meeting. It was agreed that officials will only need to attend the matters arising slot if anything requires particular Committee attention.

PRIORITIES TABLE AND PD UPDATES

- 5.1** MoJ Policy said that the Priorities Table had been updated since the July Committee meeting.
- 5.2** MoJ Policy informed the Committee that they had spoken with MoJ international Team for an update on the item on PD12F regarding international parental child abduction. Colleagues have been in touch with Mr Justice MacDonald who has confirmed that PD12F is not causing any difficulties in practice, and it is his perception that practitioners are more likely to refer to Case Management Guidance – the updated version of this Guidance includes text on international child abduction cases with linked asylum claims. The Committee made a link

on the relationship between rules and guidance proposed that it also be removed from the Priorities Table to an internal wish list.

- 5.3 The Committee referred to the issue of Pension Sharing Orders which was discussed at the November 2022 meeting where it was agreed for this item to return in October 2023 following a further report from the Pensions Advisory Group in September 2023. The Committee agreed that due to timings on the report and the extent of the work that this now be discussed again in either March or April 2024.
- 5.4 The Committee agreed for the Priorities Table be published following the meeting.
- 5.5 The Acting Chair is to meet with officials outside of Committee to discuss the Priorities Table, wish list and triaging of new matters.

ACTION POINT 2: Pension Sharing Orders discussion to be moved to March or April 2024.

ACTION POINT 3: Secretariat to arrange for the Priorities Table to be published on the FPRC webpages at the same time as the July minutes.

ACTION POINT 4: A meeting between the Acting Chair and MoJ Officials to be arranged to discuss priorities.

STANDING ITEMS

ONLINE PROCEDURE RULE COMMITTEE (OPRC)

- 6.1 MoJ Policy provided an update on the OPRC. The first two meetings were held before the summer, with a focus on bringing all members up to a shared level of understanding. The third meeting is scheduled for 9 October and will include demonstrations of pre-action online tools. The OPRC is in the process of setting up its initial sub-committee structure, which will include sub-committees with a focus on data, technology, governance and sector liaison.

SUBSTANTIVE ITEMS

EARLY RESOLUTION: CONSULTATION OUTCOME AND NEXT STEPS

- 7.1 MoJ Policy informed the Committee that they have produced first draft of the Family Procedure Rules amending SI and Practice Direction Update to put in place the procedural changes for the early resolution project. MoJ informed the Committee that the draft SI and PD Update include amendments to the FPR and PDs to change references from “domestic violence” to “domestic abuse”, in order to reflect the language in the Domestic Abuse Act 2021.
- 7.2 MoJ Policy noted that HMCTS have indicated that they will be unable to support the proposal for a new pro-forma asking parties to set out their views on NCDR at this time because of the resource implications for HMCTS in processing and filing such forms. As an alternative, it was proposed that standard application forms be amended to include questions on views on NCDR.
- 7.3 The Committee expressed concern as they considered that the reasons for making the changes are very strong. The Committee asked that consideration be given to the whole journey, not just the beginning of the process.

- 7.4 MoJ Policy agreed work with HMCTS to find a way forward on this point and would report back to the Committee at a future meeting.
- 7.5 MoJ Policy asked the Committee whether they were content with the proposal to insert a definition of “domestic abuse” in r2.3 FPR, which will apply throughout the FPR and PDs. The Committee agreed to this proposal.
- 7.6 MoJ Policy asked the Committee whether they were content with the proposed amendment to r3.4(2)(a) FPR in relation to adjournments in proceedings, considering the policy intention that directions should only be made after initial safeguarding checks are complete.
- 7.7 The Committee asked for clarification on the specific wording and timing presented. The Committee considered whether the court should be able to give directions only after the safeguarding letter has been received. MoJ agreed to redraft on that basis. Concern was expressed that amending the rule to remove reference to adjourning proceedings and replacing it with a proposition about using natural gaps in proceedings to explore NCDR might be perceived as a “watering down”, even though general powers to adjourn would remain. The Committee considered the approach proposed to be appropriate, given delays in the court. It was suggested that the Committee could “launch” the changes and be clear then about what is intended, with support from the Judicial College.
- 7.8 MoJ Policy asked the Committee whether they were content with the approach to keep the provision for the prospective applicant to have to contact a minimum of five mediators to qualify for a MIAM exemption based on the unavailability of a MIAM. The Committee agreed to this approach if there are five mediators to approach in the relevant area.
- 7.9 MoJ Policy asked the Committee for views on the proposals to preface the non-exhaustive list of NCDR process to “for example”, and to update the definition of NCDR at r2.3. The Committee agreed to this proposal.
- 7.10 The Committee raised the issue in relation to Jade’s Law as the MIAM structure does not deal with the reforms being considered over those legislative proposals. However, the view of the Committee was to wait for that legislation to go through Parliament before suggesting amendments.
- 7.11 The Committee discussed amendments to the draft Practice Direction which are consequential upon the changes to the latest drafts of the amendments to Parts 3 and 28 FPR and to PD3A that the Committee have recommended pursuant to the consultation exercise. These include amendments to reflect the change from “domestic violence” to “domestic abuse”. The Committee was content with the proposed Practice Direction amendments.

ACTION POINT 5: MoJ Policy to consider the points raised in relation to the proforma and to update the Committee at the November meeting.

ACTION POINT 6: MoJ Policy to update the draft SI and Practice Direction Update in line with the points discussed at the October meeting and bring revised drafts to the November meeting.

DOMESTIC ABUSE ACT IMPLEMENTATION

Domestic Abuse Act Protection Orders (DAPO) consultation

- 8.1** MoJ Policy updated the Committee on the FPRC DAPO consultation. The Committee were informed that 23 responses were received, many of which contained varied and detailed comments, across judicial and legal practitioner organisations and the domestic abuse sector.
- 8.2** MoJ Policy said that they have been working over the summer with the DAPO Cross-Jurisdictional Working Group to analyse the consultation responses and agree further proposed changes to the DAPO Pilot practice direction. The Committee were asked to consider and agree to the principal changes made to the proposed DAPO pilot practice direction.
- 8.3** The Committee were informed that the revisions primarily concern provisions in relation to cases where third parties are bringing an application on the victim's behalf (which may be without the victim's knowledge or consent), clarity of service provisions, information about P that it would be useful to collect at the application stage, and further detail in relation to positive requirements and electronic monitoring provisions.
- 8.4** The Committee asked for clarification on the discussion regarding whether hearings should be in public or private, in particular, the differences between the family court and the magistrates' court. The Committee said that it was a matter of course that hearings in the magistrates' are held in public. The Committee also asked whether the family provisions would apply in county courts as well as family courts. MoJ Policy confirmed that the CPRC had agreed for there to be a separate, standalone civil PD, which is to mirror the family PD as much as practicable. And that a draft of the civil PD would be put before the CPRC at their November or December meeting. The Committee asked whether MoJ Policy could return in November with a clear explanation on the process for how cases are being heard in the magistrate's court.
- 8.5** MoJ Legal then walked the Committee through a revised draft of the Practice Direction. Particular discussion was raised in relation to the Working Group's recommendation that an application for a DAPO should provide as much information as possible to the court. The Committee agreed.
- 8.6** MoJ Legal asked the Committee whether the procedure is clear and if so, is the suggested approach that applications for permission should be submitted on a bespoke form as opposed to using the FPR Part 18 procedure? The Committee agreed with this approach.
- 8.7** The Committee were asked whether in relation to parties, that victims are adequately protected by the intended procedure; and that the provisions of FPR Part 16 and Practice Direction 16A relating to the appointment of a litigation friend sufficiently provide for such appointments, taking into account that a children's guardian will not be appointed by default for these purposes. Instead, rule 16.6(1) will be amended to allow the court to dispense with the need for a guardian or litigation friend if the conditions of rule 16.6(3) are satisfied. The Committee agreed with the approach.
- 8.8** The Committee considered the service provisions of a DAPO application and agreed with the proposals for making it clearer that the court can allow for different methods of service.
- 8.9** The Committee discussed and agreed to the points made on general provisions (DAPOs made in existing proceedings); perpetrator programme provision (including a triage process); and electronic monitoring.

ACTION POINT 7: MoJ Policy to return with an update at the November meeting.

DOMESTIC ABUSE ACT IMPLEMENTATION

Update and discussion on Qualified Legal Representatives

- 9.1** The Secretariat delivered an update in the absence of policy officials and offered to take back any points raised within discussion. The Committee were informed that MoJ Policy had engaged a variety of stakeholders to better understand implementation issues with the Qualified Legal Representatives' (QLR) scheme. This engagement had also included a survey sent out to QLRs who have undertaken the work. This work produced three recurring challenges, the difficulties in appointing QLRs in certain local areas, training and court administrative processes which may be tackled through further guidance on the court administration's responsibilities for cases in which a QLR is appointed.
- 9.2** The Committee were also informed that MoJ Policy were made aware of a couple of queries that were raised at the Family Court Operational Forum on 15th September, concerning the QLR role in that they can't provide legal advice to parties and what to do when a QLR cannot be found. The Committee were informed that consideration is being given to better communicate resources such as the statutory guidance and the President's View July 2023, which help to clarify the QLR role.
- 9.3** The Committee asked whether further consideration could be given on the process for when a QLR can't be found. The Committee referred to areas where reductions in staffing meant there was administrative staff who were unable to take forward finding a QLR. As part of this discussion, the Committee asked whether sufficient QLRs had been appointed and if not, what can be done to encourage this?
- 9.4** The Committee also asked whether MoJ Policy were intending on undertaking a study on what is the effectiveness (or otherwise) in employing a QLR and whether this has a positive impact.

ACTION POINT 8: MoJ Policy to respond to the points, raised including the process for when a QLR can't be found, at the November meeting through an update under matters arising.

PD36ZC – PROCEDURE FOR USING ONLINE SYSTEM FOR DIVORCE

- 10.1** MoJ Policy updated the Committee on the proposal to make amendments to and extend PD36ZC (the pilot PD underpinning the procedure for the online system to complete certain proceedings for a matrimonial order or civil partnership order online) to 31 May 2024. The Committee agreed with proposed amendments to PD36ZC, and noted the intention that a draft permanent Practice Direction would be presented in March.
- 10.2** The Committee raised a concern that Litigants in Person (LiPs) were having trouble finding the address for FR scanning.

ACTION POINT 9: PD36ZC – Procedure for using the online system to be added to the agenda for the March 2024 Committee meeting.

ACTION POINT 10: MoJ Policy and HMCTS to consider the issue regarding the address for FR scanning.

PRIVATE LAW REFORM PILOTS - PD36Z (PATHFINDER PILOT)

- 11.1** MoJ Policy asked for views on the proposals to make changes to Practice Direction 36Z (PD36Z) to allow for extension of the Pathfinder pilot end date to 28th February 2025, and expansion of the pilot into new areas. The potential new areas are currently under consideration and will be decided upon by Ministers following discussions between MoJ, HMCTS, the judiciary, Cafcass and Cafcass Cymru. Minor procedural changes were also proposed.
- 11.2** MoJ Policy said that the intention is that the changes will facilitate smoother operational implementation of the Pathfinder pilot and therefore the Committee will be required to agree the proposals to amend the end date of the pilot PD, to extend the pilot to new locations and to make minor changes to the procedures to be followed in pilot courts.
- 11.3** The Committee agreed that the issue will return to the Committee in December, where an update will be provided on draft amendments to PD36Z (having incorporated the views of the Committee from October's meeting) and that the amendments to PD36Z will come into force on or before the current end date of the pilot (21st February 2024).

ACTION POINT 11: The Pathfinder Pilot issues to be added to the December 2023 agenda as a substantive issue.

ONLINE PROCEDURES FOR PLACEMENT (PD36P) EXTENSION OF PILOT PRACTICE DIRECTION

- 12.1** HMCTS updated the Committee on proposals to extend Pilot Practice Direction 36P for online placement applications which is due to expire on 31 October 2023. The Committee agreed that the President and then the Minister should be invited to amend PD36P to extend its end date to 31 March 2024.

ACTION POINT 12: Amendments to PD36P to be taken forward in the next Practice Direction update.

VOICE OF THE CHILD

- 13.1** The Committee were provided with an update following last year's workshop with young people, judges, magistrates, Cafcass, Cafcass Cymru, representatives from MOJ and social care professionals which looked at how improvements could be made as to how children and young people's voices are heard in private law proceedings. Three short-term and four medium term priority areas were identified as a means of progressing the issues.
- 13.2** The three short term areas were seeing children earlier in proceedings; every child knowing the outcome of proceedings and reports recording the options for participation given to children; and a suite of video resources for children and young people be established.
- 13.3** The four medium term areas were Access to Records; A Mapped Journey of Correspondence to Children; Longitudinal outcomes study into children's experiences of private law proceedings; and Judicial/magistrates training about the voice of the child.

CLOSED MATERIAL PROCEEDINGS

- 14.1** MoJ Policy updated the Committee on the issues faced with the Closed Material Proceedings (CMP) work. The Committee were informed that following an independent report on CMP in civil proceedings, other MoJ officials will be making amendments to the

CMP in CPR. MoJ Policy therefore recommended for this work to be paused whilst amendments are being made to the CPR to prevent amendments to the FPR cutting across the amendments in the CPR.

- 14.2** MoJ Policy informed the Committee that to proceed with draft Rules in family proceedings cross-government agreement would be needed, and at the moment, officials cross-government have expressed significant concern with the draft Rules. As well as this, in order to proceed with this work, MoJ would need significant legal and policy investment. There was some concern expressed by the Committee. The Chair highlighted that he had a discussion with the President previously regarding this item, and whilst they understood the need to pause this work whilst amendments are being made in the Civil Procedure Rules, they did not understand the concern expressed by officials cross-government. They asked MoJ to arrange for further discussion with cross-government officials to understand their concerns.

ACTION POINT 13: Closed Material Proceedings to be added to December agenda.

ACTION POINT 14: MoJ to arrange further discussions with cross-government officials.

RESOLVING CONFLICTS BETWEEN FPR AND “HIGH LEVEL” JUDICIAL GUIDANCE

- 15.1** MoJ Policy referred to discussion at the July 2023 Committee meeting in which the Committee asked for the issue of conflict between Family Procedure Rules 2010, supporting Practice Directions and/or Judicial Guidance to be brought back to the October meeting. MoJ reminded the Committee that when this item was last discussed, the Committee agreed to reflect on the options over the summer and re-consider the issue again in October.
- 15.2** MoJ flagged the resource requirements for this item. The Chair suggested for this item to be discussed at a planning meeting between the Chair and FPRC Secretariat Team.
- 15.3** The Committee suggested that this work may require the formation of a dedicated working group. The Committee will decide at a later stage.

ACTION POINT 15: Conflicts between FPR and “High Level” judicial guidance to be added to the judicial/MoJ officials meeting in October to discuss FPRC priorities.

ELECTONIC DISCLOSURE – [P-H-L (CHILDREN) (MOBILE PHONE EXTRACTION) (REV1) [2023] EWCA CIV 206 (FEBRUARY 2023)]

- 16.1** The Committee were presented with a scoping paper on the work required to progressing this issue. The Committee were asked to consider placing this issue on the Committee’s “wish list” and that this item be reviewed next year against the Priorities Table to consider if and when it should be taken forward. The Committee were informed that if this is taken forward it could result in other items being deprioritised to enable this issue to proceed.
- 16.2** The Chair stated that this work should be given high priority as it is an issue Judges commonly face in the Family Court. The Chair asked what the resource requirement would be for this work. MoJ stated that resources are quite stretched and that it would take time to progress this work due to resource and number of priorities on the Committee’s list of priorities. MoJ Legal noted that the Court of Appeal has stated that the CPR can be applied in family proceedings where there is a gap in the FPR, so the day-to-day handling of this issue should not be a major problem on the ground. The Chair stated that he will have a discussion with the President to see whether the President’s Office could send out a message to emphasise the Court of Appeal’s decision that the CPR can “fill the gap” in the

FPR. Judges also suggested that a newsletter from the judicial college could also inform judicial members of the Court of Appeal decisions. The Chair agreed to send an email to judicial college editor regarding this.

- 16.3** The Committee asked whether MoJ Policy could return in December with a clearer line as to what, if any, resources are available within the FPRC Secretariat to take this work forward.

ACTION POINT 16: Electronic Disclosure to be added to the December agenda for MoJ Officials to consider resource.

ACTION POINT 17: The Chair to contact the editor of Judicial College Newsletter.

DELEGATED POWERS – TO EXERCISE OF POWERS OF THE HIGH COURT

- 17.1** MoJ Policy informed the Committee that the President has proposed that Rule 54.1A Civil Procedure Rules be mirrored into the Family Procedure Rules. MoJ officials stated that they have put together a scoping paper of the work involved in making mirroring provisions in the FPR.
- 17.2** MoJ Policy recommended that this item is placed in the internal “wish list” document and reviewed from early to mid-next year against the Priorities Table to determine whether this matter should be moved to the Priorities Table and, if so, whether other items would need to be deprioritised.
- 17.3** The Chair stated that this work should be given high priority given pressures of work in the Family Division Appeals office and that officials should bring a paper to progress this issue to the November meeting.

ACTION POINT 18: MoJ to provide a paper for the November meeting.

FORWARD PLANNING AND UPCOMING MEETINGS

OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK

- 17.1** MoJ Policy informed the Committee that the standard form of request to be used in Family Court proceedings to request access to criminal court video recordings of the cross-examination and re-examination of a witness has been published.
- 17.2** The Committee raised the issue that the lead appeals judge has flagged up serious concerns in relation to appeals. The Committee have proposed that this be added to the November agenda.

FORMS WORKING GROUP UPDATE

- 18.1** MoJ Policy reported work in relation to the C100 will be now considered following the update provided at this meeting on the MIAM consultation. The Secretariat will now look for dates to arrange the next meeting of the Working Group.

FPRC WORKING GROUPS

October 2023 Minutes – Family Procedure Rule Committee

- 19.1** MoJ Policy advised that the Working Group list has been updated although some groups will need volunteers to replace departing members.

DRAFT OCTOBER 2023 AGENDA

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

ANY OTHER BUSINESS

FPRC Open Meeting

- 21.1** The Secretariat updated the Committee that 32 expressions of interest to join the meeting had been received under which four have asked questions for the Committee.

DATE OF NEXT MEETING

- 22.1** The next meeting will be held on Monday 6 November 2023 and will take place remotely via MS Teams.

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October 2023
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