



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**via Microsoft Teams**  
**At 11.00 a.m. on Monday 6 November 2023**

**Present:**

<b>Sir Andrew McFarlane</b>	President of the Family Division
<b>Mr Justice Keehan</b>	High Court Judge
<b>Lord Justice Baker</b>	Court of Appeal Judge
<b>Mr Justice Peel</b>	High Court Judge
<b>District Judge Foss</b>	District Judge
<b>District Judge Birk</b>	District Judge
<b>Fiona James</b>	Lay Magistrate
<b>Rhys Taylor</b>	Barrister
<b>Poonam Bhari</b>	Barrister
<b>Graeme Fraser</b>	Solicitor
<b>Robert Edwards</b>	Cafcass Cymru
<b>Bill Turner</b>	Lay Member

**Invited Guest:**

<b>Mrs Justice Knowles</b>	High Court Judge
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## **WELCOME AND INTRODUCTIONS**

- 1.1 The Acting Chair welcomed attendees to the annual open meeting and thanked them for the interest they had shown in the work of the Committee.

## **ANNOUNCEMENTS AND APOLOGIES**

- 2.1 Apologies were received from His Honour Judge Godwin and Michael Seath.

## **MINUTES OF THE LAST MEETING: JULY 2023**

- 3.1 The Committee approved the minutes from the October 2023 meeting.

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

## **ACTIONS LOG**

- 4.1 24 actions were recorded from the July 2023 meeting with a further 8 being carried forward from previous meetings.

## **MATTERS ARISING**

- 5.1 MoJ Policy presented a paper which contained updates on the following issues:
- Web Inaccuracies.
  - Update on Qualified Legal Representatives
  - Deed Poll Name Changes
  - Jade's Law
  - Permission to Appeal – consultation and policy options.
  - PD Update No. 5 of 2023
  - Disclosure of Electronic Records
  - PD27A bundles
- 5.2 The Committee raised an issue in relation to the update on Qualified Legal Representatives and suggested that consideration be given to undertaking a study as a means to understanding the issue and gathering data rather than the proposal for ongoing monitoring.

**ACTION POINT 2: The Secretariat to inform QLR Team on the queries raised by the Committee.**

## **PRIORITIES TABLE AND PD UPDATES**

- 6.1 MoJ Policy informed the Committee that the Priorities Table had been updated since the October Committee meeting. The Committee were content for the Priorities Table to be published.
- 6.2 The Acting Chair stated that he will be meeting with MoJ Secretariat team to discuss the Priorities Table.

**ACTION POINT 3: MoJ Secretariat Team to arrange a meeting with the Chair to discuss the Priorities Table.**

**ACTION POINT 4: Secretariat to publish the Priorities Table along with the October minutes.**

## **STANDING ITEMS**

### **ONLINE PROCEDURE RULE COMMITTEE (OPRC)**

- 7.1 MoJ Policy provided an update on the OPRC's initial sub-committee structure, which will include a focus on data and technology with another focusing on governance.
- 7.2 MoJ Policy also announced that an invitation only launch event has been detailed for 20 November but for those interested, this will have the facility of a live stream. MoJ Policy said

that those who want to attend the live stream should express an interest in doing so through the FPRC Secretariat.

**ACTION POINT 5: Secretariat to collate responses for those who wish to attend the OPRC live stream and to pass these onto MoJ Policy.**

## **SUBSTANTIVE ITEMS**

### **EARLY RESOLUTION: CONSULTATION OUTCOME AND NEXT STEPS**

- 8.1** MoJ Policy thanked the Committee for their work in reaching the position whereby they are now presenting near final versions of the Family Procedure Rules amending SI and Practice Direction Update to put in place the procedural changes for the early resolution project.
- 8.2** MoJ Policy updated the Committee on the proposed position regarding the new pro-forma asking parties to set out their views on Non-Court Dispute Resolution (NCDR). Following the issues raised at previous meetings, a compromise solution has been proposed requiring those parties whose cases are progressing on the digital CCD system to submit pro-forma before every first on notice hearing, and to file updated pro-forma before a subsequent hearing if directed by the court. This will apply to all contested financial remedy cases even if a party is unrepresented and so therefore cannot access the digital system. For private law proceedings relating to children, this will be introduced in Swansea before being rolled out across courts in England and Wales.
- 8.3** The Committee asked for assurances that if there are time delays, that consideration be given to putting in place an interim solution to ensure those not using the digital process will be accommodated. MoJ Policy said that the position will be reviewed if there are any substantial delays in the digital roll out.
- 8.4** MoJ officials also provided assurances that consideration had been given to cases where Litigants in Person who don't have access to the portal will have to use the bulk scanning facility and that there will be discussion with the judiciary about whether they wish to amend standard orders to refer to the new proforma. It was noted that the PDs underpinning the online systems make clear that "filing" can include uploading a document to the online system, and that guidance should make clear to parties how they should file the new proformas.
- 8.5** MoJ Policy also provided assurances that preparation is underway to ensure proformas can be sent out and received without any technical issues.
- 8.6** The Committee approved the proposed rule amendments and proposed that the Practice Direction Update be amended to include the relevant changes as discussed at this meeting. Following these amendments, the Committee were content to agree that both the SI and the Practice Direction be taken forward.
- 8.7** The Committee raised an issue in relation to work being undertaken by a Working Group, convened by the President of the Family Division to address issues raised by non-standard private law proceedings, such as where non-parents care for children. A paper on this matter has been agreed and will be considered in more detail by the Committee at the December meeting.

**ACTION POINT 6: The work undertaken by the President's non-standard private law proceedings Working Group to be added to the December agenda.**

**ACTION POINT 7: MoJ Policy to update the draft SI and Practice Direction Update and to take forward as agreed.**

## **DOMESTIC ABUSE ACT IMPLEMENTATION**

**Domestic Abuse Protection Orders (DAPO) – update on family and civil PD, and progress on court forms and templates**

- 9.1** MoJ Policy said that they had followed up on concerns raised by some Committee members at the October meeting in relation to magistrates routinely hearing DAPOs in public, and whether this may discourage use of that application route. MoJ Policy consulted with HMCTS's legal lead for magistrates' procedure, who confirmed that all magistrates' cases are routinely heard in public. There is in practice little difference between hearing of civil orders and criminal cases. The magistrates' court has powers to allow for a case to be heard in private, but only on the grounds when a public hearing would interfere with the administration of justice. MoJ Policy advised that amending the Magistrates' Court Rules 1981 to require DAPOs to be heard in private would be very different to current procedure and therefore recommended that no amendment be made to those rules (to allow for routine hearing of DAPOs in private). Nor should there be any amendment to the Family DAPO PD to provide that family DAPOs are heard in public.
- 9.2** The Committee agreed with the proposed way forward.
- 9.3** MoJ Policy informed the Committee that drafts of DAPO court forms (the application form and permission form) and a court order template will be presented at the December meeting. MoJ policy also advised the Committee that a draft civil DAPO PD (which is based on the family PD) will be presented to the CPRC at their December meeting.

**ACTION POINT 8: MoJ Policy to return as a substantive item at the December meeting.**

## **PD36ZC – PROCEDURE FOR USING ONLINE SYSTEM FOR DIVORCE**

- 10.1** MoJ Policy confirmed with the Committee the amendments made to PD36ZC (the pilot PD underpinning the procedure for the online system to complete certain proceedings for a matrimonial order or civil partnership order online), as had been agreed at the October meeting. MoJ policy confirmed it aimed to bring a draft permanent Practice Direction to the Committee in March, with a view for the Committee then being able to consider the draft for a second time at its April meeting.
- 10.2** The Committee were content with the proposed timetable.

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

## **ONLINE CONTESTED FINANCIAL REMEDY (PD36N PILOT)**

- 11.1** HMCTS updated the Committee on Practice Direction 36N which provides procedural underpinning for the contested financial remedy (FR) digital service for legal representatives, and which expires at the end of December 2023. The Committee were informed that an extension by a further 6 months until 30th June 2024 is being sought, during which time,

webinars and training will be delivered, and a further imbedding period can be built into the process.

- 11.2** The Committee agreed that this was a sensible solution although they recognised the areas of difficulty which had been flagged up within the pilot. The Committee said that there was no need for formal consultation and were content to approve the extension of Practice Direction 36N. MoJ Legal said that this will be reflected in a future PD Update.
- 11.3** HMCTS confirmed that currently Litigants in Person are to continue to use the paper form, and this will get scanned onto the digital portal so users benefit from the digital outputs. A digital service for Litigants in Person is something HMCTS are considering at some point in the future and also how in the meantime further changes can be made to improve their experience.

**ACTION POINT 10: Amendment to the end date of Practice Direction 36N to be included in a future Practice Direction Update.**

## **ONLINE PRACTICE DIRECTION 5B – EMAIL GUIDANCE**

- 12.1** MoJ Legal updated the Committee regarding HMCTS's proposed new email guidance, to replace the previous guidance which was archived in 2021. The Committee were informed that updated guidance will apply to the family court and the Family Division of the High Court only. Separate guidance is being drafted for the civil court.
- 12.2** The Committee were informed that engagement with colleagues in the civil jurisdiction to ensure consistency between the civil and family email guidance will be undertaken if the Committee agrees to the proposal. Arrangements will be put in place for a link to the guidance to be inserted into Practice Direction 5B once the guidance is finalised and the details of the new link are available.
- 12.3** The Committee were content to approve the proposal that PD5B be amended to insert the new hyperlink to the new guidance, once settled.

**ACTION POINT 11: MoJ Policy to inform the Committee when PD5B is amended.**

## **PILOT PROPOSAL FOR READINESS AND EXPERT ASSESSMENT CHECKLISTS**

- 13.1** MoJ Policy spoke to the MoJ/DfE proposal to pilot readiness and expert assessment checklists in public law proceedings following the update provided to the Committee in July. The pilot has been designed to build on the principles set out in the President's relaunch of Public Law Outline (PLO) timelines and involves making changes to PD36ZF to enable a pilot to implement two checklists to be completed at the advocates meetings ahead of the CMH and IRH.
- 13.2** MoJ Policy said that further consultation was carried out since the July Committee meeting including discussions with Cafcass and DFJs, and redrafted wording for the two checklists, including changes to PD36ZF has now been presented for the Committee's approval so that the pilot can commence in January 2024. The intention is that this pilot PD will be included in the next planned PD Update, to be submitted to the President of the Family Division and the Minister.
- 13.3** The Committee asked for assurances that the viability of the form will take into account as to how it will be completed online. The Committee also suggested a number of drafting

changes to tighten up the wording and the heading on the form, which were noted and agreed by MoJ Policy.

- 13.4** The Committee agreed (subject to drafting changes) for the Pilot to include the checklists to go forward as proposed.

**ACTION POINT 12: PD36ZF to be included in the next Practice Direction update.**

## **DELEGATING HIGH COURT POWERS TO COURT STAFF**

- 14.1** The Committee recognised the pace with which this exercise was carried out and the impact this work would have on High Court Family Appeals.
- 14.2** MoJ Legal informed the Committee of proposals for a new “hook rule” to be inserted in the FPR to enable a Practice Direction to make provision about the delegation of specified court functions to specified members of court staff in the Family Division of the High Court. It was proposed that amendments to rule 2.5 FPR be included in the Family Procedure (Amendment No. 2) Rules 2023, which are scheduled to be laid before Parliament on 7 December 2023. MoJ Legal explained the timing implications if this date was missed. The Committee agreed that they would prefer to keep to this timetable.
- 14.3** The Committee discussed whether they thought it appropriate to consult in line with making FPR provision (section 79(1)(a) Courts Act 2003). The Committee agreed that a consultation would not be required for this work. The Committee confirmed it was content with the wording of the draft rule amendment.

**ACTION POINT 13: MoJ Officials to include draft amendments to rule 2.5 FPR in the Family Procedure (Amendment No. 2) Rules 2023.**

## **FAMILY PROCEDURE (AMENDMENT NO.2) RULES 2023**

- 15.1** MoJ Officials updated the Committee that the next Family Procedure Rule amending SI is due to be laid on the 7 December 2023. The SI will include the early resolution changes and the amendment to rule 2.5 FPR, both of which had been discussed earlier in the meeting. The Committee were informed that a majority of 9 signatures are required, and the Committee will be asked by the Secretariat Team to provide a wet-ink signature (out of committee time). The SI will then be sent to the Minister to sign.

**ACTION POINT 14: MoJ Policy to arrange for the Committee to sign the SI remotely by 16 November 2023.**

## **FORWARD PLANNING AND UPCOMING MEETINGS**

### **OTHER PROCEDURE RULE COMMITTEES AND FAMILY PROCEDURE RULE COMMITTEE LINK**

- 16.1** MoJ Policy informed the Committee that meetings had taken place with other Rule Committee Secretariats and there was nothing to raise at this meeting.

## **FORMS WORKING GROUP UPDATE**

- 17.1** MoJ Policy reported that due to the short turn around between the October and November meetings, the next meeting of the Forms Working Group meeting will now be on 16 November. An update will be provided at the December meeting.

## **FPRC WORKING GROUPS**

- 18.1** MoJ Policy advised that the Working Group list has been updated and that volunteers from the Committee for a place on any of the existing Working Groups would be welcome.
- 18.2** The Magistrate member of the Committee asked to be added back to her existing working groups.

## **DRAFT DECEMBER 2023 AGENDA**

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

## **OPEN MEETING Q&A**

- 20.1** The Acting Chair opened the Q&A session and said that five questions had been received in advance of the meeting which will be responded to directly by the Committee.
- 20.2** **Question 1** was covered under a number of points. Please confirm the approach to Children Act matters, in both private and public law, where neurodiversity is an issue? Apart from the case of D and E [2020], there is no guidance or precedence as to how to approach these types of matters? Can you give consideration to a new Practice Direction as follows; Practice Direction [XXX] – Child Arrangements & Contact Orders: Neurodiversity. This must be applicable to both private and public law proceedings. Please can you also provide guidance to Judge's on neurodiversity in respect of Solicitors and Barristers too? Please can you consider adding guidance within PD12J in respect of the Courts approach in matters where contact is already taking place pre-proceedings?
- 20.3** **Answer 1** - This is an important issue, and the Committee agrees it's vital that all services we offer in the Family Justice system are accessible to everyone, and that court decision making is informed by a proper understanding of individual circumstances and needs. The Committee is aware that staff across the system do receive training on neurodiversity. Cafcass staff have access to an in-house library service with a range of resources on neurodiversity and in March 2023, staff attended training on the topic of understanding neurodiversity. Cafcass recently launched its Neurodiversity Support Group, and the objectives of the group are to increase knowledge of neurodiversity, to create and maintain a hub of resources and provide guidance materials for practice staff. HMCTS are undergoing a digital reform programme at the moment. Part of the purpose of this reform is to make it easier for court users to communicate their needs for support and ensuring that systems can record their specific requirements. The question of guidance to the judiciary in relation to neurodiversity in respect of solicitors and barristers is perhaps something that the Family Justice Council may be better placed to consider than this Committee, and I would be grateful if the Secretariat for today's meeting could pass this suggestion on to Council to consider. Thank you for your suggestion about Practice Direction 12J. The drafting is clear that the Practice Direction should be applied in any case in which domestic abuse is alleged or admitted. This is regardless of whether contact is ongoing before proceedings begin or not.

**20.4 Question 2** - How can we make the FPRs & PDs more accessible to litigants?

**20.5 Answer 2** - We have to ensure litigants are at the centre of our thinking when making provisions in the Family Procedure Rules and Practice Directions. The Courts Act 2003 states that the Committee's power to make the Rules is to be exercised with a view to securing, firstly, that the family justice system is accessible, fair and efficient and secondly that the Rules are both simple and simply expressed. The Committee takes these requirements very seriously when considering potential amendments to the Rules and supporting Practice Directions. We seek to ensure that we understand the challenges and barriers litigants face, particularly those acting in person, and how amendments can impact them. Where we consider it appropriate, we will consult with the public or with specific stakeholders before making amendments to the Rules or Practice Directions. We understand the need for the wording of the Rules and Practice Directions to be easy to understand and accessible for litigants without a legal background. We have made efforts to improve the online accessibility of the Rules and Practice Directions. As we make regular amendments and updates, we ensure that the Rules and Practice Directions are up to date and readily available on the Justice website. This enables litigants to easily access the detail of the Rules and Practice Directions, as well as a simple Summary of the Rules. Ministry of Justice officials continue to look for ways to improve online accessibility by working closely with their web team and, for example, ensuring any errors are corrected promptly. As well as this, His Majesty's Courts and Tribunals Service has adopted a user-centred design approach in their reform programme in modernising their services to ensure the family court system works efficiently for court-users. This includes the introduction of services to enable parties to commence and progress various types of proceedings via a digital process. Each digital service includes detailed guidance for litigants to help them understand the process. If a case is not on a digital service, there are guidance leaflets available to litigants, including online, plus a great deal of information for litigants on gov.uk.

**20.6 Question 3** - The President issued 'Practice Guidance: Non-molestation injunctions' in July 2023, which states, at paragraph 1, that it 'replaces the Practice Guidance Family Court – Duration of Ex Parte (Without Notice) orders issued on 18 January 2017'. The 2017 guidance has a wider application to without notice applications for injunctive orders. Is the 2023 guidance intended to replace the 2017 guidance only in so far as it relates to applications for non-molestation orders? Are there any plans to bring either the 2023 practice guidance or, to the extent that it is still applicable, the 2017 guidance within the Family Procedure Rules?

**20.7 Answer 3** - The short answer is that this guidance applies only to non-molestation injunctions. So far as I am aware, there is no intention to bring either the 2017 or 2023 guidance within the Rules. Guidance is responsive to issues or problems that may arise in the business of the family court and is thus capable of being adapted to changing needs as paragraph 3 of the 2023 Guidance makes clear.

**20.8 Question 4** - HMCTS statistics state that 68% of those who obtain a divorce do so without also making use of the legal system (even by consent) to sort out their financial arrangements. This is about 100,000 people each year. These people presumably have property, pensions, savings and earnings. They must be agreeing something. At the very least they should be able, with guidance, to agree consent orders. As things stand, there are each year approximately 50,000 unexploded bombs (i.e. unresolved financial claims) generated by the pronouncement of divorce orders. There is obviously a very significant public knowledge deficit about the right to make a claim for a financial remedy and what a fair outcome (whether by consent or otherwise) of those claims might be. In light of this, would the Committee be prepared to consider modifying the rules to provide that on pronouncement of a conditional divorce or dissolution order the parties shall be provided



with an information sheet giving general information about the right to make a financial claim and emphasising the importance of an order being made (whether by consent or otherwise)?

**20.9 Answer 4** - Whilst it may be possible to make such provision in the FPR or supporting Practice Directions relating to information sheets about financial claims, the Committee does not have current plans to do so because information in relation to financial claims and the importance of financial orders is already provided within the divorce application system without the need for specific provision in the rules. The majority of applications for divorce or dissolution of a civil partnership that are made by people who are not legally represented are made via HMCTS's online system (digital uptake is currently at 94%). The online system provides information on applying for a financial order on a number of 'screens' during the online divorce or dissolution process, which include information on the circumstances in which an applicant will need to apply for a financial order and a link to Form A or Form A1. At the stage of applying for a final order in the divorce or dissolution proceedings, users are reminded again of the importance of settling their finances. Additionally, the Gov.UK page "Money and property when you divorce or separate" provides details about agreeing finances on separation and the process for applying for a financial order, whether by consent or where the case is contested. Links to Gov.UK are provided when an applicant submits an application via the online system. Should a person submit a paper application for divorce or dissolution, the relevant form (D8) also provides guidance on applying for financial orders and a link to the Gov.UK page. HMCTS continues to consider whether improvements to the guidance on financial orders can be made and will consider this specifically in relation to the information provided at conditional order stage.

**20.10 Question 5** - How can the Committee help to maximise the procedural efficiency of the Magistrates' Courts?

**20.11 Answer 5** - The Family Procedure Rules 2010 do not apply in Magistrates' Courts, so it is not in the Committee's remit to help to maximise the procedural efficiency of the Magistrates' Courts. However, the Committee is working on several projects which it is hoped will assist with efficiency, and carry other benefits, in family proceedings, including in those heard by lay magistrates sitting in the family court. For example, the work on early resolution, which has been discussed earlier in this meeting, is intended to encourage more out of court resolution, so reducing the number of cases before the court. The Pathfinder private law pilot was launched in February 2022. The pilot aims to improve the experiences and outcomes for children and parents, and in particular, those who may need additional support, such as domestic abuse survivors. The pilot is being evaluated currently to understand the impact against those aims but early insights show court timeliness has improved in both areas where the pilot scheme is running. HMCTS has also launched a small pilot for a digital private law service for child arrangements order and Part 4 Family Law Act 1996 applications. This is an end-to-end digital service that is being tested in Wales. It is hoped that this service will be extended next year to further court areas, subject to further testing. The aim is to improve the service for all stakeholders and users in this area of family law work. Family Public Law is an end-to-end digital service, it means that Magistrates are able to see the digital file and access the bundles remotely. This service is well established now and continues to provide an improved service for all stakeholders. The Committee has extended the range of judicial functions that can be carried out by authorised Justices' Legal Advisers under Practice Direction 2C and introduced pilot provisions under Practice Direction 36ZE including the ability for Justices' Legal Advisers to make consent orders in section 8 Children Act 1989 proceedings, subject to certain restrictions. These changes have enabled more cases to be triaged, progressed, and/or finalised without the need for a hearing, avoiding unnecessary delay and freeing-up valuable court and judicial time to be used more effectively.

## **ANY OTHER BUSINESS**

**21.1** The Acting Chair thanked observers for attending and closed the meeting.

## **DATE OF NEXT MEETING**

**22.1** The next meeting will be held on Monday 4 December 2023 and will be a hybrid meeting and will take place in person in QB1M, Queens Building, Royal Courts of Justice and remotely via MS Teams.

Simon Qasim – Secretariat  
November 2023  
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