

Approved

Minutes of the Civil Procedure Rule Committee

Friday 1st December 2023, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via video conference.

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Trower
His Honour Judge Bird
District Judge Clarke
District Judge Johnson
Dr Anja Lansbergen-Mills
Isabel Hitching KC
David Marshall
Ben Roe
Virginia Jones
Ian Curtis-Nye
Elisabetta Sciallis

Apologies

Members: His Honour Judge Jarman KC, Senior Master Cook, Tom Montagu-Smith KC.
Non-members: Lord Justice Bean (Item 7)

Item 1 Welcome

1. The Chair was pleased to acknowledge Dr Anja Lansbergen-Mills' return following maternity leave and welcomed everyone joining the meeting, whether attending remotely or in person.

Item 2

2. **Minutes:** the minutes of the last meeting, on 3rd November 2023, were **AGREED**.
3. **Matters arising not covered by later items.** The following was duly **NOTED** from the Chair:
4. **Clinical Negligence Fixed Recoverable Costs (FRC) (AL(23)184):** Senior Master Cook is to chair the sub-committee and work is ongoing. The matter is provisionally programmed in for a report to the February 2024 meeting.
5. **EU Retained Law (AL(23)185):** This was last before the CPRC in July 2023 and concerns proposals which include enabling law officers to intervene and referral to a higher court. Discussions have since been undertaken with the UK Supreme Court, the Family Procedure Rule Committee (FPRC) and the Scottish and NI Rule Committees. This work is ongoing, in preparation of the matter returning in the Spring 2024.
6. **Strategic Lawsuits Against Public Participation (SLAPPS) (AL(23)195/196):** Sub-Committee membership is being finalised; a CPRC member is sought. The Chair invited volunteers to self-nominate, otherwise an appointment would be made. **Action:** CPRC members to volunteer by 22nd December 2023.
7. **Pilot PD for Integrated Mediation in Small Claims (AL(23)202):** Work remains ongoing in preparation of returning to the CPRC when ready, however, implementation may require a standalone PD Update, outside the usual common-commencement cycles. The recent decision in Churchill -v- Merthyr Tydfil County Borough Council Neutral Citation Number: [2023] EWCA Civ 1416 (the constitution comprised, the Lady Chief Justice of England and Wales, the Master of the Rolls and Lord Justice Birss) was also duly **NOTED**:

Item 2 Pilot PD for Domestic Abuse Protection Orders (DAPO) CPR(23)56

8. Maja Vojnovic (Ministry of Justice) and Sheila Bacha (Drafting Lawyer) were welcomed to the meeting.
9. The Chair provided some introductory remarks and **THANKS** to all working group members for their care and attention. The task required an innovative drafting approach, which has been skilfully prepared, so that mirror PDs can be used within both the Civil and Family jurisdictions. His Honour Judge Robinson and District Judge Byass (co-opted members of the cross-jurisdictional working group) were also welcomed to the meeting and participated in the discussion.
10. Ms Vojnovic presented the matter. In summary, the new Domestic Abuse Protection Notice (DAPN) and Order (DAPO), for victims of domestic abuse, were introduced by the Domestic Abuse Act 2021. In the Civil jurisdiction, DAPOs will be available only in ongoing county court proceedings specified in regulations, on application by a victim who is a party to the proceedings or of the court's own initiative.
11. The intention is to pilot the DAPN and DAPO from Spring 2024 (in certain court centres) to test their effectiveness and impact on victims and survivors of domestic abuse and perpetrators.
12. The DAPN and DAPO will replace the Domestic Violence Protection Notice and Domestic Violence Protection Order which will be repealed once DAPNs/DAPOs are fully rolled out nationally. No other protective order will be repealed as they can be used in non-domestic abuse cases.
13. A stakeholder consultation, by the FPRC, took place in the summer 2023. The cross-jurisdictional working group recommended that the Civil PD be developed once the drafting of the Family PD was finalised.
14. A detailed discussion ensued. Overall, the drafting approach was praised. HHJ Robinson considered it to be a really useful and intuitive solution; complimenting Ms Bacha for all her hard work. This was endorsed by Ian Curtis-Nye, who considered it particularly helpful from the users' perspective, advocating it as a possible model for the future. Isabel Hitching KC supported the principle and raised some practical points, which were responded to. Consideration was given to consolidating the blank paragraphs (which only apply to the Family jurisdiction), but it was decided not to do so, as that would compromise usability when working cross jurisdictionally. Other points that required further consideration included: District Judge Johnson's comments in relation to draft paragraph 7.4 on removing, adding or substituting a party and its intended purpose in Civil proceedings – it was observed by DJ Byass that there may be multiple claimants or defendants; Master Dagnall's point as regards the necessity of defining the term 'relevant Civil proceedings' which is seemingly not used.
15. It was **NOTED** that:
 - the FPRC approved the Family DAPO PD at their October meeting;
 - express provision is given in the draft Civil PD to explain that (a) it adopts the same paragraph numbering as in the Family DAPO PD, where possible and, where relevant, also corresponds with the Family DAPO PD and (b) if a paragraph of the Family DAPO PD is not applicable, the corresponding paragraph in the Civil PD is intentionally left blank. In principle, this drafting approach is to be encouraged in appropriate circumstances, but does not set a precedent for CPR drafting;
 - it is not usual CPR drafting practice to refer to substantive law, as it is in the FPR;

- proceedings in the county court will be specified within Regulations, a draft of which was tabled. DJ Johnson observed that Bankruptcy proceedings may need to be included (the conduct for which is covered by the Insolvency Rule Committee);
 - nationally, the project is being overseen by the Senior Presiding Judge for England and Wales; regular reporting and a structured evaluation of the pilot can therefore be expected.
16. It was **RESOLVED** to **APPROVE in principle, subject to final drafting**, a pilot PD for DAPOs in civil proceedings.
17. **Actions:** (i) MoJ Policy to consider the drafting of para 7.4 and whether Bankruptcy proceedings need to be included in the Regulations, as well as whether any further revisions are required in light of any of the other above comments (ii) Drafting Lawyers and Secretariat to incorporate into the mainstream CPR Update as part of the April 2024 common-commencement cycle (iii) Secretariat to advise web team that sections left blank are intentional.

Item 3 Extending Fixed Recoverable Costs (FRC) CPR(23)57

18. Mr Justice Trower presented the matter. Robert Wright (Ministry of Justice) also contributed. **THANKS** were also conveyed to District Judge Middleton for his continued hard work with the sub-committee.
19. A round-up summarising the current position as regards decisions and actions from the last CPRC meeting (see item 3 in minutes of 3rd November 2023) was **NOTED**. An additional suite of proposed amendments to the FRC regime, some following consultation, and others in response to user feedback, were then discussed in detail.
20. Ian Curtis-Nye spoke to the proposals concerning fixed costs determinations and the proposed amendments concerning rule 46.14 for fixing costs of Part 8 (costs only) proceedings. It was explained that the aim of the proposed new procedure was to produce a specific process for fixed costs determination where there is a need for something to be done. The drafting has been formed from the concept that there is agreement on all issues other than costs, but there is also a need to cover circumstances when the court cannot make a summary determination at the end of proceedings. Essentially, the reform amounted to a bespoke carve out, from the existing and well-established current procedure, for determining fixed costs in future. Some elements were devised following representations from users (the Forum of Insurance Lawyers (FOIL)). The Chair was unconvinced of the need, in practice, for a lengthy new process involving rule and PD amendments, in addition to a proposed new costs precedent form. If there is a gap to be addressed within the rules, the solution should be efficient and simple. Other members raised concern that all cases could end up going into the proposed new process, which is not the intention. The prospect of further unintended consequences were also raised. Overall, there was unease with adopting the proposal in its current form, if at all.
21. Mr Wright confirmed that the MoJ has committed to uprating the FRC figures, explaining that HM Government's position is to use the Services Producer Price (SPPI) as the inflationary index. The increase will be applied to all the *Jackson* FRC figures which are currently in the CPR, for the nine months between January and October 2023. This concerns the figures in Table 12 (fast track), Table 14 (intermediate track), and Table 15 (noise induced hearing loss (NIHL) claims) of PD 45. The trial advocacy fees in Table 12, for complexity bands 1-3, will also be increased via the SPPI, by an additional 4%, to take into account inflationary increases between 2013 and 2016; this was covered in the MoJ's summer 2023 consultation on FRC issues. The uprating will include the FRC figures which came into force in October 2023, to the nearest pound. It was **NOTED** that the uprated set of figures are currently being finalised by MoJ analysts, with the intention to include them in the CPR update cycle due to come into force in April 2024.

22. A discussion as to the principle concerning application of the new, updated, figures ensued. Two options were considered: (i) that the updated figures apply to all claims from the April 2024 in-force date, whenever started. This means that any claim which is started before that date, but which concludes after that date, will be subject to the new figures, or (ii) that the updated figures will apply only to claims which are issued on or after the April 2024 in-force date. MoJ consider option (i) to be the preferred approach and this was **AGREED**, meaning that as at April 2024 there will be one set of costs that apply, as now. However, whether this approach continues, at such time as the figures are considered for updating again in the future, is something to be reviewed afresh at that time.

23. It was **RESOLVED**:

(i) **not to adopt** the proposed reforms in relation to:

- fixed costs determinations. The committee was mindful of the potential impact on the courts, the existing duty to deal with cases in the context of the overriding objective and that, ultimately, judges have inherent case management powers to deal with matters appropriately in the interest of justice. An additional and lengthy new procedure was not merited at this time;
- fixing costs of Part 8 (costs only) claims. Further revised drafting may return in due course.

(ii) to **approve, subject to final drafting**, amendments in relation to:

- recoverability of restoration proceedings: a revised rule 45.15A and new Table 15A to provide for the allowable disbursements. This departs from the normal practice of including them in Section IX;
- timing for the admission of clinical negligence claims to be allocated to the intermediate track: minor revisions to rule 26.9(10)(b) to improve wording and formatting;
- case management conferences: revised rule 28.2. This is pursuant to the action from the last meeting at which His Honour Judge Bird and District Judges Johnson and Clarke volunteered to review to initial re-draft proposed in response to points raised by a Judicial College tutor (HH Chris Lethem);
- entitlement to costs – more than one claimant: revised rule 45.5(8) to provide clarity as to the calculation required;
- updating figures via the SPPI inflationary index.

24. **Actions:** (i) MoJ Policy to confirm updated figures by 8th January 2024 (ii) Drafting Lawyers and Secretariat to incorporate into the mainstream CPR Update as part of the April 2024 common-commencement cycle (iii) FRC Costs Sub-Committee to reconsider the draft rule on fixed costs determination, with a view to returning to the CPRC on 2nd February 2024.

Item 4 Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Hague 19”) CPR(23)58

25. Yinni Hu and Catherine Brown (Ministry of Justice) were welcomed to the meeting, along with Andrea Wright and Victoria Spencer (MoJ Legal).

26. Ms Hu presented the matter, providing an overview of the background and current policy thinking. It was explained that Hague 19 is a multilateral private international law convention. It establishes a common set of rules to facilitate the recognition and enforcement of foreign

judgments in Civil and Commercial matters between contracting parties and aims to contribute to a positive national and international environment for multilateral trade, investment and mobility by reducing transactional costs for parties in cross-border matters as well as enhancing access to justice.

27. Once in force, the convention will provide greater certainty and predictability for those dealing in cross-border Civil and Commercial disputes about when judgments from courts in the UK will be recognised and enforced in the courts of other parties to the convention, and when judgments from those states can be recognised and enforced in the UK.
28. HM's Government is planning to achieve implementation and ratification as soon as possible, if feasible by the end of June 2024. The decision to sign and ratify the Convention follows public consultation. Amendments to the CPR are envisaged as part of implementation of the Convention. Some key procedural issues have been identified, and the intention is to return to the Committee in February with proposed rules relating to the registration of foreign judgments under Hague 2019, as well as the route to challenge such registration decisions.
29. Officials are also alive to the connected issue with the work on simplifying CPR Part 25 (see item 8 below) and this was duly **NOTED**.
30. The matter was discussed. The Chair observed the challenging timetable and enquired as to the intended legislative vehicle for any rule amendments. It was confirmed that the working assumption at present was that any CPR amendments would be made by the CPRC, but via a standalone SI (rather than in one of the usual CPR amending SI), in recognition of the ambitious implementation timetable (which does not align with the CPR's mainstream common-commencement cycles). MoJ Policy indicated their willingness to lead on the associated administration and bid for Parliamentary time, rather than the Rule Committee Secretariat. This was **NOTED with thanks**.
31. It was **RESOLVED**:
 - to establish a sub-committee and appoint Ben Roe and Isabel Hitching KC as members;
 - the scope of any consultation should be considered. As an initial steer, a focused consultation with the Chancellor of the High Court and the Senior Master of the King's Bench Division, together with other relevant judges, such as Mr Justice Foxton (judge in charge of the Commercial Court), should be undertaken;
 - matter to return, when ready.
32. **Actions:** MoJ Policy to keep the Secretariat apprised of developments for programming purposes.

Item 5 Housing and Possession Sub-Committee: Report relating to aspects of eviction and other procedure CPR(23)59

33. The Chair provided some introductory remarks, giving **THANKS** to Master Dagnall and the sub-committee members (David Marshall, His Honour Judge Jan Luba KC (Designated Civil Judge for London) and District Judge Kevin Harper (past President of the Association of District Judges)) for their extensive work.
34. Master Dagnall presented the matter. It was explained that the work largely flows from earlier reforms, which although they are working in practice, some tweaks are proposed by way of improvement. Specifically, the MoJ and HM Courts and Tribunals Service (HMCTS) have received queries relating to the new Notice of Eviction procedure (CPR 83.8A) as introduced within a package of reforms in autumn 2020 and these queries have been carefully

considered, together with a point of concern and minor drafting points relating to certain other forms.

35. It was **NOTED** that the initial (2020) reforms followed consultation, however, the sub-committee's proposals were not considered to require consultation because they are of a limited nature and in the interests of clarification, rather than substantive change.
36. A suite of recommendations, prepared by the sub-committee, were discussed and considered. It was **RESOLVED** to:
- **approve** amendments (as per the November 2023 version) to prescribed form N54 Notice of Eviction;
 - **approve in principle**, that CPR 83.8A (Notice of Eviction of Writs and Warrants of Possession) be amended to provide, expressly, that a further notice of eviction is required after each occasion that a complete eviction does not occur on a day specified in a previous notice of eviction. A proposed drafting solution to return to the CPRC for further consideration/determination, when ready;
 - **approve in principle**, that CPR 83.8A and PD 83 (Writs and Warrants – General provisions) be amended to provide for a prescribed form N54A to be used as a Further Notice of Eviction in relation to both warrants of possession and writs of possession. The proposed draft form N54A is to return to the CPRC for further consideration/determination, when ready. It was **NOTED** that an informal version already exists and this will be used as the model when designing the draft prescribed form;
 - **note** the issues concerning applications by County Court Bailiffs and High Court Enforcement Officers (HCEO) for dispensation of – or truncation of a time period of – any notice, or further notice, of eviction and, **not to make any changes** to the CPR/PD in consequence. However, further representations can be made (by HMCTS/HMG) to the CPRC if required;
 - **approve** the “practice forms” required for applications for writs of possession to become prescribed CPR forms, but without requiring formal statements of truth. The suite of forms were updated following the 2020 reforms, to provide the information required for the court to properly consider each type of request and these contain statements to certify the information provided. The updated versions do not appear to be widely in mainstream use. Any CPR/PD amendments in consequence are to return when drafted, if required;
 - confirm, that the sub-committee and Forms Sub-Committee are empowered, under **delegated authority**, to make further minor amendments to court forms without need for full CPRC approval;
 - **note** that the current N54A is available online, but the prescribed form N54 is not; the Chair will raise the matter at an upcoming Civil Business Authority meeting, thereafter the position can be reviewed. The expectation is that all prescribed forms are publicly available online. When both the revised N54 and new prescribed N54A forms are finalised and approved they are to be published in the usual way.
37. **Actions:** (i) Chair to raise points concerning forms and their publication online at the CBA meeting and report back (ii) subject to the CBA meeting, the Secretariat, in liaison with the Master Dagnall and Senior Master Cook (Forms Sub-Committee Chair), to facilitate (via MoJ Forms Design) the production of forms N54 (version Nov23) and KBD/District Registry practice forms (PF and MO) for publication in the usual way (iii) Secretariat, in liaison with Master Dagnall, to schedule in time for the CPRC to consider the proposed CPR/PD amendments and revised N54A form.

Item 6 PD 52C Appeals to the Court of Appeal: housekeeping amendments CPR(23)60

38. Master Meacher was welcomed to the meeting and presented the matter.
39. It was explained that PD 52C required revision to bring it up to date with practice. The proposed amendments were reviewed and discussed. This resulted in some further modest amendments of a typographical nature in the interests of consistency and simplification.
40. It was **RESOLVED** to:
- **approve, subject to final drafting**, the amended PD 52C;
 - in consequence, two email addresses will be removed from the PD and placed into the standalone CPR E-mail address list (form N900) (which hangs off paragraph 6 of PD 5B).
41. **Actions:** (i) Drafting Lawyers and Secretariat to incorporate into the mainstream CPR Update as part of the April 2024 common-commencement cycle (ii) Secretariat to investigate whether a hyper link can be inserted into the PD to take users directly to the email list.

Item 7 Court Documents Sub-Committee (UKSC Cape -v- Dring) CPR(23)61

42. Mrs Justice Joanna Smith was welcomed to the meeting and presented the matter on behalf of Lord Justice Bean, who chairs the sub-committee.
43. A copy of the sub-committee's terms of reference, which includes a list of the judges and officials involved (from the Civil, Family and Tribunals jurisdictions), was annexed to Bean LJ's report, together with a copy of the UK Supreme Court judgment in Cape Intermediate Holdings Ltd -v- Dring. This judgment provides the context to the sub-committee's work. Special attention was drawn to paragraphs 41-51 inclusive; para 51 serves as the impetus for establishing the multi-jurisdictional sub-committee, to consider access to court documents by non-parties.
44. The Chair praised the care and diligence of all members of the sub-committee and **NOTED** Bean LJ's report and accompanying final draft proposed new CPR rule 5.4C with **THANKS**.
45. It was explained that the main change created by the proposed new rule is the expanded types of documents which may be obtained by non-parties. The draft rule provides that:
- judgments and orders, save when given in private, should be available as of right;
 - statements of case should be available on application unless any party (or person identified in the pleading) has applied to the court for an order restricting access, in which case it will be for the court to decide whether to make such an order, either preventing access or imposing restrictions. If such an order has been made a non-party may nevertheless apply on notice for a copy (or unedited copy);
 - skeleton arguments would be obtainable before the hearing unless a contrary order has been made;
 - witness statements and expert reports would be available when the witness is called or the statement/report is deployed in written form in court (again subject to a contrary order).
46. The sub-committee were keen to ensure that the court retains control (having para 45 of *Cape -v- Dring* in mind). However, they were also anxious to avoid the issues that might arise if skeleton arguments, witness statements and expert reports could only be obtained from court

records. This lies behind the draft provisions at paragraphs (8) - (10) of the new rule which place the responsibility for providing copies of these documents on the party who filed the skeleton argument or relies on the evidence.

47. A discussion ensued, during which, various points of principle and other topics were discussed. In summary:

- whether the new rule should list reasons why access might be denied (noting para 46 in *Cape -v- Dring*). CPR 32.13 (inspection of witness statements) has a list of this kind. The sub-committee's marginal preference was to suggest that it should not be in the rule but in an accompanying PD or guidance;
- whether the court should be entitled to refuse a request on the basis that it is oppressive, particularly if it is voluminous and made just before a hearing. It is not easy to provide a drafting solution for this;
- the issue of expert reports generated a considerable amount of discussion within the sub-committee, around how expert reports were to be dealt with and it was noted that there is no equivalent rule to CPR 32.13 dealing with inspection of expert reports. HHJ Bird highlighted that there was no automatic right of access to a medical report and in response to a question from Master Dagnall, it was confirmed that the intention of the drafting is that if access is provided to a witness statement, that access does not include obtaining the exhibits/annexures, because they are not required in order for a non-party to follow the proceedings; Master Dagnall also raised the point as to whether the new rule should make specific reference to affidavits as well as to witness statements and Smith J undertook to consider that;
- any time limit for the period during which access should be available. Conscious of the rapidly disappearing practice of paper bundles, this will be when the court destroys them. However, in a digital environment, this is different. The sub-committee considered that the question of when digital files should be "handed over" to the MoJ or the National Archive is beyond their remit. So long as files or e-files are retained by the court, they are within the jurisdiction of the CPRC. But, what happens to them after that was not regarded as CPRC business. The Chair **NOTED** that this issue links with wider work and HM Government's Call for Evidence on Open Justice (which closed in September 2023). The associated analysis and related work from which is ongoing. As such, this particular point could not be further advanced at this stage.

48. The Secretariat raised an observation from an HMCTS lawyer at the Administrative Court Office in Birmingham. A particular problem for judicial review arises, as often the Interested Party is the active participant rather than a defendant, who may and often does file their Acknowledgment early. The draft rule 5.4C(7) refers to defendants filing Acknowledgments of Service. It may be appropriate to consider whether, in this context, in JR proceedings the text should be "defendant or interested party". JR proceedings may be an area in which requests for papers will be high. However, a wider issue of consistency in the drafting (of *interested party*) across the CPR may also arise. It was **AGREED** to invite the official to raise the point within the prospective consultation, to allow for fuller consideration.

49. The Chair concluded that the proposed new rule was reasonably modest in text, but reasonably significant in nature. It was **RESOLVED** to:

- revisit the drafting of sub-rule (4) in relation to, "...any person identified in a document..." and sub-rule (8) to include "at or in advance of the hearing" after "copy", for clarificatory purposes;
- subject to final drafting, **approve in principle**, the proposed new draft CPR 5.4C Supply of documents to a non-party from court records;

- publish (online) the final revised draft CPR 5.4C for consultation and include within the explanatory text the possibility of an amendment to CPR 32.13 (availability of witness statements for inspection) to provide express provision in relation to the inspection of expert reports.

50. It was **FURTHER NOTED** that:

- following the consultation, work may be undertaken to further consider the issue of providing for a list of possible reasons for denying access;
- the anticipated plan once the CPR amendment is approved is that the other jurisdictional Rule Committees will consider their own, equivalent, drafting in due course. To this end, the sub-committee's work is considered as complete.

51. **Actions:** (i) In consultation with Smith J, Drafting Lawyers prepare the proposed new rule for consultation (ii) Secretariat to (a) facilitate publication of the proposed draft rule for consultation (online) as soon as practicable in the new year and advise fellow Rule Committee Secretariats and policy officials (b) advise the ACO lawyer to submit any comments [viz the above point in relation to "interested party"] as part of the consultation (c) record sub-committee as dissolved/dormant.

Item 8 Simplification (Section 2(7)) Sub-Committee

52. This item comprises two elements:

Part 25 (Interim Remedies and Security for Costs) final proposals for consultation and proposed amendment to Part 4 (Forms) CPR(23)62

53. Ben Roe presented the matter, which was last before the Committee in October and was, subject to various points, agreed in principle (see para 78 onwards in minutes of 6th October 2023).

54. It was explained that most of the issues had been resolved and revised drafting prepared.

55. A discussion ensued, which addressed the remaining issues. A summary of which is as follows.

56. DJ Clarke had raised, out-of-committee, that Section V refers to imaging orders, but unlike freezing injunctions and search orders, there is no definition in CPR 25.1. The sub-committee consider this point well made. Now that imaging orders have their own section in the rule (rather than the prior treatment in the PD, where they were presented essentially as a sub-category of search orders), it would be worth defining them in CPR 25.1 and this was **AGREED**. For consistency, some of the original wording at CPR 25.1(1)(l) on interim payments has been re-inserted.

57. It was **NOTED**:

- the draft proposed CPR 25.9 (Form of order) does not include a provision on penal notices. This is because of the resolution at the last meeting, that penal notices do not form part of the order;
- the current wording at CPR 25.9(6)(a) is lengthy ("have regard to the need for the terms of the order not to make continuing with the claim prohibitively expensive for the applicant"). Shorter wording was proposed at the July meeting, but rejected ("try to avoid making it prohibitively expensive for the applicant to continue the claim"). Overall, the sub-committee consider that the existing wording is tolerably clear and should remain as part of drafting put out for consultation;

- consequential amendments to forms PF43 (Application for security for costs) and PF44 (Order for security for costs) have been approved in principle by Senior Master Cook, under delegated powers.

58. It was **AGREED**:

- the current exception for freezing injunctions at CPR 25.10(1) will be retained, because its removal may be considered as a substantive change, which would not usually be made unless there is a perceived need;
- the proposed draft CPR 25.18(2) should not include, “relevant”, but should include, “observe”. The context being that previously, the committee discussed the phrase “responsible employee”. HHJ Bird suggested use of the phrase “in a position to exercise appropriate authority”, HHJ Jarman KC suggested “someone who appears...” and the Chair suggested “a person who appears to have relevant authority”. The sub-committee are attracted to the latter formulation, as combining elements of the other two. However, following discussions with the MoJ Drafting Team, there is a concern that the Joint Committee on Statutory Instruments (JCSI) will request an explanation of what constitutes “relevant authority” for this purpose;
- proposed drafting at CPR 25.29(a) to include a drafting note/placeholder to explain that the final text is contingent on HM Government’s intention to join the Hague 19 Convention on the Recognition and Enforcement of Foreign Judgments (see item 4 above).

59. It was **RESOLVED to APPROVE IN PRINCIPLE, subject to the above points and to final drafting**:

- the proposed reformed CPR Part 25 (Interim Remedies and Security for Costs) and proposed revocation of the supplementing practice directions (PD 25A and PD 25B);
- the proposed amendment to CPR Part 4 (Forms) to reflect model orders;
- the above proposals are FIT FOR CONSULTATION, using the (online) rolling consultation facility; the accompanying destination table is to be provided as part of the consultation material.

60. **Actions:** (i) Secretariat to facilitate publication as part of the rolling consultation facility, as soon as practicable. The timetable for which should allow for the sub-committee’s report to return at the same time as the Hague 19 item (which is provisionally scheduled for the March meeting) (ii) Isabel Hitching KC to notify the JCSI of the Part 25 consultation and draw the point concerning CPR 25.18(2) to their attention.

Forward planning

61. Isabel Hitching KC provided a brief oral report on progress with formulating a proposed plan for further simplification reforms. At the October meeting, the phase two work plan was approved (see para 71 onwards in minutes of 6th October 2023). Subsequently, sub-committee planning has been further inspired by attending the recent event which launched the Online Procedure Rule Committee (OPRC) and the Digital Justice System. Initial thinking suggested that any structural changes to the CPR should be devised in such a way as to future proof the CPR and allow for interaction with wider digital reforms. The ensuing discussion highlighted a general consensus for the vision, systemic simplification and improved navigability. However, resource implications were significant and consultation would be required.

62. It was **RESOLVED** to:

- produce a high-level plan setting out, in broad terms, the sub-committee's initial thinking;
- refine the scope of the current phase two work plan, in consequence;
- CPR Part 25 simplification project to continue as planned.

63. **Actions:** (i) Sub-Committee to produce high-level plan for presentation when ready (ii) Secretariat to provisionally schedule time in for Spring 2024. **NB:** The actions above viz Part 25 remain unaffected.

Item 9 Rail Passenger Services Public Service Obligation Contracts (bringing EU Regulation 1370/2007 into domestic law) CPR(23)63

64. Henry Robinson and Stephen Street (Department for Transport) were welcomed to the meeting.

65. It was explained that this matter was last before the Committee in October 2023 (see item 8 in minutes of 6th October 2023). Since then, a focused consultation with Mr Justice Swift (judge in charge of the Administrative Court) and HHJ Jarman KC has taken place. DfT officials conveyed their **THANKS** for the valuable judicial input.

66. The intention of the proposed amendment is to reflect in the CPR the reduction in the limitation period applicable, to be one month, for judicial review (JR) claims brought under the Public Service Obligations in Transport Regulations 2023 ("the SI"). The SI reinstates provisions contained in Regulation (EC) No 1370/2007 ("R1370"), which concern the award of public service obligation ("PSO") contracts. The Regulations also introduce into domestic law a limitation period for challenge to a decision or award made under the Regulations. The provision reduces the limitation period for awards to one month and this includes JR challenges, as well as any private law claims for breach. The reform aligns with the time limits in the mainstream subsidy and procurement rules and the Subsidy Controls Act.

67. It was **NOTED** that (a) no adverse comments were received during the judicial consultation and (b) the amendment is not strictly necessary, because CPR 54.5 para (3) could be relied upon, which provides that CPR 54.5 does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review.

68. However, it was **RESOLVED** that, in the interests of transparency of clarity and usability, it was appropriate to:

- **amend CPR 54.5 (time limit for filing claim form)** to reflect the reduction in time limit (to one month). The amendment to CPR 54.5 involves the inclusion of a new paragraph (7) to state that any application for JR brought in relation to a decision pursuant to the SI must file the claim form in accordance with the limitation provisions in the SI. A consequential amendment is also required to CPR 54.5(4), to cross-refer to the new paragraph (7).

69. It was **FURTHER NOTED** that:

- the CPR changes need to apply to claims made under procurements commenced under the SI, which comes into force on 25th December 2023. The rule changes will not apply to procurements commenced prior to that date, to which R1370 will be preserved for transitional purposes. No transitional drafting is needed in the CPR as the drafting proposed refers to decisions governed by the SI, which are decisions in respect of procurements commenced after 25th December 2023.
- agreement has been obtained from the devolved authorities (albeit that no changes to procedural rules are required in Scotland).

70. **Action:** Drafting lawyers and Secretariat to include in the next mainstream CPR Update to be published in the new year as part of the April 2024 in-force cycle.

Item 10 Pilot PDs for review

PD 51ZC Small Claims Paper Determination Pilot Scheme

71. Faye Whates (HM Courts & Tribunals Service) was welcomed to the meeting and provided a brief oral update on the progress of the pilot and the emerging themes forming the evaluation. This was duly **NOTED**. A substantive report will be presented in due course, and before the end of the current pilot period on 1st June 2024.

72. **Action:** HMCTS to keep Secretariat apprised for programming purposes.

PD 51O Electronic Working Pilot Scheme

73. The Chair explained that, due to the pressure on member time, it had not yet been possible to complete the review of PD 51O, however, it was timely to consider the pilot period, which is due to expire on 6th April 2024. The option and scope of including the Administrative Court within the PD had also been discussed with Mr Justice Swift, out-of-committee. It was **RESOLVED** to:

- amend PD 51O to provide, subject to final drafting, for the Administrative Court;
- extend PD 51O until 1st November 2024, to allow time for the review to be conducted.

74. **Actions:** (i) In consultation with Swift J, Drafting Lawyers and the Secretariat to include the amendments in the next mainstream CPR Update, to be published in the new year as part of the April 2024 in-force cycle (ii) Member to (a) lead to review of PD 51O and (b) represent the Administrative Court on the group conducting the review, to be considered by the Chair, out-of-committee (iii) Secretariat to provisionally programme the matter in for review no later than the June 2024 CPRC meeting.

Item 11 Any other business / possible items for future business

Forms N19, N19A and N19B - Civil Restraint Orders (CRO) and PD 3C

75. The Chair explained that the Forms Sub-Committee has approved, under its delegated powers, revisions to the following forms: N19 (limited CRO), N19A (extended CRO) and N19B (general CRO). The amendment being to add "*Details of the previous orders recording that claims and/or applications were totally without merit are set out below*". This is followed by a text box into which the details can be inserted.

76. The forms are accessible from the CRO PD 3C and as such, it was **RESOLVED** to include the necessary update in the next mainstream PD Update.

77. **Action:** Drafting Lawyers and Secretariat to incorporate into the mainstream CPR Update as part of the April 2024 common-commencement cycle.

Upcoming Civil Procedure Amendment Rules SI and PD Update

78. The Chair provided a roundup of items intended for inclusion in the next mainstream CPR Update and set out the associated indicative timetable. Subject to approval by the MR and Ministerial concurrence, the plan is to publish the amendments in early February 2024 in line with the April 2024 common-commencement date.

79. **Action:** Secretariat and Drafting Lawyers to produce instruments for signing in advance of the indicated February laying date.

Lacuna Sub-Committee (LSC) Membership

80. It was **NOTED** that the Chair had recently met with DJ Clarke and the Secretariat in preparation of the handover of the chairmanship of the LSC from Master Dagnall to DJ Clarke in the new year. Volunteers for a Circuit Judge member to join the LSC were sought, whereupon, HHJ Bird was **DULY APPOINTED, with THANKS.**

81. **Action:** Secretariat update the sub-committee membership list.

Letters from the Forum of Insurance Lawyers (FOIL)

82. It was **NOTED** from the Chair, that correspondence had been received regarding the online CPR. The issues raise a number of points of potential principle and practical feasibility, which require discussion with, in particular, MoJ Digital. It may be there is scope to consider the points as part of the project to relocate the CPR online (3rd February 2023 minutes at para 6 refer). **Action:** Secretariat to raise with MoJ Digital.

Valedictory for Virginia Jones

83. The Chair advised that, due to a change in circumstances and with a heavy heart, Virginia Jones has, reluctantly, tendered her resignation. Virginia was thanked for her time and effort on the Committee since her appointment, as one of the solicitor members, in June 2022. The Chair wished her a fond farewell. Ms Jones replied, observing how welcoming and supportive the Committee – both members and officials – have been and that she will miss the role greatly, but will continue to follow developments with keen interest.

Date of next meeting

84. It was **NOTED** from the Chair that the next meeting will be 2nd February 2024, as scheduled.

C B POOLE
December 2023

Attendees:

Carl Poole, Rule Committee Secretary
Master Dagnall, Chair, Lacuna Sub-Committee
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department
Andrew Currans, Government Legal Department
Katie Fowkes, Government Legal Department
Amrita Dhaliwal, Ministry of Justice
Andy Caton, Judicial Office
Faye Whates, HM Courts & Tribunals Service (attending remotely)
Maja Vojnovic Ministry of Justice (Item 2)
Shelia Bacha Government Legal Department (Item 2) (attending remotely)
His Honour Judge Robinson (Item 2) (attending remotely)
District Judge Byass (Item 2) (attending remotely)
Robert Wright, Ministry of Justice (Item 3) (attending remotely)
Yinni Hu, Ministry of Justice (Item 4)
Catherine Brown, Ministry of Justice (Item 4)
Andrea Wright, Government Legal Department (Item 4) (attending remotely)
Victoria Spencer, Government Legal Department (Item 4) (attending remotely)
Master Sally Meacher (Item 6) (attending remotely)
Mrs Justice Smith (Item 7)
Henry Robinson, Department for Transport (Item 9) (attending remotely)

Stephen Street, Department for Transport (Item 9) (attending remotely)