



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE**  
**In Royal Court of Justice**  
**and remotely via Microsoft Teams**  
**At 11.00 a.m. on Monday 4 December 2023**

**Present:**

<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>His Honour Judge Godwin</b>	Circuit Judge - Judicial member for Wales
<b>Her Honour Judge Suh</b>	Circuit 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>Laura Coyle</b>	Solicitor
<b>Shabana Jaffar</b>	Cafcass
<b>Robert Edwards</b>	Cafcass Cymru
<b>Bill Turner</b>	Lay Member

**Invited Guest:**

<b>Mrs Justice Knowles</b>	High Court Judge
<b>Mr Justice MacDonald</b>	High Court Judge
<b>Her Honour Judge Wright</b>	Circuit Judge

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1 Apologies were received from the President of the Family Division and Michael Seath.
- 1.2 The Acting Chair welcomed three new members, HHJ Suh who has re-joined the Committee to replace HHJ Raeside; Shabana Jaffar who has joined the Committee as the Cafcass

representative; and Laura Coyle who has been appointed as a new practitioner member of the Committee.

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

2.1 The Committee approved the minutes from the November 2023 meeting.

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

## **ACTIONS LOG**

3.1 14 actions were recorded from the November meeting with the majority being actioned or included for discussion at this meeting.

## **MATTERS ARISING**

- 4.1 MoJ Policy presented a paper which contained updates on the following issues:
- Web Inaccuracies.
  - Deed Poll Name Changes
  - Jade's Law
  - Permission to Appeal – consultation and policy options.
  - Practice Direction (PD) Update No. 6 of 2023
  - Family Procedure (Amendment No. 2) Rules 2023
  - PD27A bundles
  - Delegating High Court powers to court staff
  - Fast Track Working Group - Update
  - Update on Qualified Legal Representatives
  - Closed Material Proceedings
- 4.2 The Committee discussed the position in relation to Qualified Legal Representatives (QLRs) and raised concerns about the level of urgency this point is receiving especially as they are experiencing issues in relation to non-availability of QLRs. The Committee also asked for clarity around the expenses issue.
- 4.3 MoJ Policy responded to the Committee's concerns on QLRs and proposed that this will be covered as a substantive point at the February meeting. The Committee welcomed this suggestion and said that in the meantime, they would raise the issue of administrative support for the QLR scheme at their regular meeting with HMCTS.
- 4.4 The Committee agreed proposals for additional members to be added to the PD27A Working Group. MoJ policy confirmed that Public Law Experts have been consulted for this work. The Committee also raised points on Fast Track Working Group which members agreed to discuss at the Fast Track Working Group later that afternoon. It was agreed for the Working Group paper to be amended ahead of the February meeting.

**ACTION POINT 2: Qualified Legal Representatives to return as a substantive issue in February 2024.**

**ACTION POINT 3: The Working Group membership table to be amended to ensure that new members are added to the PD27A Working Group and the Fast Track Working Group.**

## **PRIORITIES TABLE AND PD UPDATES**

- 5.1** MoJ Policy informed the Committee that the Priorities Table had been updated since the November Committee meeting. The Committee were content for the Priorities Table to be published.
- 5.2** The Acting Chair informed the Committee that an updated excel version of the Priorities Table was discussed at the recent Judiciary/Secretariat meeting and agreed that this should be circulated for consideration for the Committee ahead of the February meeting.

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

**ACTION POINT 5: Secretariat to circulate the excel version of the Priorities Table in advance of the February meeting.**

## **STANDING ITEMS**

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

- 6.1** MoJ Policy provided an update on the OPRC, including reflections from the recent launch event which included mapping for Family and the other jurisdictions. The Committee members who attended the launch thought it worked well and provided a good understanding on the intentions of the OPRC.
- 6.2** MoJ Policy said that the next meeting of the OPRC will be on 18 December and will discuss the current position including testing as well as laying down the road ahead for next year which will include preparation for an affirmative Statutory Instrument.
- 6.3** MoJ Policy said that the EOI for non-judicial membership of OPRC sub-committees is live and due to close on 15 December.

## **SUBSTANTIVE ITEMS**

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

- 7.1** MoJ Policy provided an update and reported that a majority of Committee Members have signed the Family Procedure (Amendment No.2) Rules 2023 (the Rules), and the President has signed the PD Update No.6 of 2023. Both were signed by the Minister on 30 November 2023. The Rules will then be laid before Parliament on 7 December 2023.
- 7.2** MoJ Policy gave a summary of final amendments made to the Statutory Instrument after the Committee considered the draft at the November meeting. These included that, following discussions within HMCTS and MoJ about the lead-in time, a provision was made for the early resolution and domestic abuse rule changes to come into force on 29th April 2024.
- 7.3** MoJ Policy reported that one amendment was made to PD Update No.6 following the Committee's consideration of the draft in November. The amendments to PD5A on forms

have been removed, which would have inserted references to the name and number of the new proforma for parties to set out their views on non-court dispute resolution. The intention is to update this via a PD update when these details are known and to come into force with the other early resolution related provisions. MoJ Policy will work with the Forms Working Group on proposed form amendments and new forms and will keep the Committee updated on the implementation planning as needs be. Consideration will also be given to building in training for court staff into the process.

- 7.4 The Committee welcomed the update with particular reference to the point on training and stressed the importance of how this should be undertaken. The Acting Chair agreed to raise this discussion with the Judicial College with a view to inclusion on their training programme.
- 7.5 The Committee proposed that, to ensure that the profile for early resolution is not just undertaken as a tick box exercise, that a message should be conveyed to practitioners and the public to stress the importance of this matter. The Acting Chair agreed to raise this point with the President of the Family Division.
- 7.6 The Committee raised the recent decision in which the Court of Appeal concluded that a court does have the power to stay a claim for, or order, the parties to engage in a non-court-based dispute resolution process providing that the power is exercised in such a way that it does not impair a party's rights to a fair trial. The Committee agreed that although this is an important ruling, it chimes with what is being presented and therefore should not hold up progress.

**ACTION POINT 6: The Acting Chair to raise the training issue with the head of the Judicial College.**

**ACTION POINT 7: The Acting Chair to speak with the President of the Family Division on the suggestion that a note be drafted to reinforce this issue.**

## **APPLICATIONS INVOLVING NON-PARENTS: MIAM REQUIREMENTS**

- 8.1 The Committee spoke to the issue introduced at the November meeting and reported on the position as laid out by a small working group set up by the President in June 2023 to consider the challenges faced by non-parent applicants/respondents within private law proceedings and to make recommendations as to how such application might best be managed within private law proceedings.
- 8.2 The Committee were informed that the Working Group recommended that that the Committee should consider the drafting of MIAM exemptions which might better meet the needs of those involved in non-standard private law proceedings. It was proposed that the Working Group will update the Committee on its work at regular intervals which will include developing some proposals for reform of the pre-court space for those involved in non-standard private law proceedings.
- 8.3 The Committee agreed with the proposed way forward.

## **DOMESTIC ABUSE ACT IMPLEMENTATION**

### **DAPO - court forms, order template and Allocation of Business SI**

- 9.1 MoJ Policy provided an update following work undertaken by the Cross-Jurisdictional DAPO Working Group, which has been working on DAPO court forms following on from the work on the pilot practice direction. MoJ Policy said that due to work on the HMCTS Digital Reform

programme for private family law, it has not been possible to produce a digital product and has instead developed a form based on the current FL401 form, which can be completed electronically and emailed to the court or printed off and completed offline.

- 9.2** The Committee discussed the application form DA1 and proposed some amendments in relation to a cross-reference and a spelling typo. The Committee also suggested that some caution be applied in bailiff involvement for unrepresented applicants, as they may not be able to assist within a reasonable length of time. The Committee suggested that the point on bailiff numbers will need to be considered with HMCTS to ensure they will be in a position to manage the service.
- 9.3** The Committee also suggested that thought be applied to the without notice test in the DA1 form which has been paraphrased. The Committee also suggested that the words 'ex-parte' be reconsidered, with a view to removing the term. The Committee agreed that the DAPO Working Group can sign off the final revisions to these forms. The Committee also asked whether the forms have been translated in the Welsh language. MoJ policy confirmed that the finalised forms will be translated into Welsh.
- 9.4** MoJ Policy spoke to the DAPO court order template for use in the family court which has been shared with Mr Justice Peel. MoJ Policy reported that due to IT system developments required on the HMCTS family systems prioritisation for sign-off of the family court order template is required.
- 9.5** The Committee said that they were content with the DAPO court order template but asked if it could be formatted to be consistent with other products and that the colours applied follow that on other orders. The Committee agreed for the final version to be signed off by Mr Justice Peel. The Committee also suggested that the heading for the notification box on the front page be amended.
- 9.6.** The Committee agreed the proposed amendment to the Distribution of Business 2014 Rules, to provide for without notice DAPO applications made by applicants under 18 to be heard by judges other than lay justices.

**ACTION POINT 8: MoJ Policy to amend the DAPO court order template to reflect comments received at this meeting and to send these through to Mr Justice Peel.**

#### **POLICE NOTIFICATION PILOT - PD36ZA – EXTENSION OF THE NORTH YORKSHIRE PILOT**

- 10.1** MoJ Policy spoke to the issue in relation to a pilot Practice Direction underpinning a small-scale pilot in the North Yorkshire area to test the early notification system of non-molestation orders, and occupation orders with powers of arrest attached, to the police. The pilot has already been extended by a year and is due to end in February 2024.
- 10.3** MoJ Policy said that the Home Office are conducting a feasibility assessment for a bespoke IT solution which would improve data flow from the courts to the police. A report on the second 12-week phase of this work is expected in mid-February 2024. The Committee asked whether a further update could be provided in February, although it was recognised that the full feedback from the Home Office report may not be known by then.
- 10.4.** The Committee agreed to extend the pilot for a further year, until February 2025.

**ACTION POINT 9: MoJ Policy to update the Committee in February based on discussions with the Home Office regarding a bespoke IT solution.**

## **PATHFINDER PILOT – PD36Z**

- 11.1** MoJ Policy spoke to the issue in relation to the Pathfinder pilot which aims to improve the experience and outcomes for children and parents involved in private law proceedings, and particularly those who may need additional support such as domestic abuse survivors. Further amendments to Practice Direction 36Z were presented which will allow for extension of the pilot end date in the two current sites to 28th February 2025, and expansion of the pilot into new areas. The new court areas are Birmingham and South East Wales with the pilot due to run in each of the new sites for a one-year period. From their respective start dates.
- 11.2** The Committee expressed some disappointment that the pilot was not to be rolled out more widely. MoJ Policy explained that this was primarily to do with a reduction in the budget.
- 11.3** MoJ Policy also explained the caution raised in relation to potential delays in introducing the two new areas could be as a result in waiting for the two existing areas to reduce their numbers to ensure a smoother roll-out.
- 11.5** The Committee was content with the proposed amendments to PD36Z save for one point. One of the proposed changes is to remove the automatic need for a Child Impact Report (CIR) for cases that return within a short timeframe (meaning that judges will be able to decide at their discretion whether to order a CIR for these cases). The Committee recommended that MoJ officials include an approximate timeframe within this to provide greater clarity to judges. MoJ Policy considered the comments received on the draft PD and explained that in order to keep to the proposed timetable, it may be necessary to circulate an amended draft out of Committee. The Committee were content with this proposal and suggested that agreement be sought in advance of the meeting in February 2024. The Committee also suggested that an alternative name be considered to replace 'Pathfinder'.

**ACTION POINT 10: MoJ Policy to circulate an amended version of this new proposed provision in PD36Z TO THE Committee for agreement ahead of the February meeting.**

## **PD36ZE – CHILD ARRANGEMENTS PROGRAMME - ALTERNATIVE MODELS USE- UPDATE**

- 12.1** MoJ Policy updated the Committee on the position regarding the introduction of PD36Q and PD36R in 2021, which were introduced during the pandemic to allow local courts flexibilities in how they operate. The measures introduced by PD36Q and PD36R have now been combined and are included in PD36ZE (previously PD36Y). The Committee requested that an overview of the data gathered on the impacts of these practice directions be provided.
- 12.2** MoJ Policy said that previous figures obtained in May 2023 showed that 22 DFJ areas used the One Track Model and that 12 DFJ areas used the Two Track Model, six areas were using Child Arrangements Programme (CAP) and 2 DFJ areas were operating the pathfinder pilot. Figures obtained in November 2023 now show that 16 DFJ areas are using the One Track Model or variation of such model, 12 DFJ areas are now using the Two Track Model or a variation of such model, 12 DFJ areas are using CAP provisions and that 2 DFJ areas are operating under the Pathfinder pilot. One DFJ area (Leeds and West Yorkshire) is using a mix of models; with Leeds following the 'Liverpool Model', and the remaining courts using Watford.

- 12.3** MoJ Policy reported that since May 2023, six courts have reverted to CAP from the 'Midlands Model'. Two additional areas have indicated that they plan to move back to CAP within the next three months. It was reported that MoJ analysts continue to get a full picture about how all courts are currently managing cases via the monthly coordinated courts data collection.
- 12.4** The Committee agreed that this issue should come back for a further update at the May 2024 meeting.

**ACTION POINT 11: An update on PD36ZE – Child Arrangements Programme- Alternative Models Use to be added to the May 2024 agenda.**

## **H v ADOPTION AGENCY**

- 13.1** Mr Justice MacDonald presented the issues following his judgment in H v. An Adoption Agency [2021] EWHC 1943 (Fam) regarding whether the court should under section 55A of the Family Law Act 1986 grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child. Mr Justice MacDonald previously presented a report in December 2022 with recommendations for a Practice Direction to address the issues raised in his judgment. A draft new Practice Direction was considered by the Committee.
- 13.2** The Committee asked whether interaction with the Registrar General had taken place, and discussed whether the Practice Direction should contain a provision in which the Registrar General operates under or if it should instead signpost to the relevant provisions for assistance. The Committee agreed to approve the PD subject to questions surrounding the Registrar General.

**ACTION POINT 12: MoJ to liaise with Mr Justice MacDonald on the comments received from the Committee and to return to the Committee either in February or March for an update.**

## **SINGLE LAWYER MODEL**

- 14.1** The Committee spoke to the issue which was raised at the June meeting following previous discussion in December 2022. The intention was for the Working Group to consider the key issues and return with an update. The Committee agreed that the model will help but raised caution as to whether it only works well in situations without conflict.
- 14.2** The Committee confirmed that the Family Law Bar Association (FLBA) and Resolution have responded to the proposed pilot scheme. Both are supportive of the single lawyer model in principle, but both have raised significant concerns to aspects of the model. The FLBA is concerned about the element of compulsion (requiring parties to attend a single lawyer upon issue of Form A), and the concentration on one form of ADR ahead of others. Resolution have had legal advice from Kings Counsel who confirmed that it would be a regulatory breach for a solicitor to act as the single lawyer as soon as the Form A is issued, because at that point the parties would be deemed to be "in conflict" and it is impermissible to act for both. The current plan is for the Working Group to consider whether a proposed pilot scheme can be revised to take account of these concerns.
- 14.3** The Committee agreed with the position and confirmed that they were content that the Working Group should take the points raised into account which will also include awaiting

the outcome of the MoJ consultation on ADR and therefore this issue be put back until March 2024.

**ACTION POINT 13: Single Lawyer Model to return for discussion at the March 2024 meeting.**

## **VOICE OF THE CHILD**

- 15.1** The Committee provided a brief update and agreed that similar will be delivered every three to four months. There had been a meeting with the Family Justice Council Working Group on child access to court and Local Authority records; possible Cafcass funding in relation to training videos on court processes had been considered; data on children's "wishes and feelings" from the Pathfinder research has been gathered but no comparable information exists in private law cases outside the Pathfinder pilot; and a Voice of the Child Day is due to take place in March 2024.

## **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 the Forms Working Group met on 16 November and agreed a number of actions reflected on the Forms table. In addition to the work reflected in the table, MoJ Policy confirmed that future projects involving the C1A form; the Deprivation of Liberty form exercise; and work that will come out as a consequence of the next Pension Advisory Group report will also be considered in the coming year.

## **FPRC WORKING GROUPS**

- 18.1** MoJ Policy said that the Working Group list will be updated further following comments received from this meeting and an updated list will be included in the February 2024 bundle.

## **DRAFT FEBRUARY 2024 AGENDA**

- 19.1** The Committee were informed that the February 2024 agenda will be updated following this meeting.

## **ANY OTHER BUSINESS**

### **Disclosure of information in cases of alleged child abuse and care directions hearings**

- 20.1** The Committee were provided with information in relation to the 2013 Protocol and Good Practice Model: disclosure of information in cases of alleged child abuse and care directions hearings which was published on 17 October 2013. HHJ Wright, who chairs the Disclosure



sub-working group, set up by Family Crime Interface Group, was invited to attend to respond to any additional points raised. The Committee were informed that the sub-group was set up to work on revising the Protocol to ensure it remained relevant and was able to cover all circumstances where there is an exchange of information and material between criminal and family agencies and jurisdictions. The 2023 protocol as presented, is a result of their work.

- 20.2** The Acting Chair confirmed that there is a triaging process for new items to come before the Committee and recommended that this will first need to go before the President of the Family Division to give his reflections on the draft to the Working Group. It will then be for the Committee to consider what status the protocol should have in the FPR/ Practice Directions – for example, whether the protocol can, or should, be embodied in a FPR Practice Direction, or whether a FPR Practice Direction should cross-refer to the existence of the protocol. The Acting Chair said that resource will also need to be located before taking forward any agreement on the status of the protocol in the FPR/ Practice Directions, but agreed that this should be placed back on the agenda for February 2024.
- 20.3** The Committee agreed that HHJ Wright should be invited back to the February meeting for this item.

**ACTION POINT 14: The President of the Family Division to confirm next steps for this item at the February 2024 meeting.**

#### **Implications of Re G & H [2023] EWCA Civ 768 on leave to oppose adoptions.**

- 20.4** The Committee discussed the position following a recent judgment in Re G & H [2023] EWCA Civ.768 on an appeal against an order refusing leave to apply to revoke a placement order. The Committee were informed that the principal issue was an argument on the correct interpretation of the rules about whether the children had to be parties to the application for leave and, if so, whether a guardian had to be appointed.
- 20.5** The Committee agreed that this issue would need further consideration and that a Working Group be established to discuss the issue. The Committee agreed that this item should be added to the March meeting for a further update.

**ACTION POINT 15: A working group to discuss the implications of G & H to be set up before the February meeting.**

**ACTION POINT 16: Implications of Re G & H to return for discussion at the March 2024 meeting.**

#### **DATE OF NEXT MEETING**

- 21.1** The next meeting will be held on Monday 5 February 2024 and will be a hybrid meeting. The meeting will take place in person in QB1M, Queens Building, Royal Courts of Justice and remotely via MS Teams.

FPRC Secretariat  
December 2023  
[FPRCSecretariat@justice.gov.uk](mailto:FPRCSecretariat@justice.gov.uk)