

**Approved**

## **Minutes of the Civil Procedure Rule Committee**

Friday 2<sup>nd</sup> February 2024, conducted in a fully remote format via video conference.

### **Members attending**

Lord Justice Birss, Deputy Head of Civil Justice (Chair)  
Mr Justice Trower  
His Honour Judge Jarman KC  
His Honour Judge Bird (from Item 2)  
Senior Master Cook  
District Judge Clarke  
District Judge Johnson  
Dr Anja Lansbergen-Mills  
Isabel Hitching KC  
David Marshall  
Ben Roe  
Ian Curtis-Nye  
Elisabetta Sciallis

### **Apologies**

Tom Montagu-Smith KC

### **Item 1 Welcome, Minutes, Matters Arising & the Action Log**

1. **Minutes:** the minutes of the last meeting, on 1<sup>st</sup> December 2023, were **AGREED**, subject to some modest revisions provided to the secretariat, out-of-committee.
2. **Matters arising not covered by later items.** The following was duly **NOTED** from the Chair:
3. **Civil Procedure (Amendment) Rules 2024 and 163<sup>rd</sup> PD Update:** The mainstream CPR updating SI was laid before Parliament yesterday (1<sup>st</sup> February) and published alongside the 163<sup>rd</sup> PD Update on the CPR webpages, together with MoJ's response to their July consultation on the extension of fixed recoverable costs (FRC). The CPR amendments are due to come into force on 6<sup>th</sup> April 2024.
4. **Retained EU 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, respectively. This work is ongoing in preparation for the matter to provisionally return to the March/April meeting/s.
5. **Pilot PD for Integrated Mediation in Small Claims: Implementing and Form amendments (AL(23)202):** The CPRC approved the Mediation Pilot PD, in principle, at the October 2023 meeting and it is awaiting final drafting prior to promulgation. The Mediation Sub-Committee has considered a suite of form changes proposed by HMCTS and recommend their approval. Senior Master Cook was content for the Forms Sub-Committee to consider, which they have done. The Chair was content to confirm the form amendments as approved under the Forms Sub-Committee's delegated powers. The forms being updated in consequence of the mediation pilot are:
  - N180 – Directions Questionnaire
  - N9B – Make a defence or counterclaim (specified amount)
  - N1C – Notes for defendant or replying to claim form
  - N1A- Notes for claimant on completing a claim form
  - N1D – Notes for defendant on replying to the claim form out of jurisdiction
  - N182 – Mediation settlement agreement

6. **Action: (i) PD Update:** MoJ/HMCTS to keep the Secretariat apprised of developments and timing for promulgation of the Mediation Pilot PD **(ii) Form changes:** HMCTS to update the Mediation Sub-Committee and, in liaison with the Secretariat, to facilitate the form revisions and publication.
7. **Service Sub-Committee (AL(23)124):** The Chair advised that Mr Justice Richard Smith has been co-opted as sub-committee Chair, pro tem. A sub-committee report is anticipated for the April meeting.
8. **Member recruitment:** is ongoing.
9. **Forms online:** at a recent meeting of the Civil Business Authority, a commitment was given by government to make more forms publicly available online. Currently a suite of forms produced by the court are not available online, because they are not forms which public users would produce (such as a Notice of Eviction). The likelihood is that the CPR pages (on *www.Justice*) will be used for this purpose rather than Gov.uk. A programme and timetable is yet to be finalised. Senior Master Cook was keen to avoid creating a two-tier system where not all forms were on the same platform and this was duly **NOTED**.
10. **Part 25 Simplification - Forms: Freezing Order etc (AL(23)206):** Mr Justice Trower advised that the work to review the forms is ongoing. A wealth of feedback has been forthcoming and Mr Justice Henshaw (King's Bench Division) has agreed to assist, which will provide input from the Commercial Court.

## **Item 2 Extending Fixed Recoverable Costs CPR(24)01**

11. The Chair provided some introductory remarks, acknowledging the amount of work that has been undertaken since the last meeting (paras 18 – 24 of the minutes of 2<sup>nd</sup> December 2023 meeting refer). The reforms were important and he was pleased with the additional work that had been undertaken by the sub-committee, drafting lawyers and officials.
12. The Chair also **NOTED** Robert Wright's upcoming retirement, following 36 years as a Civil Servant. He provided some reflections of his experiences working with Mr Wright, describing him as a stalwart of civil justice and highlighted the effectiveness of his straightforward and professional style, for which he was very grateful. The sentiments and good wishes were echoed by Trower J and the Committee as a whole. Mr Wright commented that his interaction on CPRC business has been one of the most rewarding aspects of his career and he thanked members for their support over the years.
13. Trower J presented the matter. It was explained that there was one outstanding issue from the summer consultation and the December CPRC meeting, namely the new regime for fixing costs on assessment and the costs of Part 8 (costs only) claims (now known as Fixed Costs Determination ('FCD')) and a suite of other points that have arisen from a variety of sources, including District Judge Simon Middleton, the Association of Medical Reporting Organisations (AMRO), the Association of Consumer Support Organisations (ACSO) and other practitioners. Each was discussed in detail. A summary follows:
14. **Revised proposal for Fixed Costs Determination ('FCD').** A new Section X is proposed, supported by an accompanying proposed new Precedent form. The initial drafting has been further simplified to cater for, effectively, the new, "determination" concept, as distinct from "assessment". The intention is that one set of rules should cover Part 8 proceedings (i.e. where a claim has not been started) and Part 23 applications (where proceedings have been started). The drafting has been deliberately cast in reasonably wide terms to allow judges to discharge their discretion in appropriate cases as they see fit. Various points of detail were discussed; His Honour Judge Bird raised some drafting points, as did District Judge Clarke and Anja Lansbergen-Mills; in response to which it was **RESOLVED to approve, subject to final drafting:**

- CPR Part 45 amendments by way of a new Section X to provide for Fixed Costs Determination, subject to recasting:
  - rule 45.64(4)(a)(i) to read, “be served with when the application is ~~made~~; and”
  - rule 45.64(4)(d) to add in “45” after “Practice Direction”
  - rule 45.64(7) to remove “time and place of the”
  - rule 45.64(8) to replace “greater than” with “of”
  - rule 45.65(b) to read, “the court may give such directions as it thinks appropriate for the assessment to be made determined with the fixed costs determination”
  - rules 45.63(1) to ensure consistency of language with rule 45.63 (3)
15. HHJ Bird also commented on the proposed new Precedent form, highlighting the need to decouple it from the existing N260 form, which is for summary assessment only and this was duly **NOTED**. A further discussion ensued regarding the proposed text to certify the new form. Senior Master Cook explained that the new scheme is about *rights* and it was **RESOLVED to approve, subject to final drafting:**
- new Precedent form, subject to recasting the certification statement, to reflect the above point, possibly to read, “I believe the party has the right to claim the above”.
16. **Entitlement to costs under rule 3.7A1** (sanctions for non-payment of the trial fee by the claimant) was explained. It was **NOTED** that it is not caused directly by the new regime, but the expansion of FRC means that the point may become more of an issue. In respect of the current wording of rule 3.7A1(7) and (8), if a claim is struck out under these provisions (e.g., non-payment of trial fee by the claimant), unless the court orders otherwise, the claimant is liable for the costs that the defendant has incurred. The current wording is unusual, as ‘incurred costs’ only arises elsewhere in the costs budgeting regime. In the rules, there is no attempt to limit the costs by reference to the limited recovery within the small claims track or any fixed costs in those cases governed by fixed costs. This lack of limit sits alongside rule 44.9, which says that, where a right to costs arises under rule 3.7A1, then there is a deemed costs order for costs on the standard basis. As such, it is possible that a deemed costs order under a combination of rule 3.7A1 and rule 44.9 would take a case completely outside of the FRC regime, which the sub-committee does not consider desirable and needs addressing.
17. The Chair made clear that he did not consider the proposed amendments to be changing the intent of the rule and how it deals with non-FRC matters; it merely updates the CPR to cover FRC cases too. This was **AGREED, whereupon** it was **RESOLVED** to:
- amend rules **3.7A1** and **44.9(1)** as drafted.
18. **Costs of a preliminary issue**. Under the current rules, in respect of rule 45.48 (fast track) and rule 45.51 (intermediate track), if a costs order is made in favour of the claimant following the preliminary issue and any part of the claim is for a monetary remedy, those costs cannot be calculated at that stage as the damages will not have been quantified, and so the relevant percentage cannot be applied. As a solution, the sub-committee propose that, in these circumstances, the court shall, unless there is good reason not to do so, order the payment of those costs which are specified in Table 12 or 14 and may order a payment on account of that element of the costs which are calculated as a percentage of the damages. It was **RESOLVED to:**
- amend CPR Part 45 by way of new rules **45.48(3)** and **(4)** and rules **45.51(5)** and **(6)** as drafted.
19. **Definition of ‘day’** (in connection with the number of days before trial during which the matter is settled or vacated and the advocate is entitled to FRC) flowing from the recently published 163<sup>rd</sup> PD Update which includes reference to rule 2.8 (time) and by doing so there is likely to be some confusion about the number of days in which counsel will be entitled to a proportion of the trial advocacy fees where there has been settlement or the trial has been vacated. The

reference to rule 2.8 should be excluded. This merits prompt correcting so that future uncertainty is avoided. It was **RESOLVED, subject to final drafting**, to:

- amend the wording via an ad hoc PD Update, so that the revised text will be in force by 6<sup>th</sup> April (the coming into force date of the 163<sup>rd</sup> PD Update).

20. **Recoverability of VAT** in addition to the FRC under rule 45.8 and the FRC and disbursements in restoration proceedings under rule 45.15A. An identified ambiguity was explained. As these amendments will need to wait for the next SI, meaning they would not be in force until October 2024, it was **RESOLVED to:**

- make PD amendments to Tables 1 and 15A to provide for the recoverability of the VAT as appropriate. This was the most practicable and timely solution.

21. **Disbursements and interpreter's fees.** The Association of Medical Reporting Organisations (AMRO) has raised related points which have been carefully considered by the sub-committee and duly **NOTED**. It was explained that AMRO raised a concern of an 'illogical' difference in the treatment of disbursements in the fast track and intermediate track. However, a closer reading of the rules shows that the distinction in respect of 'the cost of obtaining expert medical reports' is, instead, between low-value personal injury claims and other types of claim in the fast track and intermediate track. It was **AGREED** that the distinction is therefore logical, and a deliberate reflection of existing caselaw.

22. The sub-committee have also reconsidered the wider approach to the recoverability of disbursements in the rules, and whether any further amendments should be made to Section IX of Part 45 to ensure consistency of approach between the tracks. The sub-committee was content with the general wording of rule 45.60 (intermediate track), given that the types of expert evidence (including medical expert evidence) that may be required in intermediate track cases is far wider than in fast track cases. However, the wording of **rules 45.58, 45.59 and 45.61** should be aligned with what is currently in **rule 45.57(2)(a)** to include 'the court may allow...' and this was **AGREED**. The intention is to ensure that the approach to recoverable disbursements is consistent across the new FRC rules, and that the court's broad discretion on whether to allow a disbursement is preserved.

23. The Association of Consumer Support Organisations (ACSO) has also raised points in respect of the MoJ consultation response on FRC issues (which was published on 1<sup>st</sup> February 2024), the cost of obtaining expert medical reports (covered at paragraph 21 above), and interpreter's fees. In respect of interpreter's fees and whether Section IV of Part 45 should make express provision for the recoverability of interpreters' or translators' fees. It was **RESOLVED:**

- **not** to make any amendments at this stage. The Committee was mindful of the risk of unintended consequences, such as inadvertently excluding others.

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

- the MoJ will keep this under review as the reforms continue to bed in;
- the rules concerning the Welsh language exist as of right, whether or not the user is vulnerable.

25. **Costs consequences of acceptance of a Part 36 offer.** A barrister has raised a point regarding the new wording in Part 36 and whether the reference in rule 36.23(9) to the costs that 'a defendant' may receive, should in fact be to 'a claimant'. With the assistance of the lead drafting lawyer, the sub-committee have carefully considered the point and concluded that the language in the rule does not require amendment because it concerns the fixed costs applicable to that stage, i.e. not up to and including that stage and this was **AGREED**.

26. The Chair **NOTED** the inevitability with reforms of this scale, that emerging issues will arise as the new regime beds in. As such, the usual triage process (involving the CPRC Chair, Trower J as Chair of the Costs Sub-Committee and the MoJ civil costs policy team) can take place and matters escalated as appropriate. However, it was **RESOLVED** to review the position in 12 months' time.
27. The item closed with Trower J reiterating **THANKS** to all involved over the last two years of extensive work by the sub-committee; reflecting on what a privilege it had been to be involved in such important reforms.
28. **Action:** (i) Drafting Lawyers and Secretariat to (a) facilitate promulgation of an ad hoc PD Update at the earliest opportunity and in any event to come into effect on/by 6<sup>th</sup> April 2024 and (b) incorporate non-urgent PD amendments and all rule amendments into the next mainstream CPR Update due to come into effect on 1<sup>st</sup> October 2024 (ii) MoJ policy to report back to the CPRC in 12 months' time (iii) Secretariat to provisionally allocate time at the February 2025 meeting for the review.

### Item 3 Renters (Reform) Bill CPR(24)02

29. Michael Marshall (Department for Levelling Up, Housing and Communities (DLUHC)) was welcomed to the meeting, along with colleagues, Mark Nicholas and Isra Choudhury.
30. The Chair's opening remarks raised concern over the timescale. He made clear that it was not his intention to delay matters unnecessarily, but the Committee had limited resources. In particular, he was conscious of (i) the need to consider consultation within the timetable and (ii) the digital dimension to the reforms and more widely. The Chair recognised that engagement with the Housing Possession Sub-Committee was taking place, but was mindful of the need to review membership in light of at least one of its members retiring. To this end, the Chair will identify a volunteer to fill that upcoming vacancy out-of-committee.
31. Mr Marshall (DLUHC) explained that the initial introductory presentation was made in October 2021 and since then, there has been occasional contact with the sub-committee, to whom **THANKS** were conveyed. An update on the Bill's passage through Parliament was provided. It was explained that the Bill provides for a suite of reforms, including abolishing Section 21 of the Housing Act 1988 and fixed term tenancies, to improve security for tenants. It also reforms repossession grounds. The changes to the tenancy system will only apply in England. His Honour Judge Jarman KC asked whether the Welsh Government had been consulted and Mr Marshall confirmed that they had been and this was **NOTED WITH THANKS**. Moreover, DLUHC are also working very closely with MoJ and HM Courts & Tribunals Service (HMCTS); engagement is also underway with the Tribunal Procedure Committee.
32. The aim is to expedite work with the sub-committee to enable the necessary CPR and form amendments to be finalised at/by June 2024, for implementation as soon as possible. It is envisaged that there will be two stages to implementation, but that the whole suite of amendments will be settled at the same time.
33. A discussion ensued. Master Dagnall highlighted that the Bill had not yet received Royal Assent and thus the detail of the reforms may change. However, in so far as the proposed abolition of s.21 itself is concerned, the preliminary view is that the CPR drafting amendments required will be relatively straight forward. A transitional provision would be required and the need to avoid adversely affect the Welsh system was recognised. The other reforms are more involved and may need consultation.
34. Rosemary Rand (HMCTS) confirmed there was a digital dimension to implement the reforms. The rules and form changes will inform the digital build of the possession system to replace the existing Possession Claim Online (PCOL) system.
35. The Chair remarked that he and the MR are strong supporters of wholesale reform for "property" and thus, system wide digital reform, to create a digital "Civil and Tribunals property

platform". The current and reformed possession work could be a part of this wider vision and he encouraged policy makers to consider it.

36. Isabel Hitching KC offered support for an integrated, digital, system and asked whether the digitally excluded were being considered (Ms Rand confirmed they were) and officials were requested to include the topic of digitally excluded users within a subsequent presentation, because it will be relevant consideration in the context of any consultation exercise.
37. **Actions:** (i) Chair to settle sub-committee membership (ii) Officials (HMCTS) to address the above point regarding digitally excluded users when reporting back to the Committee (iii) Officials (DLUHC), in liaison with MoJ and the Sub-Committee to keep the Secretariat apprised of progress for programming purposes.

#### **Item 4 Digital Markets, Competition and Consumers (DMCC) Bill CPR(24)03**

38. The Chair welcomed officials and drafting lawyers from the Department for Business and Trade (DBT) and the Department for Science, Innovation and Technology (DSIT) to the meeting. In provided his introductory remarks, the Chair observed the challenging timetable (which, subject to settling the policy detail, seeks CPR amendments to be finalised by June 2024, to come into force in October 2024). He recognised the amount of work already done in preparation, but explained that there was still a lot to work through from a rule making perspective; the need to consider consultation was also emphasised.
39. Ian Meikle (DBT) explained the background and policy context. The intention is to create a new pro-competition digital markets regime and associated new powers, with enforcement responsibilities assigned to the Competition and Markets Authority (CMA) as well as other reforms to competition law and reforms to the enforcement of consumer law, including direct enforcement powers for the CMA. In consequence a suite of CPR amendments is envisaged and this was duly **NOTED**. He added that there were dedicated lead officials on different aspects of the Bill. Each provided a brief, high level, overview of the following areas:
- **Digital Markets:** this is contained within Part 1 of the Bill and was explained by Abigail Mylchreest from DSIT.
  - **Competition:** Sukhveer Ghosal from DBT explained the competition related reforms which flow from Parts 2 and 5 of the Bill.
  - **Consumer:** for which the policy lead is Mr Meikle and which relate to Part 3 of the Bill. It was emphasised that the costs related points need further discussion with MoJ before the policy position is finalised and this was **NOTED**.
40. A discussion ensued. The Chair reiterated the scale of the task and did not consider it essential for everything to be done at the same time. As an immediate steer, he was not in favour of an additional, brand-new PD, if the objective could be achieved through a suite of other amendments to the existing rules. However, wider views would be needed to assess that. Isabel Hitching KC added to this and referenced the ongoing simplification project. Trower J raised a question regarding the interface with the Competition Appeal Tribunal (CAT) and Abigail Mylchreest (DSIT) indicated that some separate, but complimentary, work was underway with the CAT.
41. Mr Meikle recognised the weight of the task and tight timetable. He said that if the project to reflect the necessary amendments in the CPR had to be approached in a phased way, the amendments arising from the digital market reforms were the highest priority and there was some overlap with competition, which may allow for the consumer element to be worked through in slower time. This indication was welcomed.
42. It was **RESOLVED to:**

- establish a **SUB-COMMITTEE** to consider the detail of the proposals; membership is to include at least one CPRC member as well as other co-optees, possibly with judicial representation from the Competition Appeal Tribunal;
- **APPOINT** Elisabetta Sciallis to the sub-committee. *Post Meeting note: Member appointment to be Dr Anja Lansbergen-Mills rather than Ms Sciallis.*

43. **Action:** (i) CPRC members to volunteer if interested in serving on the sub-committee by 1<sup>st</sup> March (ii) Chair to discuss co-optee/judicial membership out-of-committee (iii) DBT to liaise with MoJ Costs Policy (iv) ODG officials to prepare draft work programme for consideration with the sub-committee (once appointed) and keep the Secretariat apprised for programming purposes (v) Secretariat to provisionally programme in time from April – June.

#### **Item 5 Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters CPR(24)04**

44. The Chair welcomed Cat Brown (Ministry of Justice) and Victoria Spencer (Drafting Lawyer) to the meeting.
45. This matter was previously before the CPRC at the last meeting (paragraphs 25 - 32 of the December 2023 minutes refer) when it was resolved to appoint Isabel Hitching KC and Ben Roe to discuss and prepare proposals with officials.
46. Ms Brown provided an update on progress. **THANKS** were relayed to Ms Hitching KC and Mr Roe for their valuable input.
47. It was explained that the UK signed the Hague 2019 Convention on 12<sup>th</sup> January 2024 and can only ratify the Convention once all the necessary implementing framework is in place; which includes finalising and enacting the CPR amendments. The timetable for implementation remains as soon as possible, aiming for June 2024 and MoJ will therefore take carriage of the necessary secondary legislation, once the drafting is settled by the CPRC in the usual way.
48. For consistency, it is the UK Government's intention to amend some of the implementing provisions for the Hague 2005 Convention, which also results in a small number of CPR amendments.
49. Ms Spencer presented the proposed drafting and associated draft consultation, which were discussed.
50. Senior Master Cook explained his role as the Central Authority for England and Wales (for the Hague Service Convention). He emphasised the importance of the reforms, the current pressure on the Foreign Process Department and how these changes will assist; delivery at pace was therefore merited. The position had been discussed with the judge in charge of International relations, Lord Justice Dingemans, who was supportive, as was SM Cook.
51. In response to a question from Trower J regarding the proposed set aside route of challenge for Hague 2019 registration decisions, rather than appeal, as well as the related change for Hague 2005 registration decisions, SM Cook explained how the processes operate. Commenting on the draft transitional provision for the Hague 2005 Convention, SM Cook observed that it provided a sensible demarcation and will capture inflight registration applications and appeals.
52. Ms Spencer asked whether the Committee felt that the current Part 74 provisions dealing with time limits for set aside applications are sufficient. Taking into account, in particular, the difference from the more defined time limits for appeals. SM Cook, explained the process in practice and was content with the discretion provided for in the current rules.

53. The links between rule 74.5(2), rule 25.13 and the 2019 Convention provisions on security for costs were discussed. The Committee discussed that future consideration of the Part 25 amendments, which were currently out for consultation as part of the simplification project, would bear the 2019 Convention provisions in mind.
54. It was also **NOTED** that a respondent to HM Government's consultation on Hague 2019 raised a view that the Hague 2019 Article 5 grounds on which judgments would be enforceable, do not appear to match the grounds upon which the courts of England and Wales can take jurisdiction. The respondent suggested that consideration might therefore be given to amendments to the jurisdiction grounds in PD 6B (service out), in order to expand the possibilities for recognition and enforcement of England and Wales judgments in other state parties to the Convention. MoJ consider that as these suggested amendments are not necessary to the implementation of Hague 2019 and given the accelerated timescales to put in place a framework necessary for compliance with the 2019 Convention, amendments to PD 6B should not be advanced at this stage. Officials were also mindful of the amount of work already undertaken by the CPRC on updating the service out rules (for example the package of amendments in October 2022) and potentially wider issues that arise in consequence of any consideration of amendments to the jurisdiction grounds in PD 6B. However, the respondent's point may merit consideration in slower time.
55. It was **RESOLVED** to:
- **APPROVE IN PRINCIPLE**, the proposed draft amendments to CPR Part 74 (enforcement of judgments in different jurisdictions) and the supplementing PD 74A, as well as the accompanying draft **CONSULTATION** material;
  - **REFER** the points concerning PD 6B (service out of the jurisdiction) to the Service Sub-Committee to consider when time allows;
  - **AGREE** that the Simplification Sub-Committee would bear in mind the links between Part 25 and the 2019 Hague Convention provision on security of costs, when considering responses to the Part 25 consultation
56. **Actions:** (i) Secretariat to facilitate publication of the consultation (online), as soon as practicable (ii) The above point regarding PD 6B to be referred to the Service Sub-Committee to consider when time allows (iii) The above point regarding Part 25 to be considered by the Simplification Sub-Committee.
57. **Post Meeting Note:** *consultation published online via the [Civil Procedure Rule Committee pages \(www.gov.uk\)](#) on 7<sup>th</sup> February 2024; comments to be provided to [PIL@justice.gov.uk](mailto:PIL@justice.gov.uk) by 13 March 2024*

## Item 6 References to Judges in the Civil Procedure Rules CPR(24)05

58. District Judge Clarke presented the matter.
59. It was explained that he had first raised the desire to update terminology in the CPR at the 31<sup>st</sup> March 2023 meeting (see paras 32 – 38 in the minutes). The intention being to reflect properly the status, as judges, of Masters and District Judges and provide consistency of language by removing some unnecessary and unhelpful distinctions between different levels of judge within the rules and PDs. The proposed amendments were agreed in principle at the 31<sup>st</sup> March 2023 meeting and a focused consultation followed, which closed on 1<sup>st</sup> December 2023. **THANKS** were conveyed to Master Dagnall, who has assisted throughout.
60. One consultation response had been received, from the Association of High Court Masters and Insolvency and Companies Court Judges (ICC), which was duly **NOTED WITH THANKS**. Much of what the Association has suggested has been adopted and revised drafting prepared in consequence. It is recommended for approval.



61. However, the Association also raises some additional points regarding statutory elements and other wider points outside the scope of this exercise. DJ Clarke emphasised that the project was not intended to make any jurisdictional changes nor alter the jurisdiction of any rank of judge, it was purely focused on linguistic improvements. A “light touch” approach to the proposed amendments has been taken to avoid unintended consequences and this was endorsed by the Chair.
62. A discussion ensued, with a particular focus on paragraph 2 of PD 2B (allocation of cases to levels of judiciary). The Chair raised the question of whether, if no amendment is made, but others are, whether that could be seen as widening its scope. The preliminary view was that no changes were required to the existing text of para 2, pending a wholesale review of PD 2B. However, in light of the consultation response (which proposed the insertion of “High Court [Judge]” in the interests of clarity) and considering the package of amendments as a whole, it was **AGREED** to adopt the revised proposed text, so that PD 2B para 2 will read:
63. “Search orders (rule 25.1(1)(h)), freezing orders (rule 25.1(1)(f)) and an ancillary order under rule 25.1(1)(g) may only be made by a High Court Judge.”
64. In doing so, the Chair made clear that this amendment does not change its meaning from before and this was **NOTED**.
65. Ian Curtis-Nye highlighted that, from a user perspective, use of, “...salaried or fee paid...” lacks clarity. However, although the Chair recognised the point, he explained that there are important distinctions in certain areas. Master Dagnall reiterated that there was no resistance raised as part of the consultation response and elaborated on the wider implications and statutory context. Trower J provided a practical example regarding appeals in Insolvency matters, where the distinction is important. Overall, the Chair concluded that there is the risk of wider and unintended consequences if the drafting formulation in this respect is amended at this time and this was **AGREED**.
66. It was **RESOLVED** to:
- **APPROVE, subject to final drafting**, the suite of rule and PD amendments as tabled, subject to adding in, “High Court” before “Judge” in para 2, PD 2B (as above).
67. **Actions:** (i) DJ Clarke to provide perfected suite of amendments to the Secretariat (ii) Drafting Lawyers to transpose into the next mainstream CPR update as part of the October 2024 in-force cycle.

#### **Item 7 Any other business / possible items for future business:**

68. **Suspended Committal Orders:** The recent Court of Appeal judgment in Westrop v Harrath [2023] EWCA Civ 156 raises a number of issues which require consideration. It does not appear as though any CPR amendments are required, but certain forms need to be compliant with the law as set out. In particular, form EX142 (order to attend court for questioning - reference to judge) and any pro-forma suspended committal orders, for example: Forms N79a (suspended committal order) and N118) suspended committal order (attachment of earnings)) require review by the Forms Sub-Committee and this was **AGREED**.
69. **Action:** Senior Master Cook and the Forms Sub-Committee to review under delegated powers, reverting in due course, if necessary.
70. **Civil Restraint Orders (CRO):** Following a discussed with the Chancellor of the High Court, a number of issues concerning the CRO system would benefit from consideration. Mr Justice Trower volunteered to assist, which was **ACCEPTED WITH THANKS**.

71. **State Threats Prevention and Investigation Measures (STPIMs) Statutory Instrument (SI): amendments to CPR Part 80:** It was **NOTED** from the Chair that the SI, which is undergoing its Parliamentary passage, provides a bespoke closed material procedure (CMP) for proceedings relating to State Threats Prevention and Investigation Measures (STPIMs). The imposition of STPIMs requires the permission and review of the Court and contains a procedure for appeal by the STPIM subject. Once approved, the SI will automatically update the CPR by amending CPR Part 80, which contains TPIM (Terrorism Prevention and Investigation Measures) proceedings, to extend it to STPIM proceedings. The relevant provisions for TPIMs and STPIMs are identical, and the procedure will be identical. The CPRC should not need to be involved, unless there are any consequential amendments to be considered in due course. **Action:** MoJ Legal to advise the Secretariat in the event that CPRC time is required to consider any consequential amendments.
72. **Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416:** The MR has asked Lady Justice Asplin (judicial lead for alternative dispute resolution (ADR)) to chair a sub-committee to consider the issues arising from this case, where the Court of Appeal found that courts did have the power to order proceedings to be stayed to enable ADR to take place. Volunteers were sought to join the sub-committee, whereupon it was **RESOLVED** to **APPOINT** District Judge Johnson.
73. **Action:** any other members wishing to volunteer to notify the Chair forthwith. **Post Meeting Note:** *Isabel Hitching KC was put forward.*
74. It was also **NOTED** that the impact of the *Churchill* case has been considered by the Mediation Sub-Committee (Chaired by Mr Justice Henshaw) and the view is that the draft automatic mediation for small claims pilot PD will comply.
75. **Home Office Costs Protection Engagement Exercise:** This follows an HMG policy commitment during the Economic Crime and Corporate Transparency (ECCT) Act 2023's Parliamentary passage. Volunteers sought. **Action:** Members wishing to provide input to advise the Chair forthwith.
76. **Drafting slip in the minutes of 7<sup>th</sup> July 2023:** It was **RESOLVED** to correct a typographical error in the minutes. The minute inadvertently cited court form N325 (request for warrant of possession) when it should read "N235 (certificate of suitability of litigation friend)". The context being a judgment by Mr Justice Cotter in *George Major* (by his litigation friend Katherine Gee -v- Kalaivani Jaipal Kirishana [2023] EWHC 1593 (KB) and a lacuna in the current provisions concerning litigation friends arising through the removal of the PD (paragraph 152 of the - 9 - judgment refers) and the interaction with the N235 court form. The drafting slip has been identified via correspondence from the applicant (*George Major*). The secretariat apologises for the oversight. **Action:** Secretariat to correct minute and re-publish.
77. **Lacuna in Part 7:** An apparent typographical error in rule 7.1B has been raised by DJ Johnson and referred to DJ Clarke as Lacuna Sub-Committee (LSC) Chair. HHJ Jarman KC (because it relates to proceedings in Wales) and Alasdair Wallace (MoJ legal) have reviewed and support the proposed amendment: the reference in rule 7.1B to "paragraph (1)" should instead be to "[rule 7.1A](#)". The Chair was content to confirm the amendment be approved under the Lacuna Sub-Committee's delegated powers. **Action:** Secretariat/Drafting Lawyers to incorporate into the next mainstream CPR updating SI (for October 2024 in-force).
78. **Clinical Negligence Fixed Recoverable Costs (FRC) (AL(23)184):** Senior Master Cook confirmed progress was ongoing. The matter is provisionally programmed in for a report to the March 2024 meeting.
79. **Civil Justice Council's (CJC) Mental Capacity Seminar on the Procedure for Determining Mental Capacity in Civil Proceedings.** It was **NOTED** that, regrettably, this event clashed with the next meeting. However, Ian Curtis-Nye was keen to attend, if it was possible for him to be excused from the CPRC meeting on 1<sup>st</sup> March and this was **AGREED**.

80. **Action:** (i) Nicola Critchley to relay to CJC Secretariat the concern to avoid diary clashes (ii) Secretariat to note Mr Curtis-Nye's apologies for the next CPRC meeting on 1<sup>st</sup> March 2024.

C B POOLE  
February 2024

**Attendees:**

Carl Poole, Rule Committee Secretary  
Master Dagnall, Chair, Housing Possession 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  
Rosemary Rand, HM Courts & Tribunals Service  
Robert Wright, Ministry of Justice (Item 2)  
Michael Marshall, Department for Levelling Up, Housing and Communities (Item 3)  
Mark Nicholas, Department for Levelling Up, Housing and Communities (Item 3)  
Isra Choudhury, Department for Levelling Up, Housing and Communities (Item 3)  
Ian Meikle, Department of Business and Trade (Item 4)  
Sukhveer Ghosal, Department of Business and Trade (Item 4)  
Abigail Mylchreest, Department for Science, Innovation and Technology (Item 4)  
Isabel Cromarty, Department of Business and Trade (Item 4)  
Jonathan Gee, Department for Science, Innovation and Technology (Item 4)  
Amy Behrmann, Department for Science, Innovation and Technology (Item 4)  
Cat Brown, Ministry of Justice (Item 5)  
Victoria Spencer, Government Legal Department (Item 5)  
Yinni Hu, Ministry of Justice (Item 5)