



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 March 2024**

Present:

Sir Andrew McFarlane	President of the Family Division
Mr Justice Keehan	High Court Judge
Lord Justice Baker	Court of Appeal Judge
Mr Justice Peel	High Court Judge
His Honour Judge Godwin	Circuit Judge - Judicial member for Wales
Her Honour Judge Suh	Circuit Judge
District Judge Foss	District Judge
District Judge Birk	District Judge
Rhys Taylor	Barrister
Poonam Bhari	Barrister
Graeme Fraser	Solicitor
Laura Coyle	Solicitor
Jennifer Kingsley JP	Lay Magistrate
Shabana Jaffar	Cafcass Representative
Robert Edwards	Cafcass Cymru
Fiona James JP	Lay Member
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1 The Chair welcomed Jennifer Kingsley JP to the Committee as the new Lay Magistrate member.
- 1.2 Apologies were received from Mrs Justice Knowles.

MINUTES OF THE LAST MEETING: February 2024

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- 2.1 The Committee approved the minutes for the February 2024 meeting.

Action Point 1: Secretariat to arrange for the February 2024 minutes to be published on the FPRC webpages.

ACTIONS LOG

- 3.1 The Secretariat informed the Committee that 16 actions were recorded from the February 2024 meeting.

MATTERS ARISING

- 4.1 MoJ presented a paper which contained updates on the following:
- Web Inaccuracies.
 - PD27A/e-bundles.
 - Jade's Law.
 - Implications of Re G & H [2023] *EWCA Civ. 768 on leave to oppose adoptions.*
 - Family Mediation Voucher Scheme.
- 4.3 The President of the Family Division (PFD) informed the Committee that he had spoken with Designated Family Judges (DFJs) who are concerned about the current process for e-bundles. The PFD concluded that the guidance he had previously issued was unworkable in public law cases so he has temporarily suspended it. MoJ informed the Committee that comments have been received from Mr Justice MacDonald and HHJ Lewis and the team would need to carefully review the comments before returning to the Working Group and then the Committee. It was agreed that MoJ will return in May for a substantive item on this issue.
- 4.4 The Chair welcomed the positive news on the Mediation Voucher Scheme and asked for the item to return later this year. MoJ Policy confirmed the PD underpinning the scheme is a pilot so Ministers will take a policy decision later in the year about whether the scheme will continue.

Action Point 2: Item on PD27A/e-bundles to return in May.

Action Point 3: Item on Family Mediation Voucher Scheme to return later in the year.

STANDING ITEMS

Online Procedure Rule Committee (OPRC)

- 5.1 MoJ Policy informed the Committee that the OPRC are working to set up the sub-groups. The OPRC last met in February 2024 and their items for discussion were around the data landscape and the work on MoJ digital projects.
- 5.2 The Committee were informed that before the OPRC can make Rules for proceedings, they would need to make regulations to specify what type of proceedings the Rules will relate to. Regarding family proceedings, the OPRC thought it sensible to focus on contested financial remedy cases, but further work is needed to clarify the process around this. MoJ will return in April with a detailed paper.

Action Point 4: OPRC to return to the Committee in April.

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SUBSTANTIVE ITEMS

Priorities Table and Pending PD amendments.

- 6.1 MoJ stated that the Priorities Table is in a new format and has been updated since the last meeting. The Committee also reviewed the internal “Wish List” document.
- 6.2 Committee members discussed the Review of PD12J which was included on the Priorities Table due to wider work from the implementation of policies from the Domestic Abuse Act which meant that the PD had been amended several times over the last year. MoJ indicated that it was their understanding that this item was on the Priorities Table as consideration may need to be given to whether the PD remains internally consistent. Members discussed whether PD12J required minor tweaks or a more significant reform. The Chair asked Members to reflect on this issue and asked MoJ to return to the Committee in April with an update.
- 6.3 Members also highlighted that the CPRC’s project stemming from *Cape v Dring* has now concluded. The Chair asked HHJ Suh to provide the Committee with a report on the outcome of that project so the Committee can decide whether the item should remain on the Priorities Table.

Action Point 5: Secretariat to provide an update on *Cape v Dring* for April meeting.

Action Point 6: MoJ to confirm at the April meeting whether it is considered PD12J requires further consideration.

Early Legal Advice and the Early Resolution project

- 7.1 MoJ updated the Committee on the progress that has been made towards implementing the recent rule and PD changes to encourage earlier resolution of private law proceedings relating to children and financial remedy disputes. MoJ also updated the Committee on the progress made towards designing and launching the Early Legal Advice Pilot which was announced in the Government’s recent early resolution consultation response. The President asked for a Working Group to be established to consider a revised draft letter to parties and a proposed new Pre-Action Protocol. The Chair asked members of the Committee to volunteer for this Group. The Committee expressed the view that the existing Pre-Action Protocol on financial remedies (annexed to PD9A) should be updated as part of this same exercise.

Action Point 7: Committee members to volunteer to join the WG.

Action Point 8: MOJ to work with the WG on the letter to parties and pre-action protocol(s) and then provide an update to the Committee at a future meeting.

Service of Orders at Refuges

- 8.1 MoJ Policy provided an update on the project relating to service of orders at refuges following the discussion in the February meeting. Members raised practical points regarding the implementation of the provisions.
- 8.2 Members raised concern that a court order may not be given to the correct person when served at a Refuge. The Committee agreed for MoJ to go ahead with laying the Statutory

Instrument making amendments to the FPR in April and this item to return in October for the Committee to review how the provisions are working in practice.

Action Point 9: MoJ to lay the statutory instrument amending the FPR to make provision about service of orders at refuges in Parliament in April 2024.

Action Point 10: The item Service of Orders at Refuges to return for further consideration at the Committee's October 2024 meeting.

PD36P: Online placement order process: next steps

- 9.1** HMCTS officials and MoJ Legal discussed proposal for Pilot PD36P to come to an end on its stated expiry date of 31 March 2024 and for a new permanent, rather than pilot, PD be put in place. The Committee's views were also sought on the draft new PD41F.
- 9.2** The Committee stated that it is not necessary to consult on the provisions and approved the proposals. The Committee agreed PD41F should be included in a PD Update to be sent to the President then Minister for approval following the Committee meeting.

Permission to Appeal

- 10.1** MoJ updated the Committee that the Permission to Appeal Working Group is looking at two main issues. Firstly, the question of which judges in the family court should have the ability to dismiss applications for permission to appeal (PTA) as totally without merit (TWM) and to direct that the application may not be renewed at an oral hearing. The second issue the group is considering is the fact that there is no PTA stage for appeals from the decisions of lay magistrates in the family court.
- 10.2** MoJ informed the Committee the Working Group has consulted with DFJs about the first issue, asking whether the FPR should be amended allow Circuit Judges who have been nominated by their DFJ, in consultation with their Family Presiding Judge, to be able to dismiss TWM PTA applications on paper and direct that the applications may not be renewed at an oral hearing. DFJs agreed with the proposal suggested ensuring adequate training is provided. The Committee agreed to amend FPR 30.3(5A) and make consequential amendments to PD30A and that consultation was not required.
- 10.3** MoJ Policy agreed to return to the Committee with updates on appeals from decisions of lay magistrates following consultation with Justices' Legal Advisers and the Magistrates' Association.

Action Point 11: MoJ to draft amendments to the FPR and PDs to reflect the decision that Circuit Judges who have been nominated by their DFJ, in consultation with their Family Presiding Judge, should be able to dismiss TWM PTA applications on paper and direct that the applications may not be renewed at an oral hearing.

Action Point 12: PTA to return to the Committee as a substantive item in May to consider issues relating to the fact that there is no PTA stage in appeals from decisions of lay magistrates in the family court.

Delegating High Court Powers to High Court Staff

- 11.1** MoJ updated the Committee further to the amendment to r2.5 FPR to insert a new "hook rule" to enable provision to be made in a new PD for specified members of High Court staff

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to undertake specified court functions. The amendment to the FPR comes into force on 8 April 2024. In relation to the proposed new PD, MoJ informed the Committee that feedback had been received from lawyers in the Appeals office in the Family Division and the PFD's office. MoJ said from the feedback received, they suggest that the roles should be administrative rather than functions requiring complex discretionary decisions. It was suggested that before a PD is drafted further discussions with HMCTS is needed to quantify the impact on staff.

- 11.2** The Committee agreed for a PD to be drafted which could be included in a PD Update in April to be sent to the President and then Ministers for approval. There will need to be separate consideration about the extent to which HMCTS is able to undertake the tasks efficiently as possible. Members emphasised that they do not think the PD should be delayed whilst HMCTS ensure they have sufficient resource to support the change.

Action Point 13: MoJ and HMCTS to consider the resources for High Court staff to undertake delegated court powers.

Action Point 14: MoJ to draft PD on delegating high court powers and to share the draft with the President, Lord Justice Baker and Mr Justice Keehan.

Qualified Legal Representatives (QLRs)

- 12.1** MoJ provided an update on the QLR scheme including data requested by the Committee at the February 2024 meeting. The Committee were informed that data on the number of cases that were cancelled due to not having a QLR were outlined in the paper.
- 12.2** Members were concerned that the number of cases cancelled due to the absence of a QLR was a quarter of the number of cases which required QLRs. Members also stated that they have experienced cancellations in their cases due to the absence of a QLR. Members raised concern that practitioners put themselves forward for QLR but do not complete the training and it is unclear why this has occurred.
- 12.3** Members agreed that the legal profession could promote QLR work to newly qualified lawyers as it would help with their professional development. The Committee noted that QLRs do not get paid for preparation of cases which may disincentivise them from taking on cases. MoJ noted that remuneration is an important point which the team is exploring following the recent introduction of improved expenses for QLRs.
- 12.4** MoJ agreed to provide regular updates on the progress of this scheme. The Committee asked for improved data about the scheme including figures that span the same period and instances where QLRs were not appointed or did not attend. The FPRC were informed that HMCTS did not start collecting data on cancellations until June 2023 which is why there is not a comparative period. At the moment, HMCTS rely on one member of staff to deal with all the queries and feedback. Therefore, HMCTS are not in a position currently to outline the data on cancellations with the resource they have. The Committee also asked how many CILEX practitioners are QLRs.

FORWARD PLANNING AND UPCOMING MEETINGS

Other Procedure Rule Committees

- 13.1** MoJ informed the Committee that the Civil Procedure Rule Committee's Cape v Dring working group have drafted amendments to the Civil Procedure Rules, which are undergoing a consultation exercise which started on the 19 February and will close on the 8 April.

Forms Working Group Update

- 14.1 MoJ stated that the Forms Working Group met on the 25 January and the next meeting will be confirmed in due course.

FPRC Working Groups

- 15.1 MoJ stated that the Working Group list will be updated to reflect comments received at the March meeting.

Draft April 2024 Agenda

- 16.1 The Committee were informed that the April 2024 agenda will be updated following this meeting.

ANY OTHER BUSINESS

- 17.1 The Chair and the President thanked Fiona James JP for her service to the Committee over several years as a member.

DATE OF NEXT MEETING

15 April 2024

- 18.1 The next meeting will be held on Monday 15 April 2024 and will be a hybrid meeting. The meeting will be hybrid and take place both in QB1M Royal Courts of Justice and remotely via MS Teams.

FPRC Secretariat

March 2024

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