

Approved

Minutes of the Civil Procedure Rule Committee

Friday 12th April 2024, 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
Mr Justice Pepperall
Master Sullivan
His Honour Judge Bird
His Honour Judge Hywel James
District Judge Clarke
District Judge Johnson
Dr Anja Lansbergen-Mills
Isabel Hitching KC
Tom Montagu-Smith KC
Ian Curtis-Nye
Elisabetta Sciallis

Apologies

Members: David Marshall, Ben Roe.

Non-Members: Amrita Dhaliwal (Ministry of Justice), Rosemary Rand and Faye Whates (HM Courts & Tribunals Service), Chief Insolvency and Companies Court Judge Briggs (Item 8).

Item 1 Welcome

1. The Chair welcomed all in attendance, both in person and remotely before he **NOTED**:
2. **25th Anniversary of the CPR** – on 26th April this year, the CPR (and in turn, the CPRC) will have been in existence for 25 years. The first CPRC meeting took place in July 1997 and the first CPR was agreed in December 1998 and came into force on 26th April 1999. The annual open meeting next month offers an opportunity to express thanks for the contributions made by everyone over the years and to mark, publicly, this important milestone in civil justice.
3. **New High Court Judge member** – the Chair was delighted to advise members of the following judicial appointment:
 - **Mr Justice Pepperall**: the new High Court Judge (King's Bench Division) member (succeeding Mr Justice Kerr). Pepperall J was appointed a High Court Judge (HCJ) in 2018 and sits in the Technology and Construction Court. From 2020 to 2023, he served as a Presiding Judge of the Midlands Circuit, having been a Recorder (2009), Silk (2013), Deputy HCJ (2016) and a Justice of the Court of Appeal of the Falklands Islands, South Georgia and the South Sandwich Islands in 2017. Called to the Bar in 1989, his practice was dominated by commercial and technical litigation and international arbitration, both as counsel and arbitrator. He is a former barrister member of the CPRC and is a White Book editor.
4. **Minutes**: the minutes of the last meeting, on 1st March 2024, were **AGREED**.
5. **Action Log and matters arising not covered by later items**. The following was duly **NOTED** from the Chair:

- **AL(23)218 - E-Working Pilot PD 510:** Master Sullivan is to conduct an initial review, along with the Chief Chancery Master Karen Shuman. As the pilot PD's current expiry date is 1st November 2024, the plan is to report back to the June meeting (for inclusion in summer Update for October in-force) if possible. The Judge in charge of the Administrative Court, Mr Justice Swift has previously indicated a desire to be consulted as part of the review and this was also **NOTED**.

Actions: (i) Master Sullivan to keep the Secretariat apprised for programming purposes (ii) Secretariat to provisionally allocate time at the June 2024 meeting.

- **AL(23)132 – E-signatures - proposed amendment to CPR 5.3:** This was last before the Committee on 3rd February 2023 (para 54 onwards of the minutes) and mentioned at the meeting on 12th May 2023 (under para 9 of the minutes), at which point it was understood that drafting proposals were prepared and a consultation was intended to take place. However, due to the weight of other business and member resource this has not yet taken place. It was **AGREED** that Dr Anja Lansbergen-Mills (who was involved in the initial work) and Pepperall J, will revisit the matter with the aim of publishing the proposed reforms for consultation and, thereafter, report back to the Committee for final determination in the usual way.

Actions: (i) Secretariat and Drafting Lawyers to refer latest drafts (of consultation material etc) to Dr Lansbergen-Mills and Pepperall J for review (ii) Subject to that, and in consultation with the Chair, the Secretariat to facilitate the related consultation (precise timescales to be decided out of committee).

Item 2 Alternative Dispute Resolution (ADR) Committee CPR(24)11

6. Lady Justice Asplin was welcomed to the meeting and expressed **THANKS** to fellow Sub-Committee members: District Judge Johnson, Isabel Hitching KC and Elisabetta Sciallis for their energy and hard work and this praise was extended to the officials and drafting lawyer involved.
7. It was explained that, the work flows from the Court of Appeal's decision, in November 2023, in the case of *James Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416*, for which the constitution comprised, the Lady Chief Justice, the Master of the Rolls and Lord Justice Birss. It was decided that a court could 'lawfully stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process, provided that the order made does not impair the very essence of the claimant's right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.' (paragraph 74, ii). The aim is to proceed to a public consultation at the earliest opportunity and, subject to that consultation, be in a position to finalise CPR amendments in time to be included in the summer update cycle, for implementation in October 2024.
8. It was **NOTED** that focused consultation has taken place with, the Rule Changes Sub-Committee of the Judicial ADR Liaison Committee, the Family Procedure Rule Committee and MoJ Policy. It has been confirmed that this work does not cut across proposed changes regarding automatic referral to mediation for small claims.
9. The Chair reiterated thanks for the excellent work thus far and highlighted that the proposed timetable was particularly ambitious.
10. The proposed amendments were reviewed in detail. In addition to points of drafting detail, the discussion focused on the following issues: The principle of including, in the Overriding Objective, something which is conceptually different from the rest of that rule. It was observed that ADR could be seen as more of a tool in support of achieving the Overriding Objective, rather than the Overriding Objective itself. However, the principle, that ADR should be included in the Overriding Objective in some form, was **AGREED**. The committee discussed how the rules will operate in practice. The purpose of the proposed

amendments was principally, to (i) underline that considering the use of ADR should be a key part of the court process (ii) clarify the position established in Churchill that judges may order, as well as encourage, parties to participate in ADR, demonstrating that ADR is not limited to pure case management. The reforms will also add that courts must consider whether to order or encourage parties to participate in ADR for fast-track, intermediate track and multi-track claims. The proposed amendments to Part 44 would add that failure to comply with an order for ADR or unreasonable failure to participate in ADR proposed by another party, would come under the consideration of the conduct of parties, when deciding to make any order about costs.

11. The question of whether ADR needed to be defined and/or the online glossary amended was raised. The Chair did not consider it necessary to do either and this was **AGREED**.

12. Overall, it was concluded that there is a balance to strike in drafting terms, given the caselaw, the policy direction and the desire to future proof the rules. However, operational interaction, in light of some of the proposed amendments which go slightly beyond Churchill, required further consideration.

13. It was **RESOLVED** to:

- decouple the proposed amendments to enable those arising from the judgment in Churchill to be prioritised. The remaining draft amendments to be considered as part of any phase two of this project;
- revise the proposed draft amendments arising from Churchill as follows:
 - rule 1.1(2) new (f) – add, “and promoting” and remove “methods”;
 - rule 3.1(2) new (o) – recast as follows: “order the parties to **engage participate** in **an** alternative dispute resolution **procedure**”;
 - rule 3.1(2) – reinstate the text proposed for deletion from the existing CPR 3.1(2)(m) “including hearing an Early Neutral Evaluation with the aim of helping parties settle the case” at the end of sub-para;
 - rules 28.7(1) new (d), 28.14(1) new (f), 29.2 new (1A) and 44.2(5) new (e) – substitute “participate” in place of “engage” in each instance.
- agree, in principle, subject to the above drafting revisions and to consultation, the draft amendments to:
 - Part 1 (Overriding Objective)
 - Part 3 (Courts Case Management Powers)
 - Part 28 (Fast Track and the Intermediate Track)
 - Part 29 (Multi-Track)
 - Part 44 (General Rules about Costs)

14. **Actions:** (i) Sub-Committee to provide perfected final draft proposals for consultation to the Secretariat by 15th April 2024 (ii) Secretariat to facilitate publication of the consultation (online) in the usual way as soon as practicable thereafter (iii) Matter to return following consultation; provisionally at the June meeting (iv) Sub-Committee to consider phase two work and revert via the Secretariat, when ready.

15. **Post Meeting note:** Consultation published online; closing date for comments is 28th May 2024:
<https://www.gov.uk/government/organisations/civil-procedure-rules-committee/about#alternative-dispute-resolution-consultation>

Item 3 Clinical Negligence Fixed Recoverable Costs CPR(24)12

16. Senior Master Cook and Laurent Viac (Department of Health and Social Care (DHSC)) were welcomed to the meeting, along with Helen Keefe, Government Legal Department (DHSC) to present the matter.
17. The Chair provided some introductory remarks and expressed **THANKS** to everyone involved in the sub-committee's work. This sentiment was reiterated by Mr Viac. The Sub-Committee is chaired by Senior Master Cook, the CPRC is represented by District Judge Johnson, David Marshall and Ian Curtis-Nye; Adam Burrell is an external, co-opted, member.
18. It was reiterated that the proposed new scheme solely concerns pre-issue costs and processes for clinical negligence claims with a value at settlement, or following judgment, of between £1,501 and £25,000. It does not extend into the post-issue phase, or apply to higher value claims, and there is no intention to extend the scheme in these ways. Mr Viac also explained that the aim remains to finalise the amendments at the June meeting, for inclusion in the summer Update cycle, for an October 2024 in-force.
19. A significant amount of work has been achieved by the sub-committee, which was discussed. In summary, this included an explanation of the low value clinical negligence (LVCN) fixed costs arrangements and interaction with the existing fixed costs system; vulnerability; sanctions; neutral evaluation and other issues, including the definition of 'clinical negligence' within in the new draft pre-action protocol (PAP). Part of this work involved resolving a number of workability issues, raised by sub-committee. For example, changes to terminology, whereby, "expedited claims" and "standard claims" will be used in place of the term, "track" so as to avoid confusion with the established interpretation of claim "tracks" (i.e. small, fast, intermediate and multi claim tracks) and the proposed inclusion of *neutral evaluation* and *stocktake* outcome reports as annexes to the PAP, to simplify and streamline those processes, aid understanding between parties and facilitate resolution.
20. The discussion also raised the issue of vulnerability, verses, protected parties in the context of double counting, whereupon it was **AGREED** to review the position in the interests of clarity.
21. Pepperal J and HHJ Hywel James identified various typographical errors to be amended and this was **AGREED**.
22. Isabel Hitching KC made reference to the correspondence noted at the last meeting regarding disclosure in PI proceedings (para 49 of the minutes of 1st March 2024 refer) and proposed to insert, "relevant" to paragraph 7.5 of the draft PAP thus: "...legible copies of the claimant's relevant health and other records should be..." and this was **AGREED**.
23. Overall, the view was that the draft PAP was well written and very helpful. However, it may be improved by additional definitions to aid accessibility, because some of the terms used are likely to be unclear to users who are unfamiliar with this type of work.
24. Senior Master Cook explained the rationale regarding consultation. Several government consultations have already taken place, the responses from which have been carefully considered. Where revisions have been made, they are of the nature expected following consultation and as such, a further round of consultation is not considered necessary, however, advance notice to the sector should be maximised and this was **AGREED**.

25. Ian Cutis-Nye commented on the proposed transitional arrangements, which were based on implementation by date of letter of claim. Mr Nye raised whether live complaints to the NHS were caught by the rules as drafted. Mr Viac recognised the point, but noted the difficulties with attempting to integrate the scheme with the NHS complaints process. The Chair recommended officials consider the point in the context of (i) any wider implications across the rules generally and (ii) explanatory information to users. This was **AGREED**.

26. It was **RESOLVED** to:

- agree in principle, subject to the above points and final drafting, the draft, “Pre-Action Protocol (PAP) for the Resolution of (Low Value) Clinical Disputes”;
- publish the draft PAP with accompanying high level explanatory text, making clear that approval is subject to the CPR rules being agreed in due course, which may affect the final PAP, and that the final PAP and CPR amendments are contingent on the usual promulgation procedure;
- agree in principle, that the associated rule changes to implement the scheme, will be reflected within a Section of CPR Part 45 (Fixed Costs);
- a preliminary suite of other draft consequential amendments was duly **NOTED**.

27. **Actions:** DHSC to (i) review and clarify the position regarding vulnerability, verses, protected parties, viz double counting (ii) in consultation with the Sub-Committee and Secretariat, to prepare a perfected draft PAP and accompanying information for publication at the earliest opportunity (iii) continue working with the Sub-Committee to prepare and present the necessary draft rule amendments (iv) keep the Secretariat appraised for programming purposes.

Item 4 Housing Possession Sub-Committee: Renters (Reform) Bill CPR(24)13

28. Michael Marshall (Department for Levelling Up, Housing and Communities) was welcomed to the meeting.

29. The Chair opened the item with **THANKS** to the Sub-Committee, comprising, Master Dagnall (Chair), CPRC member David Marshall and the co-opted members: District Judges Harper and Greenidge and Mr Justice Meade, for all their work at pace.

30. Master Dagnall provided a precis of the present position, explaining that the Renters (Reform) Bill (“the Bill”) is currently before Parliament. It is intended to abolish Section 21 of the Housing Act 1998 (no fault evictions) and introduce a suite of other reforms, including repossession grounds. The changes to the tenancy system will only apply in England; the position in Wales remains unchanged.

31. Government are seeking CPR amendments to be put in place, but not to enter into force until the Bill becomes an Act and comes into effect; implementation is envisaged in two stages (“Stage 1” being a transition for new tenancies and “Stage 2” encompassing all tenancies (in England only)).

32. A discussion ensued, in which the Chair raised a number of issues. In principle, he did not consider it appropriate for members to sign a CPR amendment SI before the Bill received Royal Assent and became an Act and this was **AGREED**. In addition, a number of other practical concerns regarding the timetable and scope of amendments were aired, which included the interplay with the digital process (including the need to consider PD 55B (Possession Claims Online) (PCOL)) and possible interaction with the Online Procedure Rule Committee (OPRC).

33. It was **NOTED** that, following the Committee's previous meeting, when their view concerning the possibility of prioritising housing possession related anti-social behaviour (ASB) cases, was made, rule changes are not being proposed at this stage.

34. It was **RESOLVED** to **NOTE**:

- subject to the Bill receiving Royal Assent, no CPR amendments are required for the implementation of stage 1 of the reforms (transition for new tenancies);
- in the event that transition provisions are enacted (whereby some claims fall to be considered under the existing grounds for possession and others subject to the new, extended, grounds), the Committee's preliminary view was that only one court form should be used. However, the existing versions will require updating, to include a revised list of grounds. When reflecting the new grounds on the form, the list should be, limited to those grounds which are most commonly used, to aid accessibility and avoid the form being over-complicated;
- a suite of 10 court forms are considered to require amendment; which should be discussed with the Forms Sub-Committee;
- amendments to CPR Part 55 (Possession Claims) and the supplementing PDs to be considered in due course, subject to the Bill receiving Royal Assent;
- it is premature to give a definitive view on whether consultation (concerning any future proposed CPR amendments) is necessary.

35. **Actions:** (i) DLUHC to discuss OPRC context with the MoJ lead lawyer (Wan Fan) (ii) DLUHC, HMCTS and MoJ to (1) continue to engage with the Sub-Committee as necessary and (2) keep the Secretariat appraised for programming purposes.

Item 5 Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters CPR(24)14

36. Cat Brown (Ministry of Justice) and Victoria Spencer (Drafting Lawyer) were welcomed to the meeting to present the item.

37. **THANKS** were relayed to Ben Roe and Isabel Hitching KC for their assistance, out-of-committee.

38. This was last before the Committee on 2nd February 2024 (paras 44 – 57 of those minutes refer) when draft amendments to CPR Part 74 and PD 74A were presented. They are necessary to facilitate the implementation of the Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The amendments were agreed in principle and published for consultation.

39. The consultation took place on 7th February and closed on 13th March 2024. It attracted five responses, each has been carefully considered. The responses were tabled and duly **NOTED**. Some comments have resulted in revised drafting proposals, which were explained and discussed.

40. As regards the route of challenge for registration decisions, two of the consultation respondents raised that the proposed amendments do not make it clear that the rules on set aside are not intended to oust the normal route of appeal. The respondents also raised whether the rules should state that enforcement of a registered judgment ought to be deferred until the conclusion of any appeal.

41. It was **NOTED** that an explicit right is being created, in the Civil Jurisdiction and Judgments Act 1982 (the “1982 Act”), to apply to have the registration decision set aside and envision that this will be the most appropriate route of challenge in most circumstances. Whilst it is not intended to oust the ordinary appeal route, it was not considered necessary to expressly state that in the rules, on the basis that this is not the approach taken in the 1920 or 1933 Acts (nor, in the opposite way, in the 1982 Act for the 2005 Hague implementing provision, which creates an appeal right but without ousting or making clear the court’s continuing inherent set aside powers). Additionally, whilst there may be circumstances in which an appeal is appropriate, the possibility of this seems remote.
42. When considering this at the February meeting, the view was that it is preferable not to make such a remote possibility explicit, either in the 1982 Act or in CPR Part 74.
43. The ordinary appeal routes as provided for by the Access to Justice Act 1999 and its subordinate legislation, and CPR Part 52, would remain available and unaltered for the parties without the need to say so explicitly in the 1982 Act or the CPR. Rule 52.16 sufficiently deals with the effect of an appeal on an order or decision of a lower court.
44. It was **FURTHER NOTED** that:
- for consistency, the Government also decided to amend some of the implementing provisions for the Hague 2005 Convention. This resulted in a small number of additional amendments to CPR Part 74 and PD 74A. The intention is for these amendments to be made alongside the Hague 2019 amendments in the same SI;
 - a standalone CPR amending SI, incorporating all the relevant amendments, will be laid before Parliament with the intention that they come into force in June 2024.
45. It was **RESOLVED**:
- to agree, the proposed amendments to CPR Part 74 and PD 74A (Enforcement of Judgments in Different Jurisdictions), subject to consultation with the Senior Master, in his capacity as Central Authority for foreign process;
 - a general tidy-up of PD 74A and a gender-neutral terminology review of CPR Part 74 to be added to the Committee’s programme of work and undertaken when time allows.
46. **Actions:** (i) MoJ Policy consult the Senior Master in order to finalise the drafting (ii) In liaison with the Secretariat, MoJ Policy to facilitate promulgation outside the mainstream common-commencement date cycle (iii) Secretariat to note the wider work (general tidy-up) as part of the Committee’s ongoing work programme.
47. **Post Meeting note:** Following consultation with the Senior Master out-of-committee and with the consent of the Chair, it was agreed that Rule 74.4(5) will be retained in its current form and a tidy up will be carried out in slower time.

Item 6 National Security Act 2023 – provisions in relation to civil damages reforms: reducing damages and forfeiture and freezing orders CPR(24)15

48. Peter Farr and Zalwa Alasow (Ministry of Justice) were welcomed to the meeting.
49. It was explained that, under the National Security Act 2023, the court will be formally required to consider an application from UK Security Services for a reduction in damages when they find for the claimant in a national security claim brought against the Crown (save for those brought under section 7(1)(a) of the Human Rights Act 1998), where the claimant’s own wrongdoing of a terrorist nature should be taken into account.

50. Nothing in the legislation prevents the court from considering the national security factors of its own initiative or affects any other power of the court to reduce or refuse damages as a consequence of the claimant's wrongdoing, their failure to mitigate any harm suffered, or their contribution to that harm, nor does it affect any other rules of law otherwise limiting the Crown's liability. A separate provision exists, which enables UK Security Services to apply for damages freezing orders in any civil case where a claimant is assessed as being at risk of using their award for the purposes of terrorism. If the court continues to be satisfied that there is a real risk that the damages, if paid to the claimant, will be used for the purposes of terrorism, the freezing order can be extended for a further period of two years. It is possible to apply for a forfeiture order before the expiry of the period of the extended freezing order.
51. Having worked through how these applications and orders will be made and following consultation with the President of the King's Bench Division and others, no CPR amendments are being recommended in order to implement sections 85-89 of, and Schedule 16 to, the National Security Act.
52. However, guidance has been drafted with the intention of shared it with the UK Security Services to serve as reference material for their staff as well as being made available to the judiciary and court staff. The guidance document provides an outline of the court process where the UK Security Services have a claim against the claimant regarding concerns of national security.
53. It was **NOTED** that officials are in contact with the relevant authorities in Scotland and Northern Ireland as the legislation is UK wide in application. Confirmation is awaited, but it is thought, this may result in a similar approach where no new rules are required.
54. The ensuing discussion raised the topic of whether the guidance should be issued by Government or the judiciary. Mr Farr explained the rationale was that Government issue and own the guidance document to avoid fettering judicial discretion. It was **RESOLVED**:
- to agree that no CPR amendments were required;
 - the recommended guidance document was duly endorsed, subject to settling on an appropriate title and that the guidance will be owned and issued by Government.
55. **Post Meeting Note:** *MoJ proposed that the guidance document be titled, "Outline of Court Process" and the Chair was content.*
56. **Action:** MoJ to finalise guidance and cascade etc as appropriate.

Item 7 Retained EU Law (REUL) CPR(24)16

57. Oliver Lendrum (Department for Business and Trade (DBT)) was welcomed to the meeting.
58. This matter was before the Committee at the last meeting (paras 7-14 of the minutes 1st March 2024 refer) when various drafting revisions were made and discussed.
59. The proposed amendments intend to enable the effective operation of sections 6A-C of the European Union (Withdrawal) Act 2018 (EUWA). Namely, new procedures for (i) a lower court or tribunal, which continues to be bound by assimilated case law, to refer points of law which arise on assimilated case law and are relevant to proceedings before it to a higher court (not bound by it) to decide (ii) a UK Government (UKG) or Devolved Administration's (DA) law officer to refer a point of assimilated case law which arose in a now concluded case in a lower court or tribunal to a higher court, for use in setting precedent for future cases (iii) a right for a UKG or DA law officer to intervene in

proceedings before a higher court where it is considering arguments about whether it should depart from assimilated case law.

60. The revised drafting, in response to the points made at the last meeting, was reviewed and steers provided, thus:

- rule 68.2(4) is to be cast as, “A copy of any reference must be sent by the court to –”
- rule 68.3(3) is to be cast as, “Before the reference is filed, a copy of it must have been sent by the referring court or tribunal to –”
- rule 68.3(5) is to be further revised as follows, “Any submissions made under paragraph (4) must unless the Court of Appeal directs otherwise be filed with the Court of Appeal within 14 days of the copy of the reference being sent under paragraph (3), and a copy of the submissions must be sent ~~[by the Court of Appeal]~~ to each of the persons listed in paragraph (3) when ~~or before~~ they are filed.”

61. It was **RESOLVED** to:

- agree the new CPR Part 68 (Proceedings Under the European Union (Withdrawal) Act 2018) subject to, final drafting and any views from the Family Procedure Rule Committee’s upcoming meeting;
- consider the position regarding a bespoke new form (for parties to proceedings seeking to make a reference application under section 6A(20(b)), in consultation with the UK Supreme Court. The production of any new CPR form to be aligned with the anticipated in-force date of 1st October 2024.

62. **Actions:** (i) In consultation with MoJ Drafting Lawyers and the Secretariat, DBT to provide perfected final drafting by 7th June, for incorporation into the next mainstream CPR Update (to be published in July as part of the October 2024 common-commencement cycle) (ii) HMCTS to note operational implications in advance of implementation (iii) In consultation with the UKSC, HMCTS, MoJ Policy, the Secretariat and the Forms Sub-Committee, DBT to settle the position regarding any new form in advance of the October in-force date.

Item 8 Service Sub-Committee CPR(24)17

63. The Chair welcomed Mr Justice Richard Smith to the meeting and expressed **THANKS** to him for taking on the Chair (pro tem) and to all the Sub-Committee members for their work. Particular praise was attributed to Chief ICC Judge Briggs, who serves as a co-opted member. The other members are Tom Montagu-Smith KC, His Honour Judge Bird and Senior Master Cook.

64. Richard Smith J provided a summary of the Sub-Committee’s work in the context of promoting modern means of service and simplifying the rules. The current focus is service by e-mail on parties within the jurisdiction (CPR 6.1–6.29 and PD 6A).

65. It was explained that, in essence, the Sub-Committee’s view is that the current requirement for express prior authority for e-mail service creates an unnecessary obstacle. Outline proposals for a suite of amendments were tabled and discussed. In particular, a proposal to dispense with the requirement in PD 6A, para 4, for prior written consent to e-mail service. The intention is to replace that requirement with a requirement for legally represented defendants, when notified of an intention to make a claim, to provide an e-mail address for service, in default of which, the claim form (and any further documents) may be served at any e-mail address(es). However, a number of technical limitations, practical issues and points of principle were aired and required further

consideration. Central to this discussion was the context and contrast between represented parties and non-represented parties, as well as the digitally excluded.

66. It was **NOTED that:**

- some positive informal consultation has taken place. However, the Chair observed that any formal proposals will require additional consultation and Ian Curtis-Nye encouraged input from the third sector;
- the Insolvency Rules are standalone rules not affected by the proposals. The Insolvency Rules Committee may wish to consider any amendment in due course;
- no related amendments for service out of the jurisdiction are proposed;
- the proposals recognise that personal service will still be required in a number of situations;
- the Civil Justice Council (CJC) is considering digital exclusion, this may require CPR amendments to be prepared in phases, to enable reforms to be informed by the CJC's findings.

67. It was **RESOLVED to:**

- appoint Dr Anja Lansbergen-Mills as an additional member of the Service Sub-Committee and with a particular interest in considering un-represented users;
- agree the outline proposals in principle.

68. **Action:** (i) Secretariat to update the membership list (ii) Alasdair Wallace to support/assign Drafting Lawyer resource (iii) Sub-Committee to prepare developed drafting proposals and revert when ready (iv) Secretariat to be kept apprised for programming purposes.

Item 9 Damages and Money Claims Committee: PD51R & PD51ZB

69. The Chair provided a general update on the work of the Damages and Money Claims Committee (DMCC) and expressed **THANKS** for the enormous amount of time and effort carried out by all concerned. The following was duly **NOTED:**

- Mediation: amendments for the digital services under PD 51R (Online Civil Money Claims Pilot) and PD 51ZB (Damages Claims Pilot) in consequence of the Small Claims Automatic Referral to Mediation Pilot PD 51ZE (coming into effect on 22nd May 2024) have been approved in principle by the DMCC. The necessary PD Update will be forthcoming in due course.
- Statements of Truth (SoT): the DMCC has established a sub-group to consider SoT made by those who cannot sign by reason other than language alone.
- Legal Adviser limits: it is proposed to increase legal adviser's delegated case limit to £10,000. This has been considered by the DMCC and the Civil Executive Team and this was **AGREED IN PRINCIPLE**. It was **FURTHER NOTED** that the Chair will be meeting with the Association of District Judges to discuss the matter, before amendments are finalised.
- Extension of pilots: amendments to extend both pilot schemes is anticipated in due course, possibly for another year i.e. to October 2025 and this was **AGREED IN PRINCIPLE**.

70. **Actions:** (i) Drafting Lawyers and HMCTS to prepare the relevant amendments in the usual way, in consultation with the Secretariat and subject to the Chair's meeting with the ADJ.

Item 10 Lacuna Sub-Committee (LSC) CPR(24)18

71. District Judge Clarke made some introductory remarks, explaining there are three referrals to consider. Each was discussed in turn, as follows.

72. **LSC2024/1** was presented by DJ Clarke. The issue arises from the Court of Appeal decision in [*West -v- Burton* \[2022\] 1 WLR 742](#) and concerns the absence of a rule concerning the continuation of claims made under the RTA Protocol following death of the claimant. Sir Nigel Davis gave the lead judgment and raised the possibility of the CPRC considering the matter further. Having considered the matter very carefully, three possible options were explained, which broadly involved possible amendments to the Protocol for Low Value Personal Injury Claims in Road Traffic Accidents or amending CPR 2.3 or to do nothing. On balance, the recommendation of the LSC is that no further action is required. The portal has been in use since 2010, and this is the first reported case in which this point has arisen. The Court of Appeal has now given authoritative guidance on this point and it is not felt that further amendment of either Rule 2.3 or the Protocol would bring any greater clarity. This was **AGREED**.

73. **LSC2024/2** was presented by Tom Montagu-Smith KC. The matter arises in light of the decision in [*Infrastructure Services Luxembourg SARL v The Kingdom of Spain* \[2024\] EWCA Civ 52](#). It concerns conditions on permission to appeal. It was explained that CPR 52.18 restricts a party's right to ask the Court of Appeal to impose conditions on permission to appeal. However, the language is now less apt, since parties no longer have a right to an oral rehearing. The LSC has carefully considered various options, however, there are complexities and there are likely to be a range of views on the best approach. The judiciary will be best placed to assess the relative merits and should, thus, be consulted. It was **RESOLVED to:**

- form a bespoke Sub-Committee comprising, Trower and Pepperall JJ and Tom Montagu-Smith KC to consider the matter further and prepare a developed proposal;
- thereafter, the Chair to consult the Standing Committee of the Court of Appeal.

74. **Action:** Sub-Committee to prepare a report and revert to the Chair and Secretariat when ready

75. **LSC2024/3** was presented by DJ Clarke. This topic had been raised by the Architects Registration Board. It has highlighted that PD 52D (statutory appeals and appeals subject to special provision) requires updating. It was explained that paragraph 19.1(1)(a) applies to appeals to the High Court under section 22 of the Architects Act 1997. Sub-paragraph 19.3 provides that an appellant's notice must be filed within 28 days of the decision under appeal. However, section 22(2) of the 1997 Act provides that an appeal must be made within a period of three, six or nine months, depending on the nature of the decision under challenge. By paragraph 19.4 of PD 52D, the respondent should be the Architects' Registration Council of the United Kingdom. However, the relevant registration body is now the Architects Registration Board, which superseded the Architects' Registration Council of the United Kingdom (section 1, Architects Act 1997). It was **RESOLVED to:**

- amend PD 52D sub-paragraph 19.4 to bring it up to date by reference to the Architects Registration Board and to amend sub-paragraph 19.3 as drafted:

“The appellant must file the appellant’s notice within 28 days after the decision that the appellant wishes to appeal, or within such other period as the relevant statute provides”.

- a wider review of PD 52D to bring it up to date generally is to be added to the rolling work programme.

76. **Actions:** (i) Secretariat and Drafting Lawyers to incorporate amendments into the next mainstream CPR Update (for October 2024 in-force) and (ii) Secretariat to add the PD52D review to the work programme.

Item 11 Any other business / possible items for future business:

77. **PD 51ZC Small Claims Paper Determination Pilot:** the Chair explained that HMCTS were finalising their evaluation. However, the pilot expires on 1st June 2024. It was **AGREED** to extend PD51ZC for a further six months to allow time for the evaluation to be complete and the Committee to consider the findings and recommendations. **Actions:** (i) Drafting Lawyers and Secretariat to facilitate promulgation of an ad-hoc PD Update (unless it can be included in an upcoming instrument) and (ii) HMCTS to present their evaluation report no later than the June 2024 meeting.

78. **Annual Open Meeting on 10th May 2024:** the Chair provided an update on progress and planning for the annual open meeting at which members of the public and interested parties observe the committee in session and have pre-submitted public questions answered.

79. **CPR Part 81 Contempt and Form N600:** correspondence has been received from former Committee member, District Judge Cohen, regarding a possible lacuna as regards contempt proceedings and with reference to the judgment in *Inplayer (and others) v Thorogood* [2014] EWCA Civ 1511. The Chair sought a volunteer to review the matter and report back. **Post Meeting Note:** DJ Clarke to review. **Action:** DJ Clarke to keep the Secretariat apprised for programming purposes.

80. **Business & Property Courts Sub-Committee:** following consultation within the judiciary, it has been **AGREED** to **ESTABLISH A STANDING SUB-COMMITTEE** to consider any matters specific to the Business & Property Courts as/when required. **THANKS** were conveyed to all concerned. Membership to be:

- Mr Justice Trower (Non-Executive Chair)
- Mr Justice Andrew Baker (Judge in charge of the Admiralty Court)
- Mr Justice Constable
- Master Kaye (Chancery Division)
- His Honour Judge Klein
- Chief ICC Judge Briggs (Insolvency and Companies Court)

81. **Correspondence from the Expert Witness Institute:** correspondence dated 28th March 2024 had been received. The Chair set out the issues in outline and it was **AGREED** that he will discuss the matter further, out of committee. **Action:** Isabel Hitching KC to contact the Chair to arrange a suitable time to discuss.

82. **Committee papers:** the protocol regarding papers was reiterated, specifically the need to include the names of authors/those presenting the matter and this was **NOTED**.

C B POOLE
April 2024

Attendees:

Carl Poole, Rule Committee Secretary
Lady Justice Asplin, Chair, ADR Sub-Committee (Item 2)
The Senior Master, Chair, Clinical Negligence FRC Sub-Committee (Item 3)
Master Dagnall, Chair, Housing Possession Sub-Committee (Item 4)
Mr Justice Richard Smith, Chair (pro tem), Service Sub-Committee (Item 8)
Nicola Critchley, Civil Justice Council
Alasdair Wallace, Government Legal Department (Ministry of Justice (MoJ))
Andrew Currans, Government Legal Department (MoJ)
Katie Fowkes, Government Legal Department (MoJ)
Andy Caton, Judicial Office
Crystal Hung, Judicial Office
Jayne Rayner, HM Courts & Tribunals Service
Kathryn Kram, HM Courts & Tribunals Service
Michael Padfield, Judicial Office (Item 2)
Laurent Viac, Department of Health and Social Care (DHSC) (Item 3)
Helen Keefe, Government Legal Department (DHSC) (Item 3)
Michael Marshall, Department for Levelling Up, Housing and Communities (Item 4)
Cat Brown, MoJ (Item 5)
Victoria Spencer, Government Legal Department (MoJ) (Item 5)
Peter Farr, MoJ (Item 6)
Zalwa Alasow, MoJ (Item 6)
Oliver Lendrum, Department for Business and Trade (Item 7)