



# Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE  
In Royal Court of Justice  
and remotely via Microsoft Teams  
At 11.00 a.m. on Monday 15 April 2024**

**Present:**

<b>Sir Andrew McFarlane</b>	President of the Family Division
<b>Mr Justice Keehan</b>	High Court Judge
<b>Lord Justice Baker</b>	Court of Appeal Judge
<b>Mr Justice Peel</b>	High Court Judge
<b>Her Honour Judge Suh</b>	Circuit Judge
<b>District Judge Birk</b>	District Judge
<b>Poonam Bhari</b>	Barrister
<b>Rhys Taylor</b>	Barrister
<b>Graeme Fraser</b>	Solicitor
<b>Laura Coyle</b>	Solicitor
<b>Jennifer Kingsley JP</b>	Lay Magistrate
<b>Shabana Jaffar</b>	Cafcass Representative
<b>Bill Turner</b>	Lay Member
<b>Mrs Justice Knowles</b>	Lead Family Division Judge on Domestic Abuse

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1 The Chair welcomed Sana Bux to the Committee's Secretariat.
- 1.2 Apologies were received from Robert Edwards, District Judge Foss and His Honour Judge Godwin.

## **MINUTES OF THE LAST MEETING: March 2024**

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

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

**April 2024 Minutes** – Family Procedure Rule Committee

**ACTIONS LOG**

- 3.1 The Secretariat informed the Committee that 14 actions were recorded from the March 2024 meeting.

**MATTERS ARISING**

- 4.1 MoJ presented a paper which contained updates on the following:
- Web Inaccuracies.
  - Delegating High Court Powers to High Court Staff.
  - Permission to Appeal.
  - PD Update No.2 of 2024.
  - Cape v Dring.
  - PD27A/e-bundles.
  - Jade's Law.
  - Qualified Legal Representatives (QLRs).
  - Service of Orders at Refuges.
- 4.2 MoJ Policy informed the Committee that work around Permission to Appeal remains ongoing. A further update will be provided to the Committee at either the May or June meeting after the Working Group has met.
- 4.3 MoJ Policy highlighted to the Committee that the Civil Procedure Rule Committee (CPRC) are leading on the issue of disclosure of documents to non-parties, following the decision in Cape v Dring. A report prepared by the CPRC based on consultation responses will be shared with the Committee at either the May or June meeting.
- 4.4 MoJ Policy informed the Committee that the PD27A/e-bundles Working Group (WG) had received feedback from Mr Justice MacDonald, HHJ Lewis and HHJ Sharpe which is under consideration. A substantive update will be provided to the Committee at the May meeting.
- 4.5 MoJ Policy provided a paper to address the Committee's request at the 4 March meeting for comparable statistics and data on Qualified Legal Representatives (QLRs). The Committee expressed some concern surrounding the limited dataset referenced in the paper and the Chair asked that MoJ Policy attend the May meeting to discuss QLRs as a substantive item.
- 4.6 MoJ Policy informed the Committee that the SI to amend the FPR to make provision in relation to service of orders at refuges had been postponed. The decision was made to allow for more time to resolve various operational issues. MoJ intend to bring the SI for signing either at the June meeting or out of Committee.
- 4.7 MoJ is working closely with the standard orders group and confirmed that a meeting is scheduled with the group in late April after which a further update will be provided to the Committee.

**Action Point 2: MoJ to return to the Committee in May with a further update on Permission to Appeal.**

**Action Point 3: MoJ to return to the Committee in May or June and share report provided by CPRC.**

**Action Point 4: MoJ to return to the Committee in May with a substantive update on PD27A – e-bundles.**

**Action point 5: MoJ to return to the Committee in May with a substantive update on Qualified Legal Representatives (QLRs).**

**Action Point 6: MoJ to return to the Committee in June with the FPR amending SI for signing-off or arrange for this to be done out of Committee.**

**Action Point 7: MoJ to provide a further update to the Committee on standard orders after the group has met.**

## **STANDING ITEMS**

### **Online Procedure Rule Committee (OPRC)**

- 5.1** MoJ Policy presented the Committee with a paper outlining the OPRC's preference for including contested financial remedies in their initial work programme. The Committee's views were sought on how the OPRC may adopt contested financial remedies proceedings to inform advice that will be provided to Ministers at the end of April.
- 5.2** MoJ informed the Committee that financial remedy (FR) proceedings already sit within a well-established HMCTS online process and bringing these within the OPRC's remit would allow the OPRC to test its approach to rule-making without financial or operational impacts on HMCTS. MoJ prefaced their proposal with the recognition that the parliamentary process to make the associated affirmative statutory instrument can be protracted, so there is space for the proposal to evolve through more dialogue and engagement between the two committees.
- 5.3** MoJ emphasized that although the OPRC has considerable interest in the pre-action space its work cannot be done in isolation and requires linkage with legal proceedings. The aim is to work together to integrate the two and it was suggested that contested FRs were the best place to start.
- 5.4** The Committee noted the work on Practice Direction 9A (PD9A) by the FPRC's Early Resolution Subgroup and the need for further modernisation of the pre-action protocol for financial remedies. The Committee stated that a further meeting will be taking place imminently to discuss suggestions around reframing the document. MoJ informed the Committee that they are intent on and committed to working with the FPRC in an effort to improve upon progress already made. The President confirmed that the Subgroup are to continue as they are, noting that it may be quite some time before the OPRC would be in a position to make provision for contested FR.
- 5.5** The Committee were informed that members recently met with MoJ Policy and the OPRCs sub-committee and expressed some concern around uncertainty about exactly where its responsibilities will start and end. The Committee encouraged MoJ to provide further clarity around this to ensure the two Committees can work together. As a key objective, it was also agreed that there should be strong family justice experience on the Committee.
- 5.6** The Committee also discussed FPR Pilot PD36N. It was noted that the digital service for financial remedies is not ideal, for example litigants in person cannot access the system for financial remedies. Committee members enquired whether this would fall under FPRC or OPRC governance. MoJ confirmed that they will be taking into account all options and work

to consider these will be ongoing for the next few months until a decision is reached, after which a substantive update will be provided to the Committee.

**Action Point 8: MoJ to return to the Committee later in the year with a substantive update, including OPRC's views/decision on FPR Pilot PD36N.**

**Priorities Table and Pending PD amendments.**

- 6.1 MoJ stated that the Priorities Table has been updated since the last meeting.
- 6.2 MoJ presented a paper to the Committee in relation to its new triaging process for handling outstanding items. MoJ informed the Committee that seven items have been triaged as displayed in the Completed Triaging Forms which include recommendations for the prioritisation of seven of those items. MoJ explained the priority tiering system to the Committee. MoJ informed the Committee that the Priorities List is reviewed by the Committee every meeting but there will be a more intensive review at least every six months.
- 6.3 The Committee also asked for updates on PD12J and Police Disclosure and were informed that PD12J is currently being reviewed by MoJ Policy and that MoJ are currently discussing the proposal on Police Disclosure which will return in May.

**Action Point 9: Secretariat to provide an update on FPR 9.7(4) at the May meeting.**

**Action Point 10: MoJ to provide an update on PD12J.**

**Action Point 11: Item on Police Disclosure to return in May.**

**SUBSTANTIVE ITEMS**

**Private Law Children and Financial Remedies Pre-Action Protocols**

- 7.1 MoJ Policy updated the Committee on the progress that has been made by the WG to encourage earlier resolution of private law proceedings relating to children and financial remedy disputes. MoJ were pleased to announce the agreed rule changes to encourage early resolution with a coming into force date of 29 April 2024. MoJ have confirmed that relevant court forms and web guidance have been updated to reflect the changes in law and are accessible by court users.
- 7.2 MoJ Policy expressed thanks to everyone involved in the WG who were meeting fortnightly to work on the new pre-action protocols.
- 7.3 MoJ Policy informed the Committee that they are working with HMCTS to finalise details on an updated letter to parties. The President expressed some concern regarding the wording of the draft letter and confirmed that a further re-drafting of the letter will be completed today by the PFD Office. MoJ were in agreement.
- 7.4 MoJ Policy informed the Committee that they will now be working on similar letters covering FR applications and the development of two children and financial pre-action protocols by the end of May. MoJ will bring the two draft documents to the May meeting for signing off.
- 7.5 Committee members asked MoJ what they could do to promote awareness of the new rule changes to court users and the public, either personally or on a wider scale. The Committee

enquired as to whether the MoJ had organised a public-facing launch event on the 29 April to include the professions, stakeholders and Cafcass. Mrs Justice Knowles confirmed that guidance material is being prepared for the incoming rule changes including guidance for case management at the outset of private law proceedings as well as training/talk sessions which will be sent to family judiciary in advance of 29 April. MoJ have reached out to various organisations including the Law Society and Advice Now and are keen for further input on other avenues they need to explore to promote this. The Committee noted that this was a substantial rule change – emphasising that it would be advantageous for litigants to know in advance that the option for non-court dispute resolution is there – and would therefore benefit from maximum publicity.

- 7.6 The Lay Magistrate member of the Committee asked for more information about how the implementation of the new rules would impact the Magistrates' courts. MoJ and the WG informed the Committee that training materials were being prepared for Justices, adding that the obligation will be on the courts to consider earlier resolution and that parties will be encouraged to avail themselves of it and that the court may adjourn for this purpose.

**Action Point 12: Suggestions to maximise the impact of the launch to be sent to the Secretariat before 29 April.**

**Action Point 13: Item on pre-action protocols for children and finance cases to return in May.**

#### **Enforcement: update**

- 8.1 MoJ Policy presented a paper to the Committee summarising the review conducted by MoJ in respect of changes made to r.33.3 of the FPR in April 2023 in relation to general applications for enforcement of financial orders.
- 8.2 MoJ informed the Committee that due to the low level of enforcement applications and the fact that HMCTS does not collect data on these, their review has focused on qualitative judicial feedback by way of a survey. Overall, the feedback has been positive.
- 8.3 MoJ Policy were made aware of an error in Form E1. MoJ had rectified this error and Form E1 had been amended so that it was clear that 12 months' bank statements need to be attached to the form.
- 8.4 The Committee were asked to consider the proposal that no further rule changes were needed, for any comments on proposed next steps and whether further guidance was required in respect of penal notices.
- 8.5 The Committee asked MoJ if data were available in relation to personal service of penal notices. MoJ did not have any specific data on whether personal service was taking place or whether the means of service has caused problems with subsequent enforcement. District Judge Alun Jenkins' concern in relation to personal service was that it would hold up proceedings significantly and therefore should not be a way forward. Overall, it was agreed that the absence of personal service was not causing a problem. The Committee considered penal notices to be a useful tool, working well and to be kept under review by MoJ.
- 8.6 MoJ considered that on balance the current r.33.3(3) was working well and should continue without change. However, MoJ proposed that the requirement to file Form E1 7 business days (rather than 14 days) ahead of the first hearing can be kept under review. The Committee agreed with this view.

**Action Point 14: MoJ to keep FPR r.33.3(3) under review.**

**Retained EU Law**

- 9.1** The DBT presented a paper to the Committee seeking its views in relation to draft rules for section 6 of the Retained EU Law (Revocation and Reform) Act, in particular new section 6A of the EU (Withdrawal) Act which it introduces; a new procedure by which a lower court or tribunal, which continues to be bound by assimilated case law, can 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.
- 9.2** The DBT also informed the Committee that the Civil Procedure Rule Committee recently met and agreed their version of the draft rules subject to this Committee's decision at this meeting.
- 9.3** The Committee were asked for their views in relation to the combining of the rules into one single rule. Lord Justice Baker informed the Committee that after speaking with other Judges there did not appear to be obvious instances where these provisions would need to be relied on in family proceedings. However, the Committee nonetheless agreed to include the proposed rules on a contingent basis, and confirmed that it was content for the two rules to be combined into one and to use the existing general form rather than create a bespoke one.
- 9.4** The DBT confirmed that this would be included in the next rule-making SI and that the item did not need to return to the Committee, thanking the Committee for its consideration.

**PD36ZC: Online Divorce – proposals for permanent PD**

- 10.1** MoJ Policy presented a paper to the Committee outlining a proposal to make Pilot PD36ZC a permanent Practice Direction. If approved, this will take effect on 1 June 2024.
- 10.2** MoJ informed the Committee that there are some provisions which are not currently in the pilot PD which have been rectified in the draft permanent Practice Direction 41G.
- 10.3** The Chair invited Committee members to discuss any observations or questions they had in relation to the new permanent PD41G. Following discussion, MoJ Policy and HMCTS agreed to clarify whether guidance was published online in relation to whether certain types of application are appropriate for the online divorce process. MoJ Policy also agreed to consult with Her Honour Judge Roberts about PD41G.
- 10.4** The Committee approved the new permanent PD41G. MoJ confirmed that they will return with a final draft to the next meeting in May.

**Action Point 15: MoJ and HMCTS to clarify, out of Committee and by way of email, the types of applications (referred to in paragraph 2.4 of new PD41G) that are not appropriate for the online divorce process.**

**Action Point 16: MoJ and HMCTS to confirm with the Committee that Judge Roberts has been consulted with over the new PD41G before signing-off.**

**Action Point 17: Item on PD36ZC: online divorce to return in May.**

## **FORWARD PLANNING AND UPCOMING MEETINGS**

### **Other Procedure Rule Committees**

- 13.1 MoJ informed the Committee that the Secretariat have spoken with Secretariat's from other Procedure Rule Committees and apart from the update on Cape v Dring as listed in the Matters Arising paper there is nothing relevant to update the Committee at this stage.

### **Forms Working Group Update**

- 14.1 MoJ informed the Committee that the Forms Working Group last met on the 15 March. The next meeting is to be confirmed.

### **FPRC Working Groups**

- 15.1 MoJ stated that the FPRC Working Group table will be updated following this meeting.

### **Draft May 2024 Agenda**

- 16.1 The Committee were informed that the May 2024 agenda will be updated to reflect comments received at this meeting.

## **ANY OTHER BUSINESS**

- 17.1 None recorded.

## **DATE OF NEXT MEETING**

### **13 May 2024**

- 18.1 The next meeting will be held on Monday 13 May 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.

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April 2024  
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