



Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE
In Royal Court of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Monday 5 February 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
Robert Edwards	Cafcass Cymru
Bill Turner	Lay Member

Invited Guest:

Mrs Justice Knowles	High Court Judge
Her Honour Judge Wright	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

1.1 Apologies were received from Fiona James JP and Shabana Jaffar.

MINUTES OF THE LAST MEETING: December 2023

2.1 The Committee approved the minutes for the December 2023 meeting.

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Action Point 1: Secretariat to arrange for the December 2023 minutes to be published on the FPRC webpages.

ACTIONS LOG

- 3.1 The Secretariat informed the Committee that 16 actions were recorded from the December 2023 meeting.

MATTERS ARISING

- 4.1 MoJ presented a paper which contained updates on the following:
- Web Inaccuracies.
 - Law Commission's Surrogacy Report.
 - Implications of Re G & H [2023] EWCA Civ. 768 on leave to oppose adoption.
 - Jade's Law.
 - Deed Poll Name Changes.
 - PD27A bundles.
 - Permission to Appeal – consultation and policy options.
 - Delegating High Court Powers to Court Staff.
 - Closed Material Proceedings.
 - Practice Direction Update No.1 of 2024
 - Protocol: Disclosure of Information in cases of alleged child abuse and case direction hearings.
 - Re D (A child) (Abduction: Child's Objections: Representation of Child Party) the role of the solicitor-guardian acting for a child.
- 4.3 The Committee heard that the Permission to Appeal Working Group were waiting for feedback on the fact that there is no permission filter for appeals from decisions of lay magistrates in the family court and a fuller update will be presented to the Committee at the March 2024 meeting.
- 4.4 The President of the Family Division stated that 'Jade's Law' was subject to several amendments in Parliament in wider areas concerning parental responsibility, however it would be for the Government to consider these.
- 4.5 Her Honour Judge Wright joined the Committee to provide an update on the Protocol: 'Disclosure of information in cases of alleged child abuse and care directions hearings'. The President suggested the Protocol should be referred to in a Rule or Practice Direction as it is a working agreement, rather than the Protocol being written as a Rule or Practice Direction. MoJ Legal noted that the scope of the Protocol goes beyond practice and procedure of the courts in family proceedings, which would also point against incorporating it into a rule or Practice Direction, but point towards signposting its existence in a Practice Direction instead. The Committee agreed that the Protocol should be signposted, as a link, in relevant Practice Directions. MoJ will consider where the signposts would be best placed and revert to the Committee on this. The President suggested releasing a statement from himself and the Director of Public Prosecutions regarding the new Protocol. It was agreed that the new Protocol could be launched when ready, without the need for the Practice Direction signposts to be in place first.

Action Point 2: Judicial Office to provide the protocol as a link.

Action Point 3: MoJ to revert to the Committee with proposals for where the Protocol could be signposted in Practice Directions.

- 4.6 In regard to Re D (A child) (Abduction: Child's Objections: Representation of Child Party) the role of the solicitor-guardian acting for a child, the Acting Chair stated that this issue will be put through the Committee's new triage process and return to the Committee for discussion in due course.

Action Point 4: Re D (A child) Abduction: Child's objections: Representation of Child Party) the role of the solicitor-guardian acting for a child to be put through the triage process.

STANDING ITEMS

Online Procedure Rule Committee (OPRC)

- 5.1 MoJ Policy informed the Committee that OPRC continues to be setting up its sub-committees. MoJ highlighted that they had a high number of expressions of interest for external membership with 43 applications. MoJ is finalising sifting and expect interviews to take place in February. MoJ also informed the Committee that the next OPRC meeting will take place on 12 February. The Committee discussed the OPRC's rule-making powers and asked for an update on OPRC in March.

Action Point 5: OPRC to return to the Committee in March.

SUBSTANTIVE ITEMS

Priorities Table and Pending PD amendments.

- 6.1 The FPRC Secretariat introduced the new triage process for the Priorities Table to better manage new requests for the Committee's consideration. The Committee approved of the new triage process however had a few comments. This included the clarity of the Excel spreadsheet when published online. The Secretariat confirmed that they will liaise with the web team to ensure the new format of the priorities table is published clearly online.
- 6.2 Members agreed that the triage process should also apply to requests being put to the Committee by the judiciary. The Acting Chair asked for Wish List/Priorities Table to be placed on the Agenda for the March meeting.

Action Point 6: The Secretariat to publish the Priorities Table online.

Action Point 7: The Wish List/Priorities Table to be placed on the Agenda for March.

SUBSTANTIVE ITEMS

Service of Orders at Refuges

- 7.1 MoJ Policy sought the Committee's views on proceeding with the new Family Procedure Rule (FPR) and Practice Direction (PD) provisions which work to ensure that court documents are served on persons, in relation to whom there are reasonable grounds to believe they reside in refuges, in the safest way possible.
- 7.2 MoJ Policy were asked to ensure their wording regarding refuges reflected that there are refuges for men. The Committee suggested the policy team need to check for cross-

references in other rules. It was highlighted that when addresses are provided by third parties such as Department for Work and Pensions (DWP) it may not always be clear if the address being provided is a refuge. It was discussed whether the default position should be to keep the addresses confidential until the judge orders otherwise. It was mentioned that FPR 29 works on that basis, but the policy team would double check how to ensure that orders reflect this.

- 7.3** MoJ Policy stated that they will be discussing this issue further with Domestic Abuse (DA) organisations and HMCTS. The Committee asked MoJ Policy to also review the logistical issues of the address of the respondent being disclosed to the applicant solicitor with the DA organisations and HMCTS, and to provide an update at the March meeting.

Action Point 8: MoJ Policy to discuss with DA organisations and HMCTS how to avoid the possibility of the address being disclosed to the applicant Solicitor and complete consequent amendments.

Pathfinder Pilot

- 8.1** MoJ Policy stated that since the December Committee meeting they had emailed the Committee to propose a revised draft of the proposed new Practice Direction provision which was to remove the automatic need for a Child Impact Report for cases.
- 8.2** MoJ Policy proposed to delay the start date for Pathfinder Pilot in South East Wales for operational reasons. The Policy Team stated that for Birmingham they were informed that the start date will be 28 May 2024 instead of 3 June 2024.
- 8.3** The Committee approved the suggested start date for Birmingham and stated that the start date for South East Wales should be no later than the end of April 2024.

Action Point 9: MoJ to include the proposed amendments to PD36Z in PD Update No. 1 of 2024.

Disclosure of Parties' addresses: Rule 29.1 FPR: proposed amendment

- 9.1** MoJ Policy informed the Committee of an incident whereby the address of a respondent was disclosed to an applicant and another respondent (who was previously not aware of it) when the first respondent was seeking to keep her address confidential. This had arisen as the applicant had included the first respondent's address on an application form, which was then copied to the second respondent. The FPR do not currently give scope for an applicant to request/ require that a respondent's address be kept confidential. MoJ presented several options to the Committee and recommended revising Rule 29.1 FPR to allow for an applicant to indicate that a respondent's (or respondents') contact details must be kept confidential without needing to provide a reason. The Committee agreed with the recommendation.

Action Point 10: MoJ to revert to the Committee with a draft rule amendment at a future meeting.

PD36ZF: Expert Assessment and Readiness Checklists: Proposed amendments

- 10.1** MoJ Policy stated that the checklist pilot was approved by the President of the Family Division in November and started in January. MoJ Policy explained the family court in Nottingham was facing resourcing issues which made it difficult to introduce both the Expert Assessment Checklist and the Readiness Checklist. The Committee agreed with a proposal

to amend the pilot Practice Direction to remove the requirement for Nottingham to complete the Expert Assessment but to continue to complete the Readiness Checklist.

Action Point 11: MoJ to include an amendment to PD36ZF to remove the requirement for an Expert Assessment checklist to be filed in cases in the family court at Nottingham in PD Update No. 1 of 2024.

Qualified Legal Representatives (QLRs)

- 11.1** MoJ Policy stated that since the December 2023 meeting, Parliament had passed secondary legislation and MoJ Policy had published guidance to introduce a new expenses policy allowing QLRs to claim reimbursement for expenses incurred when they have travelled to a court not local to them to take on a QLR case. MoJ stated that there have been issues around QLRs being able to access training. The Committee noted that MoJ are currently reviewing the training available as they are conscious of the importance of widening the pool of appropriately trained QLRs. MoJ also highlighted that the Law Society is developing its own family-focused training and will be issuing a call out for new training facilitators.
- 11.2** The Committee asked to see data on the QLRs across several measurements, including their availability and where QLRs were needed but none were available. MoJ stated that as of 1 February 2024 they have 356 QLRs on the register. MoJ stated that 823 cases between July 2022 and December 2023 had required a QLR. This data is manually collated and is not quality assured. The Committee queried how many QLRs have financial remedies expertise, MoJ stated that they will look into this and report back.
- 11.3** The Committee were keen to see a breakdown of QLRs based on region, and MoJ agreed to report back on this. Members flagged that the new expense policy for QLRs would be a helpful incentive to encourage practitioners to take on the QLR role. However, members of the Committee noted many people sign up to go on the QLR register but don't undertake training for another six months. The Committee asked for this item to return in March.

Action Point 12 MoJ to provide data on the number of QLRs that have financial remedy expertise.

Action Point 13: MoJ to provide data on the number of QLRs in each region.

Action Point 14: MoJ to return to the Committee in March for an update.

Private Family Law Online Services: PD36G and PD36ZD (updates and proposed extensions and amendments)

- 12.1** HMCTS updated the Committee on the progress of the end-to-end digital service for Section 8 Children Act 1989 applications and Part 4 Family Law Act 1996 applications. HMCTS highlighted that they are seeking extension to the end dates of PD36ZD, PD36G and are also proposing amendments to PD36ZD to underpin HMCTS sharing data from court files with Cafcass and Cafcass Cymru in cases where they are involved in proceedings.
- 12.2** The Committee queried the short timeframe to rollout the product when has not been fully implemented in any area to date. HMCTS reiterated that the proposal is to roll out the product by the end of 2024.
- 12.3** The Committee approved the Practice Direction amendments.

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Action Point 15: MoJ to include the approved amendments to PD36G and PD36ZD in PD Update No.1 of 2024.**Fast Track Working Group**

- 13.1** MoJ stated that they have had two meetings with the Working Group to progress pilot plans. Officials highlighted they are aiming for the pilot to start in November and run to 2025. They aim to evaluate whether pilots can be run nationally when the pilot ends. The team stated that they will provide an update to the FPRC at a future meeting.

H v An Adoption Agency

- 14.1** MoJ Legal referred to the draft new Practice Direction relating to applications for declarations of parentage in respect of a child who has been adopted. They noted that MoJ Legal had now sent comments on the draft Practice Direction to MacDonald J, such that it is hoped that the Practice Direction can soon be finalised. The Committee noted the need for some minor changes to the Practice Direction.
- 14.2** MoJ Legal flagged that the Family Court (Composition and Distribution of Business) Rules 2014 require amendment to achieve the end stated in the Practice Direction that these particular applications should be allocated to a judge of High Court Judge level in the family court. Draft amendments to those Rules were presented to the Committee in accordance with the statutory requirement to consult the Committee. The Committee indicated it was content with the proposed amendments. MoJ Legal that the Statutory Instrument will be sent to the President of the Family Division, then the Minister, in the next few weeks for signing before being laid before Parliament.

Action Point 16: MoJ Legal to pass the Committee's comments on the new Practice Direction to MacDonald J.**Early Resolution: Next Steps**

- 15.1** MoJ Policy stated that on Friday 26 January the Government published the response to the consultation on early resolution in private family law. It was noted that the response outlines a programme of reforms to assist families in resolving their issues quickly. MoJ Policy explained these reforms include launching an early legal advice pilot and creating an authoritative online information portal for parents and carers. MoJ Policy noted that the Government response referred to the rule changes already agreed and made by the Committee.
- 15.2** MoJ Policy noted that Ministers are interested in looking at a wider package of changes that complement those rule changes to continue building momentum in relation to non-court dispute resolution. MoJ Policy highlighted that Ministers are interested in exploring the potential benefits of a pre-action protocol being put in place for private law proceedings relating to children. Members stated that there is a protocol published by The Law Society, which could be integrated with a protocol from the Government to avoid confusion and encourage adherence. Members suggested to MoJ to speak with The Law Society about updating the protocol and to work together to get that in line with the new rules.
- 15.3** Members recommended MoJ Policy use judicial training to inform family judges about the Government's policy changes to early resolution in private family law.

FORWARD PLANNING AND UPCOMING MEETINGS

Other Procedure Rule Committees and Family Procedure Rule Committee

- 16.1** MoJ Policy informed the Committee that meetings had taken place with other Rule Committee Secretariats and there was nothing to raise at this meeting.

Forms Working Group Update

- 17.1** MoJ stated that the Forms Working Group met on the 25 January and discussed amendments to various forms – this included pension on divorce forms, C8 and D89 forms, and amendments to various forms in light of the early resolution rule and Practice Direction changes.

FPRC Working Groups

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

Draft March 2024 Agenda

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

ANY OTHER BUSINESS

Retained EU Law

- 20.1** Department for Business and Trade (DBT) policy officials updated the Committee on the work undertaken so far by a cross-jurisdictional working group on rules for higher courts receiving referrals from other courts and tribunals on whether to depart from assimilated EU case law. These rules will inform those for court and tribunals making referrals which FPRC would need to consider. The Committee member that sits on the cross-jurisdictional working group stated that they are considering if there is any EU assimilated case law in the family jurisdiction likely to lead to referrals, but they would need to have the rule change as a contingency and added that family rules should emulate those in the civil jurisdiction.
- 20.2** DBT agreed to return to the Committee with draft Rules in April.

Parental Alienation Experts

- 20.4** MoJ Policy informed the Committee that unregulated professionals are providing evidence as expert witnesses in the family court on the contested concept of parental alienation. MoJ Policy explained that these professionals tend to use the title 'psychologist'. MoJ officials have liaised with Department of Health and Social Care (DHSC) to determine whether it would be feasible to regulate the term psychologist, but DHSC officials have indicated it would not be an appropriate step.
- 20.5** MoJ sought the Committee's views on whether members would be minded to take forward work to consider changes to the Rules to ensure that only regulated professionals can give evidence as expert witnesses. Members agreed that this is not a matter for the Committee

and stated they would not be inclined to take on the work or make any Rule amendments regarding this issue.

DATE OF NEXT MEETING

4 March 2024

21.1 The next meeting will be held on Monday 4 March 2024 and will be a hybrid meeting. The meeting will take place in person in QB2M, Royal Courts of Justice and remotely via MS Teams.

FPRC Secretariat

February 2024

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