

Approved

Minutes of the Civil Procedure Rule Committee: Annual Open Meeting

Friday 10th May 2024, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via video conference.

Members attending

The Rt. Hon. Sir Geoffrey Vos, Master of the Rolls & Head of Civil Justice (Chair)
Lord Justice Birss, Deputy Head of Civil Justice
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
David Marshall
Ben Roe
Ian Curtis-Nye
Elisabetta Sciallis

Apologies

None

Item 1 Welcome and Introduction from the Master of the Rolls

1. The Rt. Hon. Sir Geoffrey Vos, MR, statutory Chair of the Civil Procedure Rule Committee (CPRC), opened the annual public meeting.
2. In welcoming everyone in attendance, whether in person or joining remotely, he was pleased to acknowledge the Committee's newest members: Mr Justice Pepperall (the new High Court Judge, King's Bench Division (KBD) member), His Honour Judge Hywel James (the new Welsh judicial member), Master Sullivan (the new KBD Master member), District Judge Johnson (one of two District Judge members) and Elisabetta Sciallis (one of two members representing the lay advice and consumer affairs sectors) and to pay tribute to immediate past members, all of whom have given their valuable time and expertise voluntarily, which is very much appreciated.
3. This year marks the 25th Anniversary of the Civil Procedure Rules. The MR reflected on the origins of their inception by his predecessor, Lord Woolf and how the rules and the committee have developed over a quarter of a century of change. Acknowledging this landmark, congratulations were extended to everyone involved in the keeping the CPR up to date.
4. The official launch of the Online Procedure Rule Committee (OPRC) took place in November 2023, supported by the Lord Chancellor and Lady Chief Justice. As Chair, the MR also gave a speech at the event. The MR explained the multi-jurisdictional scope (Civil, Family and Tribunals), composition and indicative work programme, of the OPRC as well as how it plans to work in close liaison with the respective jurisdictional rule committees. Before the OPRC can make its own rules, Parliament must approve a statutory instrument setting out the specified proceedings in which it can make rules. This is unlikely to come into force before the autumn and effort will

be concentrated on specific priority projects in the first instance. Mainstream rulemaking is not envisaged until a track record has been established. The Judicial Review and Courts Act 2022, which established the OPRC, provides a unique opportunity in relation to the pre-action space. The OPRC will provide governance and develop data standards in support of a new Digital Justice System (DJS). By embedding these standards across the third and private sector organisations that deliver information, support and dispute resolution services, a future DJS can support people from the very beginning of their legal problems. **THANKS** were recorded to the Ministry of Justice and HM Courts and Tribunals Service for their support and enthusiasm.

5. **THANKS** were also conveyed to the Deputy Head of Civil Justice, Lord Justice Birss, for his dedication in chairing the CPRC on the MR's behalf and to the Secretary, Carl Poole, without whom the committee would not function in the efficient and effective way it does.

Item 2 Minutes, Action Log and any matters arising not covered by later items:

6. **Minutes:** the minutes of the last meeting, on 12th April 2024, were **AGREED**.
7. **Action Log & Matters Arising:** the following was duly **NOTED**:
 - **AL(23)202 - Small Claims Track Automatic Referral to Mediation Pilot.** A new pilot Practice Direction (PD), PD 51ZE, comes into force on 22nd May 2024, pursuant to the 166th PD Update. The pilot scheme will automatically refer certain civil claims for a specific amount of money under £10,000, to a free, one-hour mediation session, with the HMCTS Small Claims Mediation Service. Not every digital small claim is included at this stage. More information is available via the CPR rules online homepage and the HMCTS pages on Gov.uk.
<https://insidehmcts.blog.gov.uk/2024/04/11/preparing-for-the-requirement-to-mediate-in-small-claims-what-you-need-to-know/>
 - **AL(24)21 - ADR Consultation.** The consultation has been published, comprising the proposed draft CPR amendments arising from the Court of Appeal (CA) judgment in *Churchill v Merthyr Tydfil Borough Council*. The draft amendments have been prepared by the sub-committee chaired by Lady Justice Asplin and agreed in principle at the 12th April CPRC meeting (paragraphs 6-14 of the minutes refer). Closing date for consultation responses is 28th May 2024.
 - **AL(23)214 - Migration of the online CPR.** The *justice.gov.uk* web site on which the CPR is published is migrating to the Ministry of Justice (MoJ). MoJ Digital have been progressing the project in collaboration with a working group made up of judges, CPRC members and external practitioners. **THANKS** were conveyed to all concerned. It was **NOTED** that Mr Justice Pepperell had not been involved in the way in which it was initially anticipated. However, Anja Lansbergen-Mills provided reassurance. The public facing pages should not appear any different, but the operation of the new pages, should be improved. MoJ Digital will monitor the new pages post go-live later this month.

Item 3 Access to Court Documents (UKSC Cape -v- Dring)

8. District Judge Clarke provide a brief oral update which was duly **NOTED**.
9. The proposed new version of CPR 5.4C (supply of documents to a non-party from court records) arise from the UK Supreme Court (UKSC) judgment in *Cape Intermediate Holdings Ltd -v- Dring* [2019] UKSC 38 (specifically, paragraphs 41-51 inclusive). The proposed reforms were drafted by the multi-jurisdictional sub-committee and agreed in

principle, subject to consultation, at the 1st December 2023 meeting (paragraphs 42 to 51 of those minutes refer).

10. The consultation, which was also set in the context of the Lady Chief Justice's broader agenda of looking at transparency issues, was published on 19th February 2024 and closed on 8th April 2024.
11. Originally, the intention was to provide a substantive report for today's meeting. However, the proposed amendments to rule 5.4C have generated a reasonably significant response. 42 consultation responses have been received, from across the spectrum, most of which were from professional representative bodies, law firms and individual journalists. They are of a very high quality.
12. Everyone agrees with the principle of open justice, however, the detail requires further consideration. It is not clear, at this stage, whether the matter will be ready for a substantive report before the summer recess, to allow for the reforms to come into force in October.
13. **Action:** Programming to be discussed, with the Chair, out of committee.

Item 4 Clinical Negligence Fixed Recoverable Costs CPR(24)19

14. Laurent Viac and Helen Keefe (Department of Health and Social Care) were welcomed to the meeting.
15. This matter was last before the Committee on 12th April 2024 (paragraphs 16 to 27 of those minutes refer). The proposed new scheme solely concerns pre-issue costs and processes for, "low value clinical negligence (LVCN) fixed costs" 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. The intention is for a harmonious interaction with the existing fixed costs regime.
16. The Deputy Head of Civil Justice and Senior Master Cook provided some introductory remarks, acknowledging the amount of work ongoing to put the broad architecture in place and prepare the final suite of amendments, to be ready for the new scheme to come into force in October 2024. In support of which, the intention is to publish the draft Pre Action Protocol (PAP) as soon as practicable, with the aim of helping users prepare for implementation. However, some concerns were raised regarding the practical aspects of achieving this in the time envisaged.
17. A discussion ensued, which raised points concerning the following.
18. The interaction of the proposed percentages for late action and how any new provisions concerning unreasonable behaviour will operate, given that an unreasonable behaviour scheme already exists. Mr Viac explained that the costs sanctions and unreasonable behaviour provisions have been developed in parallel. The intention is that they operate side by side, but with unreasonable behaviour considerations coming after other sanction considerations apply. It is not the intention to double count; as such the drafting should be reviewed to clarify this. Isabel Hitching KC thought it would be helpful to have some worked examples, to understand the related implications and whether the scheme is driving the behaviours anticipated. This garnered support.
19. Children and protected parties was raised and discussed, as was the scheme's interaction with Part 36 (offers to settle) and other points regards the Tables (and VAT provisions) in PD 45 (fixed costs). Consistency with, in particular other PAPs and claim forms was raised, because it was not clear why the draft amendments to PD16 require parties to state compliance with the PAP when this is not an express provision elsewhere as regards other PAPs. Moreover, clarity was sought on the policy behind the provision (new draft

para 4.5 in PD16) for a claimant to, ‘...set out a rationale for not commencing their claim under the Protocol replied upon.’

20. Master Sullivan and Ian Curtis-Nye provided practical insights as regards the issues encountered by litigants in person (LIP) within clinical negligence proceedings. Mr Viac recognised the practical challenges faced by LIPs. Various avenues for support, such as the Charity sector and NHS Resolution do support LIPs, but the policy intent with these reforms is that LIPs are not in scope (the existing provisions remain unchanged).

21. Notwithstanding the position Mr Viac relayed at the last meeting regarding difficulties with attempting to integrate the scheme with the NHS complaints process, Mr Curtis-Nye reiterated his views regarding this and transitional arrangements. It was **NOTED** that the Chair had previously urged officials to consider the point in the context of any wider implications across the rules generally and for reference in the explanatory information being produced for users.

22. It was **RESOLVED**:

- to **NOTE** the latest iteration of amendments to:
 - new draft Pre-Action Protocol (PAP) for the Resolution of (Low Value) Clinical Disputes.
 - the Pre-Action Conduct and Protocols PD,
 - PAP for Resolution of Clinical Disputes,
 - PD 16 Statements of Case,
 - Part 26 Case Management – Preliminary Stage,
 - Part 36 Offers to Settle,
 - Part 45 Fixed Costs,
- to **NOTE** the remaining work and potential risk of missing the deadlines for an October 2024 in-force. This would arise if the amendments cannot be finalised and agreed at the June 2024 meeting. In which case, the next mainstream CPR Update cycle is for April 2025 in-force;
- agree that the draft PAP is **NOT FIT FOR PUBLICATION** in its current form;
- to allocate time at the June meeting, subject to the sub-committee having matters ready for the CPRC to consider.

23. **Actions:** (i) DJ Johnson to collate a list of drafting points for the Sub-Committee and officials to consider (ii) DHSC to (a) rectify the formatting issues in the PAP and settle the final draft version, out-of-committee if possible (b) provide an explanatory note on the operation of the sanctions/unreasonable behaviour schemes (c) redraft to clarify policy intent not to double count sanctions (iv) provide worked examples (v) in collaboration with the Sub-Committee prepare the papers for the next meeting by 29th May.

Item 5 Extending Fixed Recoverable Costs (FRC) CPR(24)20

24. Dr Harry Chancellor (Ministry of Justice) was welcomed to the meeting. Mr Justice Trower presented the matter.

25. The updated regime (extending FRC) came into force on 1st October 2023.

26. A suite of residual amendments to the new FRC regime were explained; in summary they comprise the following:

- **Fixed Costs Determination (FCD).** The new procedure for FCD was agreed, subject to final drafting, at the 2nd February 2024 CPRC meeting (paragraph 14 of

those minutes refer) and is, subject to Ministerial approval, to be included in the mainstream summer Update cycle, to come into effect in October 2024. This suite of drafting tweaks aim to ensure consistency of language and application in practice. The sub-committee is very keen to ensure the rules are clear on the difference in concept between assessment and determination and when they can be done together.

- **“Other Money Claims”**. An amendment to rule 26.15, Table 1, paragraph 3(e), which currently refers to “other money claims” was proposed, in the interests of clarity. The draft amendment reads, “other ~~money~~ claims for a sum of money, whether the sum is specified or unspecified, except claims that fall under complexity band 1(b)”. This point was raised with the Deputy Head of Civil Justice during a civil continuation course at the Judicial College.
- **Part 28 & PD 28**. Minor changes to rule 28.7 and rule 28.14 were proposed, to remove cross-references which do not fit with rule 28.2. The points were raised by District Judge Johnson, out-of-committee.

27. With no questions being raised, it was **RESOLVED** to **approve the amendments, subject to final drafting**.

28. The Deputy Head of Civil Justice expressed **THANKS** to everyone involved in this work and reiterated the previous resolution to conduct a general stock-take of the new FRC scheme in/around February 2025, to review how well the reforms are working and whether any changes are required following experience in practice. The Secretary confirmed the review was programmed in.

29. **Action:** Secretariat and Drafting Lawyers to incorporate into the next mainstream CPR Update, for publication in July and, subject to Ministerial and/or Parliamentary approval, to come into force on 1st October 2024.

Item 6 Simplification (Section 2(7)) Sub-Committee: Part 25 reforms

30. Ben Roe provided a brief oral update, post consultation, on the work to simplify CPR Part 25 (interim remedies and security for costs).

31. The consultation was published on 18th December 2023 and closed on 9th February 2024. Under the proposed reforms, the two supplementing PDs are, in effect, dispensed with. The substantive Part is replaced in a revised format. The draft amendments were agreed in principle, subject to consultation, at the 1st December 2023 CPRC meeting (paragraphs 53 to 60 of the minutes of that meeting refer). Due to the extent of the proposed revisions to Part 25, the draft amendments were presented for consultation in clean copy version only, together with a destination table. An associated proposed revision to Part 4 (forms) was presented in the traditional tracked change style within the same consultation.

32. The consultation attracted around 50 points from a collection of respondents including counsel for the Joint Committee on Statutory Instruments (JCSI), professional users and the judiciary. Generally, the suggestions are helpful and gratefully received. Some points may be considered substantive, going beyond the scope of the present project. A fuller report will be forthcoming in due course, provisionally, for the next meeting on 7th June and this was duly **NOTED**.

33. **THANKS** were conveyed to everyone who took the time and effort to submit responses. Particular thanks were made to the JCSI as this was the first time they have been asked to comment via the simplification consultation programme.

34. **Action:** The Secretariat, in consultation with Ben Roe, to allocate time at the June meeting.

Item 7 Public Question Forum CPR(24)21

35. The Deputy Head of Civil Justice expressed thanks to everyone who submitted questions; the following were duly answered (as set out below).

	Question	Answer
1	<p>Updating the CPR.</p> <p>My question relates to the evolving or updating of Civil Procedure Rules and Practice Directions.</p> <p>All matters before the civil courts are subject to the experienced consideration of the presiding Judge(s) who seek to apply the law, CPR Rule or Practice Direction applicable to the matter before the Court, yet, to what extent is the Committee provided with examples from determined Court matters, where a Judge has been asked to make a determination in circumstance where the existing CPR Rule or Practice Direction does not in itself exactly apply to the individual or unique circumstance presented to the Court.</p> <p>Thankyou</p>	<p>The Deputy Head of Civil Justice (DHCJ) explained that issues in practice are brought to the attention of the committee via a number of methods (including: correspondence, member insights, court judgments, judicial associations, government officials and professional bodies).</p> <p>If an authoritative judgment specifically refers a matter to the CPRC, then it is duly considered, usually by the Lacuna Sub-Committee in the first instance.</p> <p>However, not all matters require CPRC consideration, because judges have inherent powers which can allow for judicial discretion in appropriate cases.</p>
2	<p>Adherence to the CPR.</p> <p>Is there a procedure in place to ensure the Judge and court staff conform to civil procedure rules?</p>	<p>The DHCJ explained that there are a number of ways in which this takes place. Judges and staff receive regular training and standard operating procedures are in place for staff to ensure consistency and that processes are in accordance with the rules. Complaints and appeal processes are also available to consider errors in law or failures in the law. Overall, judges and court staff do strive to conform with the CPR and largely that is achieved.</p>
3	<p>Court Etiquette</p> <p>Is there a procedure in place to ensure the judge does not communicate with the party who is on video call when the other party is asked to leave the courtroom during the recess?</p>	<p>District Judge Clarke explained CPR 39.8 concerns communication with the court. However, there are inevitably various possible dynamics at play and it is not really something which the CPR can address.</p>

		<p>Often there is a degree of choreography with such processes, for example, sometimes people are slow to join or leave.</p> <p>Essentially, the process is no different than if one party within the court room is asked to leave or has to leave the courtroom. The judge will remain true to their duty to follow court protocols.</p> <p>Within the VH platform, when a hearing is paused for a recess, all parties including the judge (or panel members / magistrates) and clerk are returned to the virtual waiting room and the courtroom cannot be entered until the judge or clerk re-starts the hearing. On the restart of the hearing all participants booked onto the hearing will automatically join the virtual courtroom. Observers and participants joining via a <i>quick link</i> will need to be admitted into the courtroom. As such, this is not a particular issue for VH hearings.</p>
4	<p>Litigants in Person</p> <p>Can a CPR be introduced that places an obligation on HMCTS to inform a litigant in person of the existence of the Civil Procedure Rules?</p>	<p>The DHCJ did not think this was a rule committee matter, but, generally considered public facing material was useful.</p> <p>Public facing guidance is available on GOV.UK that provides users with information regarding the making of a court claim and subsequent processes.</p> <p>If there is a specific issue to be raised, individuals were invited to write to the Secretary via CPRC@justice.gov.uk</p>
5	<p>CJC Cost Report – Costs Budgeting Light</p> <p>When is the anticipated implementation or pilot of “Costs Budgeting Light” likely to be?</p> <p>Additionally, has the process been formulated and are there any initial indications regarding its potential features?</p>	<p>His Honour Judge Bird explained that this is a recommendation from the Civil Justice Council’s Costs Report from May 2023. A small working group, comprising CPRC, judicial and practitioner members, has been considering the matter.</p> <p>The plan is to report more fully to the June CPRC meeting. It would not be helpful to explain on the detail now, because it may change following CPRC consideration and implementation is subject to the weight of other work.</p> <p>However, usually CPRC pilots are introduced for an initial two-year period.</p>

		Please provide any update on the work flowing from the CJC's Costs Report.
6	<p>Access to Court Documents (UKSC Cape-v-Dring)</p> <p>Are you able to provide an update on plans for the rules on public access to court documents, following the recent consultation on a revised CPR 5.4C?</p>	Please see item 3 above (paragraphs 8 -13 in the minutes).
7	<p>Structure and Style of CPR</p> <p>I appreciate the desire to reduce the content of the Rules and Practice Directions but from my experiences I can see the need for codes of practice (a general guide then sub-guides for the different Court divisions) to better explain to Experts what is expected of them.</p> <p>By way of example, I draw a parallel with the Electricity at Work Regulations, which are brief and clear in their objectives, and the guidance note GSR 25 issued by the Health and Safety Executive on how to comply with those regulations.</p> <p>Q - Would it be possible to bring professional bodies into the drafting of such codes and make compliance of them a requirement of membership so that the professional bodies can be more active in policing their members?</p>	<p>The MR and DHCJ answered.</p> <p>Part 35 and the supplementing PD provides great detail and sets out what should and should not be included in expert reports. Additionally, the Court Guides give advice. However, the MR and DHCJ are delighted to liaise with and listen to expert groups.</p> <p>The MR observed that there are 100's of different types of experts and, therefore, it is difficult to consult or tailor every piece of guidance or CPR, but generally it is very clear guidance.</p> <p>It is also not the direction of travel to produce more rules, the Committee is trying to simplify rules wherever possible. In time, the OPRC will also have a part to play.</p> <p>Where reforms are proposed, consultations take place and in different ways. Legally, the Committee does not have to consult, but it does consider whether consultation is necessary, and part of that consideration is the information already obtained, for example, by including external co-opted members with a specific expertise participating in a sub-committee or working group. However, a balance also has to be struck, because experience has shown that often, there is an impact on timeliness with larger working groups.</p>
8	<p>Litigant in Person</p> <p>The Civil Procedure Rules are not user friendly to the ordinary lay person. What modifications could you change to make it easier to understand.</p>	The MR explained that the CPRC's Simplification Sub-Committee is currently conducting a review of the CPR in an effort to simplify language, provide greater clarity and wherever possible remove duplication and provide brevity. Detailed scrutiny takes time and

		<p>effort and with the pace of reform that is challenging.</p> <p>The wider possibilities afforded by the introduction of a Digital Justice System, supported by a guided user journey and other supplementary guidance provide welcome opportunities. The digital interface is important because that is the public facing service and does not require personal interaction with complex rules, the rules underpin it and sit behind it. As online access to justice expands that should start to address the criticism.</p>
9	<p>Enforcement & Service</p> <p>The current Civil Procedure Rules for enforcement under Parts 71 have technical obstacles. If you cannot locate a Defendant, you cannot serve them. That creates a barrier to obtaining information.</p> <p>What can you do to make it easier to obtain information to enforce a judgment debt?</p>	<p>Tom Montagu-Smith KC answered.</p> <p>It was explained that Part 71 deals with applications for orders requiring judgment debtors to attend court and provide information about their assets. This is a powerful provision.</p> <p>An order under Part 71 must be served personally unless the Court orders otherwise. That is because its effect is like an injunction. If the respondent does not attend court when instructed, they will be in contempt.</p> <p>The Service Sub-Committee is looking at ways to bring the rules of service up to date. In particular, we are looking at providing for electronic service by default in certain circumstances.</p> <p>It is hoped that this will remove some of the technical obstacles that exist at the moment in serving some defendants, and in particular those which arise for the service of claim forms. However, this is unlikely to affect the approach to service under Part 71.</p> <p>In an appropriate case, the court can already permit service by alternative means. That could well include email if it can be shown that that will be effective.</p> <p>More widely, the MR noted that the MoJ has asked the Civil Justice Council (CJC) to look at enforcement generally. This is a big piece of work and will be treated as a priority by the CJC.</p>
10	<p>Appeals and Reasonable Adjustments on the grounds of Disability</p>	

	<p>If a litigant or party wants to lodge an appeal to the Court of Appeal and because of their disability, they feel that they should have a right to communicate their appeal 'orally' and a Judge in the Court refuses permission, even to hear the appeal orally, there is no right to appeal 'the case management decision of the appeal'.</p> <p>This is a discriminatory procedure.</p> <p>Some disabled persons may have problems with communication on paper. What can you do to change that?</p>	<p>The MR explained the changes regarding the right to orally renew and how the current procedures operate in practice. This includes judicial discretion. If an application is made and specific circumstances are explained to the judge, they will exercise judicial discretion where they find the ground to do so. Accordingly, there is no need for further rules.</p>
<p>11</p>	<p>Costs</p> <p>CPR 45.50(3) states that:</p> <p><i>“The costs to be awarded for stage S1 are subject to assessment up to a maximum of the figure shown for stage S1 in Table 14, except in a claim for personal injuries where the figure shown is fixed.”</i></p> <p>First, Can the Committee clarify why S1 costs on the Intermediate Track are capped, rather than fixed for Intermediate Track cases? Notably this does not apply to non-PI Fast Track claims. Moreover, does this not deprive parties of certainty the FRC scheme is meant to provide?</p> <p>Secondly, can the Committee clarify how assessment is to take place? There is no guidance within the rules as to how S1 costs are to be presented in such circumstances nor on the process to be followed? If it is assessment then what process should parties use where there is no agreement and what are</p>	<p>Mr Justice Trower explained that this was a specific proposal by Sir Rupert Jackson, which was accepted by the Ministry of Justice, in their <i>Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs</i>; Chapter 7, paras. 5.3(vi) and 5.4:</p> <p>For non-personal injury cases which are settled before issue, the figures in stage S1 are capped costs, rather than FRC.</p> <p><i>Why should the figures in stage S1 be FRC in personal injury cases but capped costs in other cases?</i></p> <p>In personal injury cases, there is a minimum amount of work which must be done to achieve a settlement pre-issue. On a 'swings and roundabouts' basis the S1 figures can fairly stand as FRC in personal injury cases. In non-personal injury cases, the amount of work to be done to achieve a pre-issue settlement may vary substantially. In some cases, a simple letter of claim may suffice to bring about a settlement. In other cases, a large amount of investigation may be required.</p> <p>Secondly: There is an overlap, here, with the fixed costs determination procedure, and the most recent amendments which are being considered [at the May meeting], which includes reference to rule 45.50(3) (the rule which gives rise to the first limb of question 19).</p>

	<p>the recoverable costs of this process?</p>	<p>It was emphasised that the Court has wide discretion and reference was made to the changes (to CPR 45.65) under item 5 above (paragraphs 24 to 29 in the minutes refer).</p>
12	<p>Costs</p> <p>The Fixed Recoverable Costs were (in part) uprated for inflation with respect to Table 12 (Fast Track), Table 14 (Intermediate Track) and Table 15 (Noise Induced Hearing Loss) but none of the other Tables were uprated including fixed costs for applications (Table 1) and Specialist Legal Representative Fees on Fast Track (Table 13).</p> <p>Was this a deliberate choice or is the intention to reflect inflation across all of the Fixed Costs figures, some of which have not been updated for over 10 years.</p>	<p>Mr Justice Trower answered.</p> <p>The figures mentioned in this Question that were uprated (in Tables 12, 14, and 15) were the 'Jackson' FRC figures. Other uprating will require further separate consideration. The MoJ's proposals on inflation are based on Sir Rupert Jackson's 2017 report, and have been discussed with both academic experts and the CPRC. The rationale for the further uprating for the FRC figures in Tables 12, 14, and 15 is set out in the recent (2024) MoJ consultation response on FRC issues^[1] which can be seen online (link below).</p> <p>Further information about future reviews on the FRC figures will be set out in due course.</p> <p>^[1] The MoJ's 2024 consultation response on FRC issues: https://assets.publishing.service.gov.uk/media/65ba6a20f51b10000d6a7e30/fixed-recoverable-costs-consultation-response.pdf</p>
13	<p>Costs – Provisional Assessment & GHR</p> <p>The Provisional Assessment cap which applies to the costs of Provisional Assessment has remained unaltered since its inception in 2012 at £1,500 plus VAT.</p> <p>Guideline Hourly Rates have increased twice since this time (and will now be subject to annual inflationary review).</p> <p>Practitioners are left with less time to do the same level of work which was necessitated over 10 years ago.</p> <p>The Bank of England Inflation Calculator shows that if inflation were applied to the cap then it</p>	<p>The MR observed that any policy decision on whether to increase the Provisional Assessment cap will require separate consideration to the recent FRC work.</p> <p>However, this required consideration and the matter was referred to the CPRC Costs Sub-Committee to review.</p> <p>Action: Secretariat to add to the Costs Sub-Committee work programme.</p>

	<p>would now exceed £2,000 plus VAT.</p> <p>Q - Will the Provisional Assessment cap be increased as other elements of costs have been?</p>	
14	<p>Part 36 & FRC</p> <p>Under the Part 36 rules, those running Portal cases if they beat their Part 36 offer would not be entitled any uplift save for on interest.</p> <p>Q - Can the Committee clarify whether there is an intention to bring the Part 36 consequences in line with those set out for Fixed Recoverable Costs, namely the 35% uplift on costs as detailed within 36.24(4).</p>	<p>Mr Justice Trower was grateful for the matter being raised and said that the point could be considered as part of the 'stocktake' of the FRC regime in early 2025.</p> <p>It was noted that MoJ Costs Policy was not planning any further action on Part 36 at present in respect of the FRC regime.</p> <p>Action: MoJ to include as part of the FRC Stocktake.</p>
15	<p>Part 36 & FRC</p> <p>Some confusion has arisen over the wording with Part 36.23(9).</p> <p>This provides that if a Part 36 offer was accepted late within the same Stage then <i>“the defendant is entitled to the fixed costs applicable at that stage”</i>. This suggests that late acceptance within the same Stage would nullify any Claimant costs entitlement. This appears to be extremely punitive.</p> <p>Confusion arises, however, as 36.24(9) provides that where a Part 36 offer is accepted late by a Claimant then the Defendant would be entitled to <i>“applicable fixed costs [...] less the fixed costs to which the Claimant is entitled [...]”</i>.</p> <p>This would suggest that a Defendant would receive nothing as their entitlement would be the same as the Claimant, so the Defendant's entitlement would be nullified. Given the Defendant would be responsible for the same level of FRC irrespective of when an</p>	<p>Mr Justice Trower drew attention to the text in the rule, which reads, <i>“to”</i> [that stage], not <i>“at”</i>. This point has been considered by the committee and it was confirmed that the use of the word <i>“to”</i> is intentional.</p> <p>The inclusion of rule 36.23(9) arose from a query as to who should be entitled to the costs of a stage where both the relevant period had expired and the offer was subsequently accepted within that stage (including whether, and if so how, the costs of that stage should be divided between the parties).</p> <p>The decision was that, in these likely rare circumstances, the claimant should be entitled to the costs for the stages up to, but not including, the stage when the relevant period expired, and the defendant should be entitled to the costs for the stage when the relevant period expired and the offer accepted.</p> <p>Without this provision, in these circumstances, paragraphs (3)(a)(i) and the full-out in paragraph (8) would likely mean that the defendant would receive no costs notwithstanding the claimant's late acceptance of the offer.</p> <p>The costs for each stage being inclusive of the costs for the preceding stage(s), the defendant's entitlement to the costs of that</p>

	<p>offer was accepted within the same stage then this appears to be logical.</p> <p>Can the Committee clarify which interpretation of the rules is intended?</p>	<p>stage must be calculated by subtracting the FRC that have accrued in the preceding stages.</p>
16	<p>FRC - Agency Fees (eg Medical Reports)</p> <p>A significant and contentious issue between parties involved in costs dispute is, agency, for example, where a medical agency is used to obtain expert reports.</p> <p>The Paying Party argument is that a breakdown should be given where an agency is used setting out the agency and non-agency elements.</p> <p>There have been County Court decisions given on both sides but no binding authority yet.</p> <p>Given the repetitive nature of this dispute, is there any intention from the Committee to consider whether the rules or Practice Direction should clarify whether:</p> <p>A. Parties should or should not be required to give breakdown.</p> <p>B. Whether agency fees are recoverable, in principle, in Fixed Recoverable Costs cases?</p> <p>This would help narrow disputes between parties which are ever increasing on this particular point.</p>	<p>As with question 14 above, Mr Justice Trower said that the point could be considered as part of the 'stocktake' of the FRC regime in early 2025.</p> <p>Action: MoJ to include as part of the FRC Stocktake.</p>
17	<p>Engagement (with Expert Witnesses)</p> <p>We appreciate that it is difficult for the Civil Procedure Rule Committee to engage with every single stakeholder group.</p> <p>But given the recognition of the role of Expert Witnesses in the</p>	<p>The DHCJ reiterated that it is now a regular feature of the Committee's work to publish proposals online for consultation and we encourage interested parties to respond. He engages with a wide range of people at conferences and in other forums and is more than happy to continue to do so.</p>

	<p>judicial system, I wonder whether the committee have given further consideration as to how they could engage with the Expert Witness Community more effectively in future?</p>	
18	<p>Possible Drafting Slip</p> <p>Paragraph 6 of Practice Direction 58 refers to the timing for making admissions in the Commercial Court.</p> <p>However, paragraph 6(2) of Practice Direction 58 refers exclusively to provisions included in Practice Direction 14 which was deleted with effect from 1 October 2023.</p> <p>Is there a plan to update?</p>	<p>Isabel Hitching KC explained that at first sight this appears to be a consequence of the simplification amendments (from the Civil Procedure (Amendment No.3) Rules 2023 and the associated 158th PD Update) and the matter will need to be looked into more fully, possibly in liaison with the Lacuna Sub-Committee.</p> <p>However, it may be that there is a work around already in place.</p> <p>When changes are made, a check across the CPR is made to identify any consequential amendments but occasionally drafting slips do occur, for which apologies are given.</p>
19	<p>Part 25 Reforms (Interim Remedies and Security for Costs).</p> <p>Does the Committee have any update concerning the proposed amendments to CPR 25?</p> <p>In particular, can the Committee confirm whether any substantive changes are envisaged to the court forms currently set out in, or annexed to, Practice Direction 25A?</p>	<p>Ben Roe referred to the update provided at item 6 (paragraphs 30 to 34 of the minutes refer) above:</p> <p>The consultation closed on 9th February 2024. Four responses, plus comments from the judiciary have been received. The matter is due back before the CPRC soon, if possible, in time to include the reformed Part 25 in the summer Update cycle, for October 2024 in-force.</p> <p>The forms are being considered, by a min-working group, led by Mr Justice Trower.</p>
20	<p>SLAPPS (Strategic Litigation Against Public Participation)</p> <p>Is the Committee able to provide any update as to the new CPR provisions to deal with SLAPPS under ECCTA (Economic Crime and Corporate Transparency Act) 2023?</p>	<p>The DHCJ explained that a sub-committee, chaired by a High Court Judge, Mrs Justice Collins Rice and comprising external co-opted members, is considering the CPR implications and hopes to be in a position to report back to the Committee in due course, possibly in July.</p>
21	<p>CJC Costs Report</p> <p>Is there an anticipated timescale for the introduction of pilots of</p>	<p>HHJ Bird referred to the answer under question 5 (above). In principle, CPR pilots tend to operate for two years prior to review/evaluation.</p>

	<p>the costs budgeting schemes proposed for:</p> <p>a) claims valued at between £100,000 and £1,000,000; and</p> <p>b) claims proceeding in the Business and Property Courts valued at over £1,000,000 (as referred to in paragraphs 1.18 and 1.19 respectively of the Civil Justice Council's report published in May 2023)?</p> <p>If so, how long is it likely that such pilot schemes will operate prior to their evaluation?</p>	
<p>22</p>	<p>Pilot Schemes</p> <p>What is likely to happen when the pilot schemes currently in operation under Practice Direction 51O for online money claims, and Practice Direction 51ZB for damages claims, expire on 1 October 2024?</p> <p>Is there any technical, governmental or judicial aspect that needs to be addressed before then before such schemes can be made permanent?</p>	<p>The DHCJ explained that this matter is under active consideration by the committee chaired by Mr Justice Johnson and HMCTS who are responsible for delivery of the reform programme. Given that Government has extended the HMCTS reform programme generally, the expectation is that the OCMC and Damages online pilot scheme will also be extended. It is hoped that this can be confirmed as part of the summer Update cycle.</p> <p>Reference was also made to the OPRC (paragraph 4 above refers) and the potential for future interaction, given the Damages and OCMC schemes are digital services.</p> <p>For completeness, it was noted that PD 51O (as referenced in the question) is the e-working pilot scheme. The OCMC pilot is governed by PD 51R.</p>
<p>23</p>	<p>EU Retained Law</p> <p>Is the Committee able to confirm that sections 6 and 8 of the Retained EU Law (Revocation and Reform) Act 2023 will not come into force until the Committee has completed its review of these sections to:</p> <p>(1) determine whether any amendments to the CPR and relevant practice directions are required and, if so</p>	<p>The DHCJ explained that this is in hand.</p> <p>The most recent appearance at the CPRC was at the last (April 2024) CPRC meeting, under Item 7 (paragraphs 57 to 62 of those minutes) refer and can be seen online (publishing.service.gov.uk).</p> <p>As this is UK wide, the matter has also been discussed with the UK Supreme Court and those responsible in Ireland and Scotland.</p> <p>The commencement timings for provisions in the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act") are a matter for the Government rather than the CPRC.</p>

	<p>(2) any such amendments are brought into force.</p> <p>If so, can the committee provide insight into when such changes may come into force?</p>	<p>However, in relation to section 6 of the REUL Act (role of courts), the CPRC is working in close collaboration with officials at the Department for Business and Trade (DBT) to ensure the timely introduction of appropriate court rules and/or practice directions. The Government currently intends to commence section 6 later this year.</p> <p>Proposed new rules intended to provide for proceedings concerning references and interventions in relation to assimilated caselaw (or “retained EU case law”), pursuant to sections 6A to 6C of the European Union (Withdrawal) Act 2018 (EUWA), as inserted by section 6 of the Retained EU Law (Revocation and Reform) Act 2023 are due to be published, subject to Ministerial agreement, as part of the mainstream October 2024 CPR Update, due to be published in July this year.</p> <p>Section 8 of the REUL Act (incompatibility orders) was commenced on 1st January 2024.</p> <p>Should the CPRC decide in future that guidance beyond the legislation itself would be desirable, it will be able to consider what rule and/or practice direction changes might be most helpful.</p>
24	<p>Mediation (Churchill -v- Merthyr Tydfil)</p> <p>Lady Justice Asplin is chairing a sub-committee to consider the implications of <i>Churchill v Merthyr Tydfil County Borough Council</i> [2023] EWCA Civ 1416. (We are unaware of the timescale on which that review is operating.)</p> <p>Does the Civil Procedure Rule Committee have a view on whether the best way now to promote and widen the use of mediation or similar approaches to negotiated dispute resolution would be to reverse the default position of parties having to request a stay under CPR 26.5?</p> <p>This would mean the default position would be that there would be a stay of at least one month after notification of allocation of the case, with any</p>	<p>District Judge Johnson explained that the sub-committee’s proposals were considered at the last CPRC meeting (in April) when it was decided to publish for consultation, a suite of draft amendments considered necessary in response to the points arising from the <i>Churchill</i> judgment. Item 2 (paragraphs 6 to 15 of those minutes refer) and can be seen online (publishing.service.gov.uk).</p> <p>The consultation is now online, the deadline for responses is 28th May and we encourage you to review it and respond.</p> <p>However, this does not currently include draft amendments in relation to Part 26, because of the need to consider the policy and other implications for any wider amendments. As such, there may be some specific procedural changes proposed in the longer term.</p> <p>Also, the context of the pilot PD regarding integrated mediation for small claims, (PD 51ZE) which is to come into effect on 22nd May 2024, may also be a relevant consideration.</p>

	dissatisfied party having to apply to alter that.	
25	<p>Future work programme</p> <p>Based on recent approved CPRC minutes, it appears that topics likely to keep the CPRC busy over the next twelve months or so include:</p> <ul style="list-style-type: none"> - mediation, - CPR 5.4C, - CPR changes relating to the Hague Judgments Convention and - housing and possession. <p>What other key issues do you expect to be dealing with?</p>	<p>The DHCJ explained that the agenda programme is under constant review and is subject to change, but some topics the CPRC expects to be asked to consider are:</p> <ul style="list-style-type: none"> • Costs matters (CJC Costs Report and Clinical Negligence FRC) • Civil Restraint Orders • Pilot PDs for review, such as: Small Claims Paper Determination pilot (PD51ZC) and E-Working pilot (PD51O) • Lacuna Sub-Committee referrals • Service & E-signatures • Final proposals from the consultation on updating the standard disclosure list in the Workplace Claims PI PAP • Simplification Sub-Committee proposals intended to reduce the overall length of the CPR, to simplify the language, improve clarity and provide gender neutrality. • SLAPPS – Strategic Litigation Against Public Participation • Amendments arising from the Digital Markets, Competition and Consumers Bill
26	<p>Unopposed Business Lease Renewal Pilot</p> <p>Central London County Court and First-tier Tribunal Unopposed Business Lease Renewal Pilot Scheme for LTA 1954 unopposed lease renewals. We have heard from other sources that the pilot scheme has ended, but with the suggestion that it may be brought back on a permanent basis once certain jurisdictional issues have been ironed out. There has, however, been no official announcement about this anywhere that we have seen (either about the end of the pilot scheme, or the possibility that it might come back in permanent form). We have written to Judge Siobhan McGrath, President of the First-tier Tribunal (Property Chamber), about this and are awaiting a reply but if the CPRC were able to clarify the situation,</p>	<p>The DHCJ explained that this is not a CPR pilot. However, cross jurisdictional work is underway to draft a Pilot PD to provide for the “flexible deployment” of County Court and Tribunal judges for property cases.</p>

	that would be incredibly helpful.	
27	<p>Access to Court Documents (UKSC Cape-v-Dring)</p> <p>Is the Committee able to provide the planned implementation date of the proposed new CPR 5.4C [supply of court documents to a non-party]? And can the Committee confirm whether the provisions are intended to apply prospectively?</p>	Please see item 3 above (paragraphs 8 -13 in the minutes).

Item 8 Any Other Business from Committee members & Close

The Deputy Head of Civil Justice noted the following, both of which were referred to the Lacuna Sub-Committee for consideration:

- Fit Kitchen Ltd and another v Relx Group UK Plc and another company - [2023] EWHC 1954 (KB) <https://caselaw.nationalarchives.gov.uk/ewhc/kb/2023/1954> This is a judgment by Master Dagnall concerning signposts in the CPR and has been raised by Lexis Nexis.
- Ryan Morris (and 131 others) v Williams & Co Solicitors - [2024] EWCA Civ 376. This judgment, by the MR, concerns representative claims. Paragraph 8 of the decision refers.

Action: (i) Secretariat to refer to the LSC (ii) DJ Clarke to allocate and report back when ready.

C B POOLE
May 2024

Attendees:

Carl Poole, Rule Committee Secretary
The Senior Master, Chair, Clinical Negligence FRC Sub-Committee (Item 4)
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
Amrita Dhaliwal, Ministry of Justice
Rosemary Rand, HM Courts & Tribunals Service
Faye Whates, HM Courts & Tribunals Service
Laurent Viac, Department of Health and Social Care (DHSC) (Item 4)
Helen Keefe, Government Legal Department (DHSC) (Item 4)
Dr Harry Chancellor, Ministry of Justice (Item 5)
43 public observers