



Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE
In Royal Court of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Monday 13 May 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
Her Honour Judge Suh	Circuit Judge
District Judge Foss	District Judge
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Graeme Fraser	Solicitor
Jennifer Kingsley JP	Lay Magistrate
Shabana Jaffar	Cafcass Representative
Rob Edwards	Cafcass Cymru
Bill Turner	Lay Member
Mrs Justice Knowles	Lead Family Division Judge on Domestic Abuse

ANNOUNCEMENTS AND APOLOGIES

- 1.1 The Chair acknowledged expression of thanks from former Committee member, Fiona James JP.
- 1.2 Apologies were received from Laura Coyle and District Judge Birk.

MINUTES OF THE LAST MEETING: April 2024

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

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

ACTIONS LOG

- 3.1 The Secretariat informed the Committee that 17 actions were recorded from the April 2024 meeting.

MATTERS ARISING

- 4.1 MoJ had tabled a paper which contained updates on the following:
- Web Inaccuracies.
 - Delegating High Court Powers to High Court Staff.
 - Permission to Appeal.
 - PD Update No.3 of 2024.
 - Cape v Dring.
 - PD12J.
 - Jade's Law.
 - FPR amending SI.
- 4.2 The Committee raised the issue of whether PD12J needed to come back for further review (as officials were proposing), unless for example amendments to statute make this necessary. It was agreed that PD12J need not return to the Committee before March 2025, unless substantive issues arise in the meantime which mean the PD requires amendment.
- 4.3 The Committee were content with the other matters arising as outlined in the paper and no further observations were made.

Action Point 2: Cape v Dring: MoJ to return to the Committee at a later date and share report provided by CPRC when available.

Action Point 3: The Secretariat to arrange for the FPR amending SI to be signed out of Committee time.

STANDING ITEMS

Priorities Table and Pending PD Amendments.

- 5.1 MoJ stated that the Priorities Table has been updated since the last meeting.
- 5.2 Following the Committee's prior approval of the triaging process and tiering system, MoJ provided an update paper outlining the next round of outstanding items to be triaged which the Committee approved.

SUBSTANTIVE ITEMS

Early Resolution Proposals: sign-off of Pre-Action Protocols for children and finance cases

- 6.1 MoJ Policy presented a paper together with the final drafts of the new Pre-Application Protocols in private law children and financial remedy cases in support of the early resolution

rule changes which came into force on 29 April 2024. The Committee were also presented with draft amendments to PD12B and PD12B(Pilot), to which the new private law children Pre-Application Protocol will be annexed, and to PD9A, to which the new financial remedy Pre-Application Protocol will be annexed.

- 6.2** The Committee were informed that both Protocols intend to make clear the steps parties are expected to take before they make an application to court, whilst also bringing together signposting to a range of online resources and encouraging parties to take up non-court dispute resolution.
- 6.3** MoJ Policy informed the Committee that the Pre-Application Protocol in respect of private law children cases had been drafted to ensure suitability for litigants in person given their prevalence in such cases in court. The Pre-Application Protocol in respect of financial remedy cases had been drafted primarily with professionals in mind given that many parties to a financial remedy case are represented, although it is intended to be accessible to litigants in person.
- 6.4** MoJ Policy expressed thanks to everyone involved in the Early Resolution Working Group who had met fortnightly to work on the new Pre-Application Protocols. The Committee also acknowledged and thanked the financial remedy experts for their work on the financial remedy Protocol.
- 6.5** MoJ Policy informed the Committee that, if approved, formal sign-off will be sought from the PFD by the end of May.
- 6.6** The Chair invited the Committee to make any observations on the paper. The Committee raised an issue around publicity and promoting awareness of the Protocols. MoJ stated that they have been working with Resolution, the Law Society, and a number of organisations in the advice sector, including Law for Life who produce the Advicenow guides, to ensure parties and professionals are made aware of the Protocols. Additionally, MoJ are working on an addendum to be added to court letters which will include signposting to the location of the Protocols online. The Chair agreed to suggest to the Family Justice Council that it develops a guide which helps to navigate all the new guidance for the Protocols.
- 6.7** The Committee also raised concerns regarding the legal wording of paragraphs 25 and 33 in relation to the Finance Protocol and possible sanctions. The Chair suggested alternative wording and the Committee were content for this to be varied. The Committee also raised concerns in relation to vulnerable users and translated documents for non-English speakers to which the MoJ agreed to give further consideration.
- 6.8** There was consensus amongst the Committee in relation to its concerns around the formal language and tone and length of the Protocols which may be inaccessible for some. It was suggested that a single page document summarising the key principles in plain language attached as a front page to each Protocol would be a useful addition to improve accessibility for litigants in person. The Committee agreed and members volunteered to draft a one-page summary in respect of both Protocols for consideration and approval out of Committee.
- 6.9** The Committee were content with and approved the amendments to PD12B, PD12B (Pilot) and PD9A.

Action Point 4: Committee Chair to request the Family Justice Council develops a guide to assist in navigating the new Pre-Action Protocol guidance.

Action Point 5: Single page summaries in respect of Pre-Application Protocols for children and financial cases to be drafted and circulated to the Committee for comments.

Action Point 6: Secretariat to include agreed PD amendments in a future PD Update once single page summaries are finalised.

Action Point 7: MoJ to provide a brief update on this item at the June Committee meeting.

Permission to Appeal

- 7.1 At the March 2024 Committee meeting, it was agreed that the FPR should be amended so that certain Circuit Judges (CJ) may dismiss an application for permission to appeal (PTA) as being Totally Without Merit (TWM) and order that the PTA application may not be renewed at an oral hearing. It was agreed this should apply to a CJ who is nominated by a Designated Family Judge in consultation with a Family Presiding Judge (previously known as Family Division Liaison Judge).
- 7.2 MoJ returned to the Committee and presented a paper outlining draft amendments to r30.3 FPR and PD30A to achieve this end.
- 7.3 The Committee were informed that a further paper will be put to the June Committee meeting to discuss the issue regarding the absence of a permission to appeal filter for appeals from decisions of lay magistrates sitting in the family court.
- 7.4 The Committee approved the proposed amendments to Rule 30.3 FPR and PD30A.

Action Point 8: Item on Permission to Appeal in relation to appeals from lay justices to return in June.

Action Point 9: Secretariat to include the rule and PD amendments in future FPR amending Rules and the associated PD Update.

Parental Alienation Experts

- 8.1 The Re C judgment (February 2023) highlighted issues with the generic title psychologist and the ability for unregulated experts to operate under this title to give evidence in family courts on “parental alienation”. Following cross-government consideration of the issue, and consideration by ministers of primary legislative options for resolving this issue, the Lord Chancellor had asked officials to approach the Committee to consider changes to prevent these unregulated experts from being instructed in private law children proceedings.
- 8.2 MoJ Policy presented a paper to the Committee inviting its views on its initial proposal with potential changes. MoJ Policy stated that it would like to work with the Committee to explore and make changes to the FPR and PDs to prevent the opportunities for unregulated “parental alienation” professionals to give evidence as expert witnesses in the family court. Any changes to the FPR would need to ensure that any psychological assessment and any “family assessment” undertaken by these “parental alienation” experts would need to be appropriately regulated or on a Professional Standards Authority (PSA) accredited register. Any changes would also need to be robust enough to prevent these experts from giving

evidence should they switch titles, without infringing on the judicial discretion to instruct expert witnesses.

- 8.3** The Committee were invited to make any views and observations. The Committee asked MoJ to cover public law proceedings as well as private law proceedings. Members concluded their discussions with the action point recorded in paragraph 8.4 of these minutes.
- 8.4** It was suggested in the paper that, as this was a complex issue, it may be that the Domestic Abuse Working Group (DA WG) will be best placed to consider any draft rule amendments. The Committee were content to refer this matter to those working within the DA WG who were invited to report back to this Committee with any substantive updates and recommendations. District Judge Foss volunteered to join the DA WG as the District Judge member. The Committee were informed that the DA WG were due to meet shortly.

Action Point 10: Secretariat to add District Judge Foss to Domestic Abuse Working Group membership and send invites for any future meetings.

Action Point 11: Domestic Abuse Working Group to report back to the Committee on parental alienation experts after it has met.

Action Point 12: Item on Unregulated Experts to return to the Committee in June with a further update.

PD12F: change of email address for UK Visas and Immigration

- 9.1** MoJ Policy presented a paper to the Committee with a proposal to amend Paragraph 4.14 in the Protocol annexed to Practice Direction 12F (Annex 1 to PD12F) to reflect a change to the contact email address for the Home Office.
- 9.2** The Committee were content with and approved the proposed amendment to PD12F.

Action Point 13: Secretariat to include the agreed amendments in a future PD Update.

Police Disclosure

- 10.1** MoJ Policy presented a paper to the Committee outlining proposed amendments to relevant Practice Directions (PDs) in relation to applications for Police Disclosure Orders in proceedings relating to children (public and private law proceedings). The Committee discussed the Protocol: 'Disclosure of information in cases of alleged child abuse and care directions hearings' in February 2024. The Committee had noted at a previous meeting that the Protocol would be launched, and had asked MoJ to return with suggestions for signposts towards the Protocol to be made in the relevant Practice Directions.
- 10.2** The Committee were also provided with the 2022 consultation responses from prior work the Committee had undertaken in relation to police disclosure. MoJ suggested that as the 2024 Protocol addresses the main concerns highlighted by consultees in the 2022 consultation, signposting to the 2024 Protocol in relevant PDs would address all the Committee's concerns. MoJ presented suggested amendments to PD12A, PD12B, PD12B (Pilot) and PD12J.
- 10.3** The Committee agreed to the suggested amendments, subject to the additional inclusion of a reference in the PDs to a final draft order to be used for private law proceedings. The Chair

invited Mrs Justice Knowles to lead on reviving the draft template order first drafted in 2022 as part of the consultation exercise.

- 10.4** The Committee confirmed that draft PD amendments should be placed on hold whilst the final version of the draft order is finalised and following that the Police Disclosure workstream should be closed.

Action Point 14: Mrs Justice Knowles to work with MoJ Policy to include the draft private law order which can be referenced in the PDs in relation to police disclosure.

Action Point 15: MoJ to return to the Committee in June with updated PD amendments which include the draft private law order.

PD27A – electronic bundles

- 11.1** MoJ presented a paper in relation to PD27A on court bundles. This issue was first raised with the Committee in February 2023, the Committee asked in June 2023 for a Working Group (WG) to be established to modernise PD27A to bring it into line with current practices. The work paused briefly due to other priorities and then restarted in 2024. MoJ outlined feedback received by the PD27A WG from public law experts and expert members of the judiciary.
- 11.2** Before opening discussions with the wider Committee, the Chair recognised that members may want an opportunity, out of Committee, to answer the questions in the paper and allow more time for discussion at the June meeting. Members agreed that the amended PD should be a definitive authority on rules for bundles and members also asked the PD27A WG to suggest updates to the separate guidance on bundles issued by the President of the Family Division.
- 11.3** Mr Justice Peel suggested that it may be useful to arrange a meeting with the PD27A WG before the June FPRC meeting to discuss the financial remedies aspects so that the WG may consider his view and any further comments to the questions referenced in the paper.
- 11.4** The Committee welcomed the suggestions, and it was agreed that PD27A return in June for a longer timeslot of 45 minutes to discuss the item more fully.

Action Point 16: Secretariat to arrange a meeting in May with Mr Justice Peel and the PD27A WG.

Action Point 17: Secretariat to re-list item PD27A in the June agenda for 45 minutes.

Rule 29.1 Draft Amendments

- 12.1** MoJ Policy presented a paper inviting the Committee to consider and agree the drafting of two amendments to Rule 29.1. These amendments would make provision for one party to give notice to the court that another party's (or parties') contact details should be kept confidential to the court. The changes were agreed in principle by the Committee in February.
- 12.2** MoJ informed the Committee that, if agreed, the amendments will be included in the June FPR amending SI which was planned to be laid on 1 July and HMCTS will make the necessary changes to their online portal by November 2024.

12.3 The Committee approved the draft amendments to Rule 29.1.

Action Point 18: Secretariat to include the agreed r29.1 FPR amendments in the next FPR amending Rules.

PD36N: contested financial remedy online: next steps

13.1 HMCTS sought the Committee's views in relation to a proposal to extend PD36N for a further 6-month period to enable embedding and further improvements to the online contested financial remedy service.

13.2 The Committee approved the proposal to amend PD36N.

Action Point 19: Secretariat to include amendments extending the end date of PD36N in a future PD Update.

Justices' Legal Advisers: proposals for PD2C/PD36ZE amendments

14.1 MoJ Policy informed the Committee that the proposals that were brought forward in 2023 to expand Justices' Legal Adviser (JLA) powers. MoJ presented a paper explaining that PD2C and PD36ZE make provision for the powers of JLAs in the family courts. Following consultation HMCTS and Cafcass, MoJ presented options for extending JLAs' powers which could improve expediency in proceedings whilst avoiding powers which will materially impact the outcome of proceedings.

14.2 The Committee agreed to amend the power to make standalone parental responsibility orders, and the power to accept undertakings from parties under Section 46 of the Family Law Act, in specific circumstances (to be set out in the PD amendments).

14.3 The Committee discussed whether the fact that the potential outcome of a breach of an undertaking under s46 Family Law Act 1996 results in imprisonment would mean that this function should be reserved for judges rather than JLAs. The Committee agreed that enforcement of a breach would be dealt with at a different stage of proceedings, so members were content with that extension of powers to JLAs.

14.4 MoJ highlighted that as both proposals come under PD36ZE, which is a pilot PD, the powers would only be expanded on a temporary basis, be kept under the same review process as the other provisions in that PD.

14.5 The Committee also asked MoJ to consider extending some further powers to JLAs to make consent orders on standard public law case management directions in certain circumstances. MoJ agreed to review this alongside some additional work on powers for trainee JLAs.

14.6 The Committee approved the proposed temporary modifications to PD2C through an amendment to PD36ZE.

Action Point 20: MoJ to liaise with HHJ Suh to discuss the power of legal advisers to make consent orders on standard public law case management directions.

Action Point 21: Secretariat to include agreed PD amendments in a future PD Update.

Online Divorce Service - PD36ZC

- 15.1** MoJ Policy presented a paper inviting the Committee to review and agree to make permanent the final draft of PD41G, which was annexed to the paper and subject to approval would take effect from 1 June 2024, together with a proposed amendment to PD7A at paragraph 3.1.
- 15.2** The final draft was shared with HHJ Roberts who was content and had no further comments.
- 15.3** The Committee were pleased to hear the online service had a high level of uptake at 94% of divorces completed online. No further observations were made, and the Committee approved to make the pilot PD36ZC permanent through amending PD41G.

Action Point 22: Secretariat to include new PD41G in a future PD Update.

Online Procedure Rule Committee (OPRC)

- 16.1** The Committee were provided with an update on the work around the priorities of the newly formed OPRC. The Committee were informed that the OPRC would be meeting later the same day and work was progressing at pace. The OPRC received many high quality applications to join its various subgroups. The Committee were encouraged to work with the OPRC in relation to possession proceedings and the financial remedy process.
- 16.2** The Committee were informed that currently a joint Working Group with members of the Civil Procedure Rule Committee and OPRC was being set up for the civil process and FPRC members agreed it may be useful to have a similar joint Working Group for family law.

Qualified Legal Representative Scheme

- 17.1** MoJ Policy presented a paper to the Committee with updates on the Qualified Legal Representative (QLR) Scheme. Noting the Committee had previously asked the QLR data to be improved, MoJ explained further improvements would require additional resourcing in HMCTS which they are exploring but improvements are not feasible within existing budgets. However, HMCTS have advised that they will now be challenging nil returns from Designated Family Judge areas with a view to improving accuracy in the data that is collected. MoJ confirmed that they were content to continue to provide the Committee with updated data, when requested.
- 17.2** MoJ addressed the issue raised by the Committee in relation to gaps in the existing training provision for QLRs. MoJ explained The Law Society is currently developing a family-focused Vulnerable Witness and Advocacy training course for solicitors which will be available this Spring. MoJ will continue to review the training available for QLRs, including after The Law Society's training has rolled out.
- 17.3** MoJ also acknowledged that the reputation of the QLR scheme has been poor and that this was affecting uptake. MoJ updated the Committee that, on Friday 10 May, the Government laid a negative Statutory Instrument before Parliament to uplift the fixed fees paid to QLRs by 10% exclusive of VAT and introduce a new fee for terminated appointments. These changes to fees come into force on 31 May 2024, and are on top of the expenses policy that was implemented in January.
- 17.4** Committee members noted that at a recent FLBA conference the announcement about the increase in remuneration for QLRs was welcomed. The Committee concluded that MoJ should continue to engage widely to promote the QLR scheme.

FORWARD PLANNING AND UPCOMING MEETINGS

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Other Procedure Rule Committees

- 18.1 The Secretariat informed the Committee that they had spoken with other Secretariats from other Rule Committees and there was nothing relevant to update the Committee at this stage.

Forms Working Group Update

- 19.1 MoJ informed the Committee that the Forms Working Group last met on the 15 March and that the next meeting will be confirmed in due course.

FPRC Working Groups

- 20.1 MoJ stated that the FPRC Working Group table has been updated to reflect new membership and will be further updated following this meeting.

Draft June 2024 Agenda

- 21.1 No observations were made on the draft June 2024 agenda.

ANY OTHER BUSINESS

- 22.1 Mrs Justice Knowles provided an update on a Working Group which has been established to look at the experiences of non-parent applications in family law. The Working Group will be meeting over the summer and will produce a report it will share with the President of the Family Division.
- 22.2 Mrs Justice Knowles provided an update on various pieces of work to improve the voice of the child in family courts. This included guidance for children to be used in Pathfinder courts; and guidance for judges on meeting with children following a Court of Appeal decision in *Re C*.

DATE OF NEXT MEETING

10 June 2024

- 23.1 The next meeting will be held on Monday 10 June 2024 and will be a hybrid meeting. The meeting will be hybrid and take place both in QB1M Royal Courts of Justice and remotely via MS Teams.

FPRC Secretariat
May 2024

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