

Approved

Minutes of the Civil Procedure Rule Committee

Friday 7th June 2024, conducted in a hybrid format, namely, at The Rolls Building (Royal Courts of Justice), Fetter Lane, London and via video conference.

Members attending

Lord Justice Birss, Deputy Head of Civil Justice (Chair)
Mr Justice Trower
Mr Justice Pepperall
Master Sullivan
His Honour Judge Bird
His Honour Judge Hywel James
District Judge Clarke
District Judge Johnson
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching KC
Tom Montagu-Smith KC
Ben Roe
Ian Curtis-Nye
Elisabetta Sciallis

Apologies

Non-Members: Mr Justice Swift (sitting) (Item 2); Faye Whates (HM Courts & Tribunals Service)

Item 1 Welcome

1. The Chair welcomed everyone to the meeting and made some introductory remarks.
2. At the last meeting, it was not known that a General Election would be called for 4th July 2024. This has meant that the programme of work has changed, with some projects paused all together. However, to a large degree the Committee's work remains ongoing as a matter of business as usual.
3. Members were reminded of the usual limitations on activity during the pre-election period, in order to maintain political impartiality. Any enquiries can be directed to the Secretariat and this was duly **NOTED**.
4. **Minutes:** the minutes of the last meeting, on 10th May 2024, were **AGREED**.
5. **Action Log and matters arising not covered by later items.** The following was duly **NOTED** from the Chair:
6. **AL(23)235 - Access to Court Documents (UKSC Cape -v- Dring).** Further to the update provided at the last meeting (paragraphs 8 – 13 of the May 2024 minutes refer) and following internal discussions, the work will be temporarily paused. This is to allow the Lady Chief Justice's Transparency and Open Justice Board (chaired by High Court Judge, Mr Justice Nicklin) to conduct the first phase of its work. It is envisaged that a member of the Board will be nominated to act as liaison with the CPRC. **Action:** Secretariat to provisionally allocate time in the autumn for the matter to return.

Item 2 Part 77 – Serious Crime Prevention Orders (SCPO) CPR(24)22

7. The Chair presented the matter on behalf of Mr Justice Swift, the judge in charge of the Administrative Court.

8. It was explained that, with the consent of the President of the King's Bench Division, amendments were proposed to introduce a requirement that applications for Serious Crime Prevention Orders (SCPOs) under the Serious Crime Act 2007 are (a) made to the Administrative Court; and (b) filed in London.
9. The proposals followed experiences in practice, of the two specific examples cited, His Honour Judge Hywell James was pleased to note that the application in Wales was referred to a Presiding Judge and re-directed to be dealt with in London. HHJ Hywell James has also considered the Welsh Language Act implications with the Chair, out-of-committee, concluding that the proposed reforms do not prevent matters being heard in Wales in appropriate cases and this was duly **NOTED**.
10. Swift J finds there is a strong case for a requirement that all SCPO applications be filed in London (at the Royal Courts of Justice) because applications under CPR Part 77 may present issues of novelty, complexity, or difficulty (for example, in relation to any interaction with licence conditions). Such applications are suitable to be considered as High Court Judge only applications. Appropriately experienced High Court Judges will be most readily found in the RCJ. If cases are filed outside London, it may take some time to deploy to a suitable Judge for action.
11. A discussion ensued. It was observed that the circumstances that prompted this proposal concern applications for SCPOs directed to persons convicted of terrorism offences, however, it was noted that SCPOs are not limited to this category of case and in any event the volumes are low.
12. Points concerning the principle were also raised and discussed. Members had a firm desire for appropriate cases to be released and heard in the regions wherever possible and asked if this could be highlighted, perhaps through the Court Guide and this was **NOTED**.
13. It was **RESOLVED to agree in principle, subject to drafting**, amendments to CPR 77.5, PD 77 (paragraph 4.1) and PD 54C (paragraph 3.1).
14. **Action:** In consultation with the Chair, Drafting Lawyers and the Secretariat to incorporate the amendments into the next CPR Update cycle.

Item 3 Simplification (Section 2(7)) Sub-Committee: Part 4 and Part 25 reforms CPR(24)23

15. Ben Roe presented the matter.
16. The draft amendments to Parts 4 (Forms) and 25 (Interim Remedies and Security for Costs) were approved in principle (at the CPRC meeting on 1st December 2023) subject to public consultation. Under the proposed reforms, the two supplementing PDs are, in effect, dispensed with. The substantive Part being replaced in a revised format. The consultation closed on 9th February 2024 and attracted around 50 points from a collection of respondents including Counsel for the Joint Committee on Statutory Instruments (JCSI), professional users and the judiciary.
17. The responses were reviewed and duly **NOTED WITH THANKS** and it was thought particularly useful to have had early engagement, and such a positive dialogue, with the JCSI. Generally, comments were helpful and gratefully received, however, some points are substantive, going beyond the scope of the present project.
18. Revised drafting proposals were reviewed and discussed in detail. The following points were **AGREED**:
 - r.25.2(4) (Timing – interim remedy) – add in, “where appropriate” after, “must”.

- r.25.4 (Applications for an interim remedy) – leave title as drafted.
- r.25.5 (Interim Injunctions: Court’s powers) – leave as drafted, do not include “only”.
- r.25.6 (Applications) – recast and include “where possible” to provide flexibility for litigants in person in the context of electronic service.
- r.25.8 – recast the title to read, “Applications without notice” because not everything is urgent and recast provisions to be more general, so as to cover urgency and secrecy in the context of whether notice is/is not given.
- r.25.9(3)(a) (Form of order) – add in “and” after, “pay any damages which the respondent sustains”.
- r.25.9(7) (Aarhus Convention claims) – remove as it is covered elsewhere in the CPR
- r.25.10 (Automatically struck out) – consider recasting to reduce text and introduce a signpost (to Part 20 counterclaims).
- r.25.14 (Supervising Solicitor) – leave as drafted because it is not intended to change current practice.
- r.25.25(4) (Interim Payment Orders) – recast in the interests of clarity to reflect current practice, by adding in, “for the purposes of x” [must be the gross amount].
- Legacy PD25A para 4.5(2) (out of hours applications) – check if/where the provision is retained and consider incorporating a rule along the lines of, “out of hours applications are to be made in accordance with the relevant Court Guide”.

19. Mr Justice Trower provided an update on the work of the group examining the model orders which accompany Part 25. The draft, revised model orders, which now include a cover note and collection of footnotes were tabled. They comprise: draft Freezing Injunction; draft Freezing and Proprietary Injunction; draft Search and Imaging Order. It was explained that the revisions have necessitated some further amendments to Part 25. For example, the search order and the imaging order have been amalgamated into a single model, because a search order without imaging provisions would be very unusual. This is now reflected in the drafting of Part 25, where search and imaging orders are presented together in the same section. Potential scope was also identified to reduce Section IV of Part 25 (dealing with search and imaging orders) further, to remove provisions in the rule that are also covered in the model order. This includes the majority of r.25.17 and r.25.18 and this was **AGREED IN PRINCIPLE, subject to final drafting**.

20. It was **RESOLVED** to:

- recast the reformed Part 25 in response to the above points and revert for final approval prior to incorporating into an Update cycle.
- amalgamate the search order and the imaging order, subject to final drafting.

21. **Actions:** Sub-Committee and Model Orders Working Group to prepare revised drafting and advise the Secretariat for programming purposes.

Item 4 Lacuna Sub-Committee CPR(24)24

22. District Judge Clarke presented the following two referrals, which were discussed.

23. **Contempt (LSC2024/4):** It was explained that this concerns warnings given to respondents to committal applications, regarding their right to silence and that an adverse inference can be drawn. The lacuna was raised by former CPRC member, District Judge Cohen.

24. Currently, CPR 81.4 requires a committal application to give information to a respondent about rights including the right to silence. However, it does not warn of the consequence if that right is exercised. A drafting proposal was tabled. It was observed that Dr Anja Lansbergen-Mills raised whether the proposed amendment would inadvertently place an

undue onus on the defendant to give evidence. On balance, this concern was not considered to be made out.

25. It was **RESOLVED to amend**:

- CPR 81.4(2)(n) as follows:

(n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant, but that the court may draw adverse inferences if this right is exercised.

- Form N600 (contempt application) be amended in consequence.

26. **Legal Adviser Delegations (LSC2024/5)**: This concerns the delegation of the power of authorisation of legal advisers. It was explained that HMCTS legal advisers undertake authorised judicial functions at the Civil National Business Centre (CNBC) and in Online Civil Money Claims, as prescribed under the CPR. This now requires updating, following the introduction of a Designated Civil Judge (DCJ) Online. The incumbent being His Honour Judge Ranson, who raised the matter.

27. The LSC offered two options: (a) an amendment of the definition in CPR 73.1, changing “the consent of the Designated Civil Judge for Greater Manchester” to “the consent of the relevant Designated Civil Judge” in line with PD2E or (b) amendments to PD2E, PD51R and CPR 73.1 to refer only to “the consent of the Designated Civil Judge Online”. It was **NOTED** that HHJ Bird (DCJ for Greater Manchester) is content. It was **FURTHER NOTED** that option (b) would be subject to the Lady Chief Justice’s approval and, therefore, pending that amendment, the preferred option is option (a) to be adopted and this was **AGREED**.

28. Additionally, it was also **NOTED** that the Sub-Committee intend to report on the issues arising from the MR’s decision in Ryan Morris (and 131 others) v Williams & Co Solicitors - [2024] EWCA Civ 376 at the next meeting.

29. **Actions**: (i) In consequence of the amendment to CPR 81.4(2)(n) above, an equivalent amendment to the contempt application, form N600, is to be made, in consultation with the Forms Sub-Committee Chair (ii) Drafting Lawyers and Secretariat to incorporate all the above amendments (from LSC2024/04 and 05 above) into the next CPR Update (iii) Secretariat to allocate time for a LSC item at the July meeting.

Item 5 PD 51O E-Working Pilot Scheme CPR(24)25

30. The Chair expressed **THANKS** to Master Sullivan for leading the work to review the e-working pilot PD, together with Chief Chancery Master Shuman and input from Mr Justice Swift.

31. Master Sullivan presented the matter. It was explained that PD51O has evolved as the rollout of CE file has progressed across the High Court and the Court of Appeal. Because of its iterative, pilot nature there are various issues regarding consistency of use across Divisions, limitations of the CE file itself, use by litigants in person (LIP) and clarity of drafting to be considered. It is also necessary to consider the caselaw implications of Cape-v-Dring as regards access to court documents by non-parties.

32. A discussion ensued. Four main options were set out to de-pilot PD51O and incorporate a replacement into the CPR: adopt the current text and incorporate it into the CPR as a non-pilot PD; amend individual rules as to the procedures for issue, service etc as necessary, to include CE file; re-draft PD51O as a new PD with the essential rules only and leave the detail to the respective Court Guides; entirely re-draft PD51O as a new PD. The recommended option is to entirely re-draft PD51O as a new PD and this garnered

support. When considering use by LIPs and the digitally excluded, the concluding view was not to mandate its use. This would maintain the status quo and provide flexibility for non-represented parties. The Committee also favoured a unified approach, generally, across jurisdictions, wherever possible.

33. It was **NOTED** that:

- consultation with the Court of Appeal is to take place in due course;
- CE file is not appropriate for closed material. It was also **NOTED** that the Government's response to the report by former High Court Judge, Sir Duncan Ouseley, on the [Review of closed material procedure: government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/review-of-closed-material-procedure) has been published. It proposes a number of quite prescriptive CPR changes, which will require consideration in due course.

34. It was **RESOLVED** to:

- **draft an entirely new PD** to replace the existing pilot scheme as prescribed by PD510;
- **extend** pilot PD510 in its current form for a further year, to 1st November 2025, to allow time for the replacement provisions to be introduced.

35. **Actions:** (i) Secretariat and Drafting Lawyers to incorporate amendment to extend the operation of PD510 for an additional year into the next CPR Update (ii) Sub-Committee to prepare a draft replacement PD and keep the Secretariat apprised for programming purposes.

Item 6 PD51ZC Small Claims Paper Determination Pilot: Evaluation CPR(24)28

36. Rosemary Rand (HM Courts & Tribunals Service) was welcomed to the meeting.

37. The Chair provided an overview and a brief discussion followed. It was explained that, although initially, there were concerns from some users as to the scope of the pilot scheme, there have been no appeals against decisions to determine claims on paper. Broadly, the pilot was seen to be working very well, particularly for airline delay and parking claims. The position regarding the digital process was also raised, as was the need for consultation before a revised PD is considered. The pilot PD was recently extended to 1st December 2024 (pursuant to the 168th PD Update) to allow time for the evaluation to be concluded and any revisions to be considered.

38. It was **RESOLVED** to seek a volunteer to join a judicial led sub-committee to review the pilot with HMCTS and report back when ready.

39. **Actions:** (i) Sub-Committee membership to be finalised out-of-committee (ii) Secretariat to provisionally programme in time at the July/October meeting/s.

Item 7 Contents of the summer SI and PD Update

40. The Chair explained that, in consequence of the General Election, clarity is awaited as to the availability of Parliamentary time for laying the next mainstream CPR amending SI. Usually, the summer SI is laid in July to come into effect on 1st October 2024, alongside the PD Update. However, as Parliament is now dissolved and business will not resume until after the State Opening of Parliament later in July, a precise date is not yet known. However, subject to this and to Ministerial approval, the Chair provided an overview of the anticipated amendments for inclusion in the next mainstream CPR Update, which was duly **NOTED**.

41. It was **FURTHER NOTED** that:

- the new Fixed Costs Determination (FCD) procedure is intended for inclusion in the next Update cycle. A related Fees Order amendment was also envisaged. However, this is likely to be delayed due to the new Parliamentary timetable. The steer from the Committee is that the FCD provisions should not have to wait for the Fees Order. This will be further discussed at official level out-of-committee.
- the Damages and Money Claims Committee (DMCC) is due to consider extending both PD51R (OCMC) and PD51ZB (Damages) pilot schemes. The CPRC has previously agreed an extension in principle, for a further year, to 1st October 2025 (as at the April 2024 meeting, Item 9 - paragraph 69 in those minutes refer). If ready, these amendments can be included in the next available PD Update.

Item 8 Civil Justice Council Costs Report – Costs Budgeting Light CPR(24)26

42. The Chair provided some introductory remarks. It was explained that work flows from the Civil Justice Council's Report on Costs ("The Report"), which was published in May 2023. The recommendations from which have all been accepted by the Master of the Rolls.
43. **THANKS** were conveyed to His Honour Judge Bird, District Judge Johnson, Master Kaye and Nick Bacon KC for reviewing the recommendations on behalf of the CPRC. Master Kaye joined the meeting and contributed to the ensuing discussion, which focused on the Report's recommendation for a more flexible approach to costs budgeting. The other recommendations from the Report, will be considered in due course.
44. HHJ Bird, explained that the Sub-Committee has prepared a new draft PD, which includes claims with a value of over £10m, unless the court decides to exclude them. The present rules exclude such claims unless the court decides to include them. Litigants in Person (LIPs) and claims brought by or on behalf of children are excluded unless the court otherwise orders. The draft pilot PD provides for five categories of case, each limited in certain courts and court centres: Business & Property Courts (BPC) claims with a value of £1m or more; BPC claims with a value of less than £1m; Qualified One-Way Costs (QOCS) claims; Non-QOCS claims and certain other non-BPC claims. A new Precedent costs form is also proposed, which is modelled on the existing Precedent H form.
45. A discussion followed, which raised a number of points regarding scope and application, particularly for non-QOCS matters and evaluation. It was **AGREED IN PRINCIPLE**:
- to separate out the categories currently incorporated into the one draft PD and cast a collection of draft PDs in response to the feedback and further discussion out-of-committee;
 - implementation dates do not need to be the same for each PD.
46. **Action:** Sub-Committee to (i) reconsider and produce revised drafting proposals (ii) keep the Secretariat appraised for programming purposes.

Item 9 Digital Markets, Competition and Consumers (DMCC) Act CPR(24)27

47. Mrs Justice Bacon was welcomed to the meeting. **THANKS** were conveyed for leading the Sub-Committee on a co-opted basis. Dr Anja Lansbergen-Mills represents the CPRC with external co-opted members, Bridget Lucas KC and Pat Treacy.
48. The following officials were also present and duly welcomed: Isabel Cromarty and Carol Kindregan, from the Department for Business and Trade (DBT) who are leading on the competition provisions regarding inspection powers and civil penalties. Amy Berhmann

and Vivienne Goulburn, from the Department for Science, Innovation and Technology (DSIT), leading on the Digital Markets provisions and Denny Jicheva from DSIT Policy.

49. The Chair provided some introductory remarks, observing that the DMCC Act 2024 passed its final stages in Parliament on 23rd May 2024 and has now received Royal Assent.
50. This matter was before the CPRC for an introductory presentation in February 2024. At that meeting, the wide-ranging nature of the proposed reforms and the scale of the task were noted. Subsequently, it was decided to re-prioritise the consumer related reforms in favour of the digital markets and competition changes. Accordingly, the Sub-Committee is approaching its work in three phases.
51. The first phase of work concerns applications for warrants as a result of the provisions of Parts 1, 2 and 5 of the DMCC Act 2024 and the Competition Act 1998. Bacon J presented the matter and the proposed draft amendments, which were discussed.
52. It was reiterated that the purpose of the DMCC Act 2024 is to: (a) ensure effective competition in digital markets through the introduction of an *ex ante* regime enforced by the Competition and Markets Authority (CMA) (Part 1 of the DMCC Act); (b) strengthen the CMA's competition law investigative powers by amending the existing regimes under the Competition Act 1998 and the Enterprise Act 2002 (Part 2 of the DMCC Act); and (c) make amendments to the procedures for the enforcement of consumer protection law, as currently set out in the Enterprise Act 2002 and the Consumer Rights Act 2015 (Part 3 of the DMCC Act).
53. In reviewing the draft PD amendments, the Chair sought clarity on the use of the abbreviation "O" when referring to the overseas regulator. It was confirmed that "O" is used in the Act and thus decided to remain in the revised PD as drafted.
54. It was **RESOLVED to approve, subject to final drafting:**
- amendments to 'Practice Direction – Application for a Warrant under the Competition Act 1998'. Alasdair Wallace (MoJ Legal) confirmed that the explanatory note to the existing warrant had been presented in the body of the PD and accordingly had been amended, as part of the Brexit amendments exercise, as part of the PD amendments; but that it would be possible to amend the PD in such a way that the explanatory note for each warrant appears as an embedded document in the same way as the warrant does;
 - amendments to the example Companies Act 1998 warrant;
 - introduction of a new example DMCC Act warrant.
55. It was **NOTED** that:
- implementation is expected to be aligned with the commencement date of Parts 1 and 2 of the DMCC Act 2024;
 - the next tranche of work is due to be presented at the December CPRC meeting, if not before. This is subject to a planned consultation, which, due to the General Election, is now paused.
56. **Actions:** (i) Secretariat to provisionally schedule time into the December programme (ii) Secretariat and Drafting Lawyers to (a) incorporate the amendments into the next appropriate Update cycle (b) in consultation with the relevant officials/Sub-Committee, to finalise revised/new model warrants.

Item 10 PD 51Z County Court Officers Pilot: Possible item for future business

57. It was **NOTED** from the Chair that this pilot PD was intended to operate from 1st December 2022, to allow authorised court officers to make standard form case management directions on paper in certain circumstances. The pilot expires on 30th November 2024 unless varied or extended. **Action:** HMCTS to advise the Secretariat for programming purposes if pilot is to be varied/extended.

Item 11 Time limit for applications to the Court of Appeal for permission to appeal to the Supreme Court CPR(24)29

58. Supreme Court Justice, Lady Rose of Colmworth DBE, was welcomed to the meeting.
59. It was explained that the UK Supreme Court (UKSC) has been undertaking a review of their Rules and digital processes. The related consultation included a proposal to set a deadline of 28 days for a party who has been unsuccessful in civil proceedings in the Court of Appeal (CoA) to apply to the CoA for permission to appeal to the Supreme Court. Responses to the consultation were supportive. This proposed reform would bring the position in respect of civil proceedings in England and Wales in line with other permission applications coming before the UKSC.
60. It has been prompted by a change in the CoA's practice in recent years. Previously the CoA would hand down judgment at a short hearing at which brief submissions would be made by the losing party applying for permission to appeal. Permission would be granted or refused at that hearing and that decision would be included in the order which implemented the substantive decision to allow or dismiss the appeal. Usually, therefore, the date of the decision under appeal and the date of refusal of permission would be the same and the 28-day time limit under UKSC Rule 11(1) effectively ran from both. The current practice of the CoA is to consider applications for permission to appeal to the UKSC after the hand down of the CoA's judgment, usually without a hearing. The period of 28 days provided for in UKSC Rule 11(1) therefore starts to run and may expire, in whole or in part, before the Co A's order granting or refusing permission is drawn up.
61. At present, there is no rule in the CPR which sets a deadline by which the unsuccessful party in civil proceedings (other than contempt proceedings) before the CoA must apply to the CoA for permission to appeal to the UKSC.
62. The 28 days runs from the date of the order of the CoA refusing permission to appeal and not from the date of the decision under appeal.
63. It was **RESOLVED** to amend CPR Part 52 (Appeals) to insert a new rule 52.3B providing for a deadline for seeking permission from the CoA to appeal to the Supreme Court, the deadline being 28 days after the date of the decision of the CoA which the appellant wishes to appeal.
64. The intention is that the updated UKSC Rules and the CPR amendment will come into effect at the same time, on 1st October 2024. However, it was **NOTED** that it is not essential for commencement dates to be aligned.
65. **Actions:** Drafting Lawyers/Secretariat to incorporate into the next CPR Update.

Item 12 Any Other Business

66. The following was discussed and **NOTED** from the Chair:
67. **Guidance Form EX340 (Appeal a court decision).** Revisions to the leaflet (and job cards) to align with the rules regarding appeals have been considered and resolved upon by the Forms Sub-Committee. The need to do so was raised by the judiciary. **Action:** HMCTS/MoJ to publish the updated EX340.

68. **Committee Papers.** In the interests of efficiency, a pro-forma cover sheet for all submissions to the Committee will be introduced; the position will be kept under review. **Action:** Secretariat to finalise in consultation with the Chair.

69. **Meeting Dates for 2025.** Have now been scheduled. **Action:** Secretariat to circulate to members and lead officials.

C B POOLE

June 2024

Attendees:

Carl Poole, Rule Committee Secretary

Nicola Critchley, Civil Justice Council

Amrita Dhaliwal, Ministry of Justice (MoJ)

Andy Caton, Judicial Office

Crystal Hung, Judicial Office

Alasdair Wallace, Government Legal Department (MoJ)

Andrew Currans, Government Legal Department (MoJ)

Katie Fowkes, Government Legal Department (MoJ)

Rosemary Rand, HM Courts & Tribunals Service (Item 6)

Master Kaye (Item 8)

Nick Brown KC (Item 8)

Mrs Justice Bacon (Item 9)

Isabel Cromarty Department for Business and Trade (Item 9)

Carol Kindregan, Department for Business and Trade (Item 9)

Amy Berhmann, Department for Science, Innovation and Technology (Item 9)

Vivienne Goulburn, Department for Science, Innovation and Technology (Item 9)

Denny Jicheva, Department for Science, Innovation and Technology Policy (Item 9)

Lady Rose of Colmworth DBE (Item 11)