



Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE
In Royal Court of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Monday 10 June 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
Mrs Justice Knowles	Lead Family Division Judge on Domestic Abuse
His Honour Judge Godwin	Judicial Member for Wales
District Judge Birk	District Judge
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Laura Coyle	Solicitor
Graeme Fraser	Solicitor
Jennifer Kingsley JP	Lay Magistrate
Shabana Jaffar	Cafcass Representative
Rob Edwards	Cafcass Cymru

ANNOUNCEMENTS AND APOLOGIES

- 1.1 The Chair welcomed Judge Nishimura to the meeting as an observer.
- 1.2 Apologies were received from Her Honour Judge Suh, District Judge Foss and Bill Turner.

MINUTES OF THE LAST MEETING: May 2024

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

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

June 2024 Minutes – Family Procedure Rule Committee

ACTIONS LOG

- 3.1 The Secretariat informed the Committee that 22 actions were recorded from the May 2024 meeting.

MATTERS ARISING

- 4.1 MoJ had tabled a paper which contained updates on the following:
- Web Inaccuracies.
 - Jade's Law.
 - Cape v Dring.
 - PD Update No.5 of 2024.
 - Plans for the Family Procedure (Amendment) Rules 2024.
 - PD27A – e-bundles.
 - PD5B.
- 4.2 The Chair summarised the matters arising as outlined in the paper.
- 4.3 The Committee were informed that the Secretariat continue to resolve various web issues.
- 4.4 The Committee were provided with an update on Jade's Law. The Criminal Justice Bill ('the CJ Bill') which would have provided for the automatic suspension of parental responsibility for offenders sentenced for the rape committed against a child was not selected as part of the wash up process during prorogation of Parliament for the upcoming General Election. As a result, the CJ Bill did not progress to Royal Assent. The final stages of the Victims and Prisoners ('VAP') Bill took place on 23 May 2024 and received Royal Assent the same day. MoJ Policy will now focus on the implementation of the VAP Act measures. MoJ will continue to engage with the Domestic Abuse Working Group to discuss any consequential work on the Family Procedure Rules and/or Practice Directions and bring any recommendations to the Committee for consideration. MoJ, in consultation with HMCTS and various other stakeholders, will be developing an implementation process map to outline the HMCTS notification process to reflect the position brought about by Jade's Law. MoJ will provide the Committee with a further update at the July meeting.
- 4.5 The Committee were provided with an update on Cape v Dring. The Secretariat has been liaising with CPRC Secretariat regarding the report on draft amendments to the Civil Procedure Rules in relation to access to court documents by non-parties and confirmed that the report would be shared with the Committee when available.
- 4.6 The Committee were informed that PD Update No.5 of 2024 had been made by the President of the Family Division, approved by the Minister and published online. The Update made amendments to various existing PDs and introduced one new PD.
- 4.7 The Committee were updated on the plans for the Family Procedure (Amendment) Rules 2024. It was confirmed that the laying before Parliament of all negative SIs, including the FPR amending SI, had been paused owing to the dissolution of Parliament for the general election.
- 4.8 The Committee were informed that a revised draft of a proposed new PD27A (e-bundles) has been prepared and the Working Group are scheduled to meet on Wednesday 19 June

to discuss its views on the draft PD. MoJ plan to bring the draft PD and proposed next steps to the Committee at the July meeting.

- 4.9** The Committee were informed that a proposal to amend PD5B will be included in a future PD Update to accurately reflect HMCTS Guidance on emails. That Guidance includes reference to the maximum email size being 25 megabytes. Paragraph 3.3(c) of PD5B states that it is a requirement that “the total size of an email, including any attachments, does not exceed 10.0 megabytes”. To ensure consistency, MoJ Policy proposed to amend paragraph 3.3(c) of PD5B in a future PD Update, so it refers to a maximum size of 25 megabytes.
- 4.10** The Committee were content with the matters arising as outlined in the paper and no further observations were made.

Action Point 2: Jade’s Law: item to return to the Committee as a Matter Arising in July.

Action Point 3: Cape v Dring: MoJ to return to the Committee at a later date and share report provided by CPRC when available.

Action Point 4: Plans for the Family Procedure (Amendment) Rules 2024: Secretariat to update members on plans for the making and laying of the Rules.

Action Point 5: PD27A – e-bundles: item to return to the Committee with a substantive update in July.

Action Point 6: PD5B: Proposed amendment at paragraph 3.3(c) to be included in a future PD Update.

STANDING ITEMS

Priorities Table and Pending PD Amendments.

- 5.1** MoJ stated that the Priorities Table had been updated since the last meeting. The Committee approved the paper and were content for its contents to be published.
- 5.2** Following the Committee’s prior approval of the triaging process and outstanding items to be triaged, MoJ provided an update paper outlining the remaining triaged item for the Priorities Table. The triage form showed MoJ and Cafcass Legal’s consideration of the proposals from the Court of Appeal in *Re D and C v M* on representation of children in 1980 Hague return cases which the Committee approved. The Committee agreed that it should be added to the Priorities Table under Tier 3. It was confirmed that this was the last of the items which officials had received requests to add to the Priorities List.

SUBSTANTIVE ITEMS

Fast-Track: Financial Remedy Applications

- 6.1** The Fast-Track Financial Remedies Pilot was previously brought before the Committee at the February 2024 meeting. The MoJ/HMCTS Joint Unit updated the Committee on the progress that had been made to date and provided more detail on the matters considered by the Fast Track Working Group (‘WG’).

- 6.2** The Joint Unit explained that the pilot would apply to all contested financial remedy cases where the net value of assets was estimated to be under £250,000. Pensions would be excluded from the calculation, but the division of pensions would still be considered as part of the financial remedy proceedings. The WG suggested fixing the first appointment 16-20 weeks and the final hearing at 26-30 weeks after the issuing of Form A. It also provisionally decided to include six courts for the pilot in the following areas: Birmingham, Cheshire and Merseyside, Cleveland, Newcastle and Durham, Greater Manchester, Lancashire and Cumbria and North and West Yorkshire, but this is subject to ongoing discussions.
- 6.3** HMCTS plan to release a modified version of Form A on the online Financial Remedy portal from summer 2024 which will help evaluate the success of the pilot. Additionally, once the pilot is live, all versions of Form A will be amended with an additional question which will filter applicants into the pilot and a new Form C will be generated to provide applicants with further details on the pilot. The Joint Unit plan to bring these amended forms to the Committee in the coming months and a draft of the Practice Direction to the October meeting. The Joint Unit are aiming for the pilot to start by the end of this year and to run for 12 months. However, the timeline of this work will be kept under review.
- 6.4** The Committee were invited to make any comments or observations. The Committee asked whether another variation of the pre action protocol would be required. Mr Justice Peel confirmed that this point would be raised at the next Fast Track WG meeting.

Action Point 7: item on Fast-Track: Financial Remedy Applications to return to the Committee in October.

Unregulated Experts: update on Domestic Abuse Working Group

- 7.1** MoJ Legal updated the Committee on the outcome of the discussion that took place on 3 June between MoJ Policy and members of the Domestic Abuse Working Group (DA WG) in relation to unregulated experts.
- 7.2** MoJ Legal informed the Committee that the DA WG favoured the approach that the expert appointed by the Court should be regulated and that the amendments should apply to both public and private law children proceedings. MoJ Policy will proceed to draft the FPR amendments and intend to produce a final draft before the end of the year.
- 7.3** The Committee were invited to provide any comments or make observations. Committee members raised the issue of whether the approach applied to individual cases under certain circumstances. MoJ Legal confirmed that they would be considering the approach in relation to exceptional circumstances. The Committee agreed that a further consultation would be required to discuss this matter further before a final Practice Direction or any proposed amendments may be approved.

Action Point 8: item on Unregulated Experts to return to the Committee in July.

Early Resolution: pre-application protocols

- 8.1** MoJ Policy provided a brief verbal update on the Pre-Application Protocols in both children and finance cases which were approved by the Committee at the May meeting. MoJ confirmed that the protocols were signed off by the President and Minister and can now be found online. MoJ thanked everyone involved for their support in getting these in place in

such a short timescale. MoJ's understanding is that they have been generally well received within the legal sector.

- 8.2** MoJ sought the Committee's views on the future role of the early resolution sub-group stating that members were keen to continue to meet and engage with the ongoing early resolution work programme. The Committee agreed that the sub-group should continue to meet to ensure any variations and amendments as may be required, particularly with regard to Financial Remedy proceedings, are implemented effectively.
- 8.3** The Committee asked whether the MoJ had put in place a process to monitor the success of the new protocols. MoJ confirmed that this is under consideration and an evaluation plan is currently being developed to determine what impact the early resolution programme has had.

Action Point 9: Early Resolution Sub-group to continue its work on the early resolution work programme.

Action Point 10: Early Resolution Sub-group to consider amendments to the Family Procedure Rules to give specific reference to compliance with pre-action protocols, particularly with regard to Financial Remedy proceedings, when the court is determining whether to make an order for costs.

Action Point 11: MoJ Policy to share feedback received on the new protocols with the Minister.

OPRC

- 9.1** MoJ Policy provided a brief verbal update on the OPRC, including revised timings following the announcement of the general election.
- 9.2** MoJ informed the Committee that the induction event for the OPRC sub-committees has been rescheduled to 15 July and the names of the sub-committee members would be announced online after the election. MoJ intend to seek ministerial agreement to the work programme in the Autumn with a view to laying the draft Statutory Instrument to set out the initial matters which the OPR will make provision for in February 2025. MoJ will return in the Autumn to provide a further update to the Committee.

Action Point 12: item on OPRC to return to the Committee in October.

Service of Orders at Refuges

- 10.1** MoJ Policy presented a paper outlining the proposed operational process for Service of Orders at Refuges. MoJ confirmed that they will present the proposal to ministers after the election with a laying date in the Autumn. MoJ will design the online portal in collaboration with Women's Aid Federation England and Welsh Women's Aid.
- 10.2** MoJ officials and the Domestic Abuse Working Group met recently to discuss the process for service of orders at refuges. As a result, MoJ proposed questions for the Committee to consider. The Committee were content for MoJ Policy to approach the PFD's office in relation to sharing the operational process with judiciary together with the proposed approach in relation to confirmation of service and the proposed process of service at refuges as outlined in Annex A.

- 10.3** MoJ confirmed that once a laying date is agreed, MoJ will return to the FPRC for final approval and sign-off of the Practice Direction and Rule amendments.

Action Point 13: MoJ Policy to liaise with the PFD's office in relation to informing judges of the operational process.

Action Point 14: Item to return in October with final draft PD.

Permission to Appeal (PTA)

- 11.1** MoJ Policy presented a paper which contained feedback received from Designated Family Judges (DFJs), the Magistrates' Association (MA) and Justices' Legal Advisers (JLAs) on whether there should be amendments to introduce the PTA filter for appeals from decisions of Magistrates in the family court, and whether the lack of a filter was causing any operational issues.
- 11.2** MoJ summarised the feedback to the Committee concluding that the feedback was divided with the majority of DFJs and the MA in favour of reform which was accompanied with a more nuanced view from individual magistrates, whilst JLAs were against reform and had raised several concerns focussed around the impact this would have on operational resource and training. Having considered the feedback together with research findings, which included consulting with HMCTS indicating there was little data to suggest that a lack of filter was causing any issues, MoJ recommended not to proceed with reform due to the potential risks it could cause. The Committee were invited to offer their views on the feedback and whether it agreed to proceed with the amendments.
- 11.3** Upon further discussion, the Committee agreed that work on the possibility of introducing the PTA filter for appeals from decisions of Magistrates in the family court should continue. The PTA WG were asked to reconvene in order to give further consideration to the issues raised.

Action Point 15: MoJ Policy to continue work on Permission to Appeal and arrange a meeting with the PTA WG for further discussions.

Action Point 16: item on Permission to Appeal to return to the Committee in October.

Police Disclosure

- 12.1** Following the Committee's comments at the May meeting, MoJ presented a paper outlining revised drafts of PD amendments which raised two issues for the Committee to consider; a) where in the FPR Practice Directions (PDs) to refer to the Protocol relating to disclosure of information between family and criminal agencies and jurisdictions ("the 2024 Protocol"); and b) whether to make reference in PDs to a proposed new template order for use in private law children proceedings. MoJ invited the Committee to provide their views on the issues raised.
- 12.2** The Committee raised concerns about the complexity of the draft order relating to private law cases at Annex 5 of the 2024 Protocol and the impact this is having on those involved in family proceedings, but also noted concerns that had been raised about the proposal previously discussed of having an alternative template order for private law cases. The Committee agreed that its concerns should be considered by the FPRC's Domestic Abuse Working Group ('DAWG'), with the authors of the 2024 Protocol (the Disclosure Working Group – 'DWG'). The Committee agreed that the DAWG may also benefit from the expertise of a member from the Standard Orders Group.

- 12.3** The Committee invited the DAWG to engage with the DWG to see if the various annexes in the 2024 Protocol, in particular annex 5, could be revised so that they would be simpler and would be suitable for use in both private law and public law family proceedings. The Committee confirmed that draft PD amendments should be placed on hold in the meantime. Mr Justice Peel also confirmed that he would pass on details of the member from the Standard Orders Group who would be involved with this process. Given the additional work required, it was agreed that the item should return to the Committee in October.

Action Point 17: MoJ to place the draft PD amendments on hold.

Action Point 18: Secretariat to arrange a meeting with DAWG and DWG to discuss whether the various annexes in the protocol, in particular annex 5, can be revised so there are similar orders/one template order that meets the needs of both public law and private law cases.

Action Point 19: Mr Justice Peel to pass on details of member from Standard Orders Group who will be involved in this work strand. Once confirmed, MoJ/Secretariat to include member in subsequent DAWG meetings.

Action Point 20: item on Police Disclosure to return to the Committee in October.

Local Flexibilities – PD36ZE Child Arrangements

- 13.1** MoJ Policy presented a paper with a brief update and overview of the models in use in each Designated Family Judge (DFJ) area in England and Wales under Practice Direction 36ZE. MoJ shared the results of the May 2024 data collection which included a tabulation of model uptake figures and summarised the key learnings to date.
- 13.2** The Committee were invited to make any observations. The Committee questioned whether there was a need for resources to be allocated to continue to provide periodic updates to the Committee. It was agreed that MoJ would revert to the Committee to discuss next steps ahead of the expiry of the Practice Direction on 28 February 2025, but that the MoJ need not return to the Committee with further updates in the meantime.

Action Point 21: item on Local Flexibilities – PD36ZE Child Arrangements to return to the Committee in December.

FORWARD PLANNING AND UPCOMING MEETINGS

Other Procedure Rule Committees

- 14.1** 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

- 15.1** 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

16.1 MoJ stated that the FPRC Working Group table will be further updated following this meeting.

Draft July 2024 Agenda

17.1 No observations were made on the draft July 2024 agenda.

ANY OTHER BUSINESS

18.1 None recorded.

DATE OF NEXT MEETING: 8 July 2024

19.1 The next meeting will be held on Monday 8 July 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

June 2024

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