



Ministry of Justice

**FAMILY PROCEDURE RULE COMMITTEE
In Royal Court of Justice
and remotely via Microsoft Teams
At 11.00 a.m. on Monday 7 October 2024**

Present:

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| Sir Andrew McFarlane | President of the Family Division |
| Mr Justice Keehan | Chair of the Family Procedure Rule Committee |
| Lord Justice Baker | Court of Appeal Judge |
| Mr Justice Peel | High Court Judge |
| His Honour Judge Humphreys | Circuit Judge, Judicial Member for Wales |
| District Judge Foss | District Judge |
| District Judge Birk | District Judge |
| District Judge Nelson | District Judge (Magistrates) |
| Helen Sewell | Legal Advisor |
| Poonam Bhari | Barrister |
| Rhys Taylor | Barrister |
| Laura Coyle | Solicitor |
| Graeme Fraser | Solicitor |
| Jennifer Kingsley | Lay Magistrate |
| Shabana Jaffar | Cafcass |
| Rob Edwards | Cafcass Cymru |
| Bill Turner | Lay Member |

ANNOUNCEMENTS AND APOLOGIES

- 1.1 Apologies were received from Her Honour Judge Suh
- 1.2 The Chair confirmed that the Law Commission will attend the FPRC meeting on 4th November, which is open to the public. They will have a slot on the agenda to gather the committee's views on their ongoing consultation in relation to the law of contempt.

Action point 1: Secretariat to circulate the link to the Law Commission consultation ahead of the November FPRC meeting.

- 1.3 The Chair provided updates on committee membership:
- Helen Sewell has been appointed as the New Legal Adviser member.
 - Circuit Judge Gareth Humphreys has been appointed as the new Welsh judicial member.
 - District Judge William Nelson has been appointed as the new District Judge member.
- 1.4 The Chair announced that Alasdair Wallace, Head of Civil, Family, Courts and Tribunals Law Team, has retired. The President thanked Alasdair for his years of service to the family procedure rules.

MINUTES OF THE LAST MEETING: July 2024

- 2.1 The Committee approved the minutes for the July 2024 meeting, with an amendment to reflect that DJ Birk had attended.

Action Point 2: Secretariat to arrange for the July 2024 minutes to be published on the FPRC webpages.

ACTIONS LOG

- 3.1 The Secretariat informed the Committee that 10 actions were recorded from the July 2024 FPRC meeting.

MATTERS ARISING

- 4.1 MoJ had tabled a paper which contained updates on the following:
- Web Inaccuracies
 - Cape v Dring
 - Jade's Law
 - Pathfinder update
 - Family Procedure (Amendment) Rules 2024 and PD Update
 - Bundles PD27A
 - Unregulated Experts
 - Police Disclosure
 - Family Group Decision Making
- 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 web issues.
- 4.4 The Committee were provided with an update on Cape v Dring. The Civil Procedure Rule Committee (CPRC) is finalising a report based on consultation responses regarding draft amendments to the Civil Procedure Rules, specifically about non-parties' access to court documents. The report drafting is currently paused due to the complexity of responses and to allow the Lady Chief Justice's new Transparency Board to complete its first phase of work.
- 4.5 The Committee received an update on the work stemming from Jade's Law, which focuses on the automatic suspension of parental responsibility (PR) in cases where one parent is convicted of killing the other. The MoJ is working with the Domestic Abuse Working Group and with key stakeholders, such as local authorities, the CPS and the police to ensure thorough consideration

of the implementation process. MoJ Policy will return to the Committee once necessary changes to the Family Procedure Rules (FPR) and Practice Directions (PD) have been identified. There was also an update on the plan to restrict PR for child sex offenders which is planned to be included in the upcoming Victims, Courts, and Public Protection Bill.

- 4.6** The Committee were informed that subject to decisions made in the Autumn Budget, MoJ Policy are planning to further expand the Pathfinder pilot in private law in the coming months, which will require amendments to the underpinning Practice Direction (PD) 36Z. The Committee were informed that evaluation is underway in the initial pilot court areas in Dorset and North Wales which will be completed by Spring 2025. Members noted the impacts of the pilot needed to be better understood but that there were expectations that the model will be implemented nationally.
- 4.7** The Committee received an update on the Family Procedure (Amendment) Rules 2024 and PD Update No. 6. The FPR amending Statutory Instrument (SI) was due to be signed by Committee members by 7 October and would then be submitted to the Minister, before being laid before Parliament on 11 October.
- 4.8** The Committee discussed updates regarding PD27A which outlines the process for preparing bundles in family proceedings. The Chair confirmed that the consultation is progressing and once responses are reviewed, the Bundles Working Group will discuss amendments to PD27A and then return to the Committee with any necessary amendments to the draft new PD.
- 4.9** The Chair provided an update on Police Disclosure orders following the Committee's concerns that the published template order (Annex 5) was too complex and cumbersome for the court. MoJ has consulted with the Domestic Abuse Working Group and with the Disclosure Working Group to review the templates and develop simplified versions which can be used in proceedings.

Action Point 3: The Secretariat to send the DAWG's proposed new template police disclosure order to Mr Justice Peel.

STANDING ITEMS

PRIORITIES TABLE AND PENDING PD AMENDMENTS

- 5.1** MoJ Policy 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. The Committee also reviewed the Wish List.
- 5.2** The Committee also noted the completed triage forms for additional policies to be added to the Priorities Table: one regarding online applications for permission to make an application to court where a s91(14) Children Act 1989 order is in place, to be under tier 2 and the other an amendment to the C100 form to cover intra-UK jurisdiction to be under tier 3. The Committee agreed for both items to be added to the Priorities Table.
- 5.3** One member noted an approach may be brought to the Committee's attention to allow for the production of an intermediary assessment of a client in a family matter at the request of a solicitor pre-proceedings, similar to the process that is available to a solicitor acting for a client in relation to a criminal matter. The Secretariat explained the approach would need to follow the usual triaging process, which accorded with the member's understanding of the process.

- 5.4 One member asked for an update at the November meeting on the priority to address the financial position after an overseas divorce following the Supreme Court decision on *Potanina v Potanin* (2021) which is currently in Tier 3 in the Priorities Table.

Action point 4: MoJ will provide an update on timing for the progression of the item on financial position after an overseas divorce at the next meeting.

SUBSTANTIVE ITEMS

ONLINE PROCEDURE RULE COMMITTEE UPDATE

- 6.1 MoJ Policy provided a verbal update on the progress of the Online Procedure Rule Committee (OPRC) over the summer. The OPRC has identified eight workstreams, each of which had a kick off meeting. MoJ is preparing an SI which is planned to come into force by Spring 2025 and will give the OPRC rule-making powers in various proceedings, including property and possession in civil cases and financial remedies in family law.

DOMESTIC ABUSE PROTECTION ORDERS UPDATE

- 7.1 MoJ Policy provided an update on the implementation of the Domestic Abuse Protection Orders (DAPO) pilot, which is a new civil order designed to provide more protection to victims of domestic abuse. The Committee has previously approved a Pilot Practice Direction and court forms for the pilot. MoJ explained the start had been delayed due to the General Election, but it is set to launch in November 2024 in three areas. MoJ and HO Ministers as well as the Senior Presiding Judge (SPJ) have approved the November launch. The precise launch date in November is yet to be confirmed.
- 7.2 The Committee discussed the cross-jurisdictional judicial training underway to support this pilot which is overseen by Mrs Justice Knowles. Mrs Justice Knowles confirmed that there will be a recorded webinar made available to all judges by 21 October, supported by a pack, with a separate product for crime judiciary.
- 7.3. The Committee asked for a further update on DAPOs to be provided at the December meeting.

JUSTICES' LEGAL ADVISER POWERS

- 8.1 HMCTS presented a proposal to allow Trainee Justices' Legal Advisers to undertake specific court functions under certain circumstances. HMCTS explained trainee legal advisers in the family jurisdiction are not able to exercise as many judicial functions as trainee legal advisers do in other jurisdictions. This stems from concerns voiced by the Committee in 2018 on implementation of the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (CATJAFS).
- 8.2 HMCTS explained that when CATJAFs came into force, Heads of Legal Operations (HOLOs) in HMCTS were acting conservatively, only authorising legal advisers (not trainee legal advisers) to undertake functions listed in PD2C but now Family Senior Legal Managers are unanimously of the view that it would be appropriate for HOLOs to grant the ability to undertake certain functions listed in PD2C to trainee legal advisers, subject to various checks, conditions and controls. This would replicate the position in the criminal and magistrates' courts civil jurisdictions. HMCTS explained no FPR or Practice Direction amendments would be required to facilitate these changes.

- 8.3** The Committee discussed the requisite qualifications and the training requirements to which trainee legal advisers are subject. Members discussed whether trainees would have the training and experience necessary to undertake functions on contested hearings. HMCTS explained trainees are subject to a high-quality training programme with multiple portfolio assessments, observation, mentoring and examinations and they are allowed to take on functions based on their competency in this training programme. The Committee asked HMCTS to provide a table which clearly illustrates the judicial functions trainees can and cannot undertake.
- 8.4** The Committee agreed that trainee legal advisers should be allowed to undertake certain functions specified in PD2C, under the arrangements outlined by HMCTS including that senior support would be made available if requested by a trainee. HMCTS aims to implement this from 1 November.

The Committee discussed the importance of having a clear table outlining the tasks that trainee legal advisers are authorised to perform, and it was suggested that HMCTS may want to consider providing this for further clarity.

TRANSPARENCY: MEDIA REPORTING PILOT

- 9.1** MoJ Policy and Jack Harrison, from Coram Chambers and a member of the Transparency Implementation Group, presented an item on the media reporting pilot seeking the Committee's agreement on extending the pilot to all courts (in the family court and the Family Division of the High Court) in early 2025, supported by a new provision in the FPR and PDs. The Committee were reminded that the reporting pilot started in January 2023 and it was extended to further court areas in January 2024. In July 2024, the Committee approved the proposal to include a provision in the FPR, with a supporting PD to underpin a permanent, national scheme for this pilot.
- 9.2** The Committee agreed that further consultation was not required on this FPR and PD since public engagement with the pilot had been extensive since it began and the pilot had benefited from an external evaluation which was published in August 2024. On the question of giving reasons for not making a transparency order, members agreed that written reasons would be too onerous so verbal reasons would be sufficient. In response to a question from a Committee member, Jack confirmed that the responsibility for complying with the transparency order with respect to redactions was for reporters not for judges or legal practitioners.
- 9.3** The Committee approved the draft PD subject to an amendment on the written reasons point and asked for a revised draft to be presented at the meeting in November.

Action Point 5: MoJ to provide an updated Practice Direction, plus drafts of consequential amendments to the FPR and other Practice Directions, to underpin the roll out of the Reporting Pilot on the at the November meeting.

PERMISSION TO APPEAL

- 10.1** MoJ Policy presented a proposal to introduce a permission to appeal (PTA) stage for appeals from decisions of magistrates in the family court. MoJ explained a PTA Working Group had been established to consider this issue and noted the Committee had asked the Working Group in June to further explore this issue.
- 10.2** MoJ explained appeals for decisions from magistrates in the family court currently do not have a PTA filter. Appeals are usually heard by a judge of Circuit Judge level or they may be

heard by a judge of High Court judge level sitting in the family court. Introducing a PTA stage for decisions from magistrates would treat the decisions equally to decisions from other tiers of judge, which have the PTA stage, and it could help filter out unmeritorious appeals, which can waste the time of the senior judiciary.

- 10.3** MoJ explained the Working Group recommended proceeding with amendments to introduce a PTA filter for decisions from magistrates in the family court, providing that PTA decisions are made by the “appeal court” (ie Circuit Judges, or exceptionally a judge of High Court Judge level, in the family court) rather than by magistrates, given the concerns raised about the scale of training and the resource implications for magistrates and legal advisers if magistrates were asked to make the PTA decisions. MoJ explained the Working Group acknowledged that this recommendation would not treat PTA applications from the decisions of magistrates equally to other tiers of judge, however the Group was satisfied that this option was a proportionate response to the issue.
- 10.4** The Committee agreed with the Working Group’s recommendation and asked for MoJ to return to the Committee with proposed amendments to the Rules and PDs for approval.

Action point 6: The MoJ to return to the Committee with proposed amendments to the Rules and PDs for approval.

EARLY RESOLUTION: EVALUATION PLANS

- 11.1** MoJ Policy provided a verbal update on the evaluation of Rule changes in private family law, aimed at encouraging the early resolution of disputes through non-court resolution methods. The goal is to assess the impact these changes have on both the courts and the parties involved. MoJ will convene the Early Resolution Working Group to consider the impact of the changes and how these could be measured.
- 11.2** Members noted there had been a proposal to consider amending Rule 28.3 to state that non-compliance with pre-action protocols could be a factor in cost decisions. It was agreed by the Committee that the evaluation of the recent changes should be awaited. Once the impact of those changes has been seen, the Committee will be in a position to make an informed decision whether to amend r28.3. Members also asked whether data on orders made due to FM5 can be tracked to assess impact of the new rules. The Committee also expressed support for exploring the reach of the pre-action protocol, particularly its accessibility to litigants in person and ensuring it is promoted effectively within the advice sector.
- 11.3** The Committee asked to be kept informed of progress and findings.

Action point 7: MoJ Policy to continue evaluating the impact of the early resolution rule changes with input from the early resolution sub-group.

Action point 8: MoJ Policy to investigate tracking data related to FM5 orders and court implementation of the new rules.

ADDITIONAL ITEMS

OTHER PROCEDURE RULE COMMITTEES

- 12.1** The Secretariat reported that, after discussions with other Committees’ Secretariats there are no relevant updates to share with the Committee not already covered.

FORMS UPDATE

- 13.1 The Forms Working Group last met on 15 March. The date for the next meeting will be confirmed soon.

FPRC WORKING GROUPS

- 14.1 The Working Group table will be updated after this meeting. Closed working groups will be removed, but a record will be kept. It was noted that Judge Roberts, who is retiring this week should be removed from the Divorce Group on the Table.

Action point 10: Update the Working Groups Table after this meeting.

Action point 11: Remove closed Working Groups from the table but keep a record of them.

Action point 12: Remove Judge Roberts from the Divorce Group on the WG table, as he is retiring this week.

DATE OF NEXT MEETING: 4 NOVEMBER 2024

- 15.1 The next meeting will be held on Monday 4 November 2024 and will be online only via MS Teams as it is the annual public meeting.

FPRC Secretariat

October 2024

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