

## Approved v.2

*Typographical error amended in paragraph 27 by removing the text “and served” from the end of the sentence commencing “(i)”.*

### Minutes of the Civil Procedure Rule Committee

Friday 1<sup>st</sup> March 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

His Honour Judge Bird

Senior Master Cook

District Judge Clarke

District Judge Johnson

Dr Anja Lansbergen-Mills

Isabel Hitching KC

Tom Montagu-Smith KC

David Marshall

Ben Roe

Elisabetta Sciallis

#### Apologies

Members: His Honour Judge Jarman KC (leave), Ian Curtis-Nye (CJC seminar), Master Sullivan (CJC seminar).

Non-Members: Nicola Critchley (Civil Justice Council), Lucy Tavener (Department for Levelling Up, Housing and Communities (Item 4))

#### Item 1 Welcome

1. The Chair was delighted to advise that the following judicial members had been appointed to the Committee:
  - **His Honour Judge Hywel James:** the new Welsh judicial member, succeeding His Honour Judge Jarman KC, who has reached his maximum six-year term on the Committee. HHJ Hywel James has been a Circuit Judge at Cardiff Civil Justice Centre since July 2021 and prior to that, he served as a District Judge (2010) a Deputy District Judge (2004) and a Solicitor. He is the Judicial College training lead for Welsh law and language.
  - **Master Lisa Sullivan:** succeeds David Cook, following his appointment as Senior Master and King’s Remembrancer. Master Sullivan has been a Master in the King’s Bench Division (KBD) of the High Court since December 2019, having previously served as Deputy (2015) and was called to the Bar in 1997. Amongst other tasks, Master Sullivan is closely involved with the KBD Court Guide.
2. **Minutes:** the minutes of the last meeting, on 2<sup>nd</sup> February 2024, were **AGREED**.
3. **Action Log and matters arising not covered by later items.** The following was duly **NOTED** from the Chair:
  - **Court Documents (UKSC Cape -v- Dring) consultation (AL(23)235):** The consultation is published online and closes on 8<sup>th</sup> April 2024. **Action:** Matter to provisionally return to the May meeting.

- **Standard Disclosure in Workplace Claims - Annex C to the PI PAP (AL(22)82):** HHJ Jarman KC has agreed to remain as Chair of the sub-committee in order to consider the consultation responses (from August 2023 but has not yet returned due to the pressure of other work) and provide a final report to the CPRC. **Action:** Secretariat to provisionally allocate time in May/June.
- **CPR online migration (AL(23)214):** This is progressing well. MoJ Digital are engaging with the working group (chaired by Mr Justice Pepperall) as part of the design and user testing phase. A switchover to the live pages is anticipated in the coming months, provisionally May 2024.
- **Renters (Reform) Bill (AL(24)04/05):** The following judges have been co-opted on to the Housing Possession Sub-Committee and to whom **THANKS** were conveyed: District Judge Ian Greenidge, to replace HHJ Luba KC (upon retirement) and Mr Justice Meade in relation to the related digitalisation work concerning amendments arising from the Renters Reform Bill.
- **Digital Markets, Competition and Consumers (DMCC) Bill (AL(24)06):** Once membership is finalised, the sub-committee's work can commence in earnest. Mrs Justice Bacon will serve as chair, along with other co-opted members. Elisabetta Sciallis (who was appointed at the February meeting) has advised that she is currently a class representative for five actions before the Competition and Appeals Tribunal and has thus withdrawn and will not participate in the sub-committee work on this occasion. The CPRC will be represented by Dr Anja Lansbergen-Mills. **THANKS** were conveyed to all concerned.
- **ADR Committee (AL(24)14):** Membership of the Alternative Dispute Resolution Committee (considering the CA judgment in Churchill -v- Merthyr Tydfil County Borough Council) is, subject to liaison with Lady Justice Asplin, now finalised as District Johnson, Isabel Hitching KC and Elisabetta Sciallis. **THANKS** were conveyed to all concerned. **Action:** Chair to update Asplin LJ.

## Item 2 Clinical Negligence Fixed Recoverable Costs CPR(24)06

4. Laurent Viac (Department of Health and Social Care) was welcomed to the meeting.
5. **THANKS** were conveyed to Senior Master Cook and all members of the sub-committee for their valuable time and assistance. A general update and overview of the progress made by the sub-committee was provided. Mr Viac also set out the remaining issues the sub-committee intends to cover, before being in a position to present draft rules and a proposed pre-action protocol for committee consideration. This was duly **NOTED**, as was the possibility of providing notice to the sector at the earliest possible opportunity, once the amendments are settled. The intention is to finalise the CPR amendments in time for inclusion in the summer Update cycle, for implementation in October 2024.
6. **Action:** Secretariat to provisionally allocate time at the April, May and June meetings.

## Item 3 Retained EU Law (REUL) CPR(24)07

7. Oliver Lendrum (Department for Business and Trade (DBT)) was welcomed to the meeting; he was joined by Alice Scott-Gatty (DBT Legal).
8. The Chair provided some introductory remarks. This was first before the CPRC in July 2023, since when, the Chair has been involved with the group developing the draft rules. The working group has also engaged with UK Supreme Court (UKSC) officials and representatives from the Scottish courts and Northern Ireland courts, which has been very

useful. The Family Procedure Rule Committee has also been kept abreast of developments.

9. Mr Lendrum explained that, subject to any other ministerial decision, an October 2024 implementation was envisaged. Once, the CPR amendments are settled, the plan is to use them as a template for the other jurisdictions and this was **NOTED**.
10. The proposed new rules intend 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. In essence, providing new procedures covering:
  - a lower court or tribunal, to refer points of law on assimilated case law to a higher court to decide;
  - UK Government (UKG) or Devolved Administration (DA) law officers to refer a point of assimilated case law, which arose in a now concluded case in a lower court or tribunal, to a higher court, for use in setting precedent for future cases;
  - a right for a UKG or DA law officer to intervene in proceedings before a higher court where it is considering arguments about whether it should depart from assimilated case law.
11. The proposed drafting was reviewed and discussed in detail. A summary is as follows.
  - Draft rule XX.2 References under section 6A of the Act - proceedings before County Court or High Court: the interaction with the UKSC rules, over which the CPRC has no jurisdiction, was discussed. Dr Anja Lansbergen-Mills suggested an elegant approach could be to draft the CPR provisions in the context of destination, in effect a signpost, avoid overlapping with the UKSC rules. This garnered support and following a steer from the Chair it was **AGREED** to re-cast the drafting under XX.2 in a form along the lines of, “when referring to ‘x’ court, refer to ‘y’ rules”. It was also **AGREED** that the use of the text “respondent” was not appropriate in this context and should be removed.
  - Draft rule XX.3 References under section 6A of the Act: Court of Appeal: Mr Justice Trower observed that the use of “judge” and “Court of Appeal” needed to be reviewed in the interests of consistency and clarity and this was **AGREED**. Tom Montagu-Smith KC also raised whether sub-rules (6) and (7) could be compressed and drafting lawyers undertook to consider this out-of-committee.
  - Draft rule XX.4 Interventions in references on assimilated case law: it was **AGREED** to recast the drafting to make the new, two stage process, clear and to remove, “and in particular any official body or non-governmental organisation” from sub-rule (1) as well as replacing, the text, “person” with, “party” in sub-rule (4)(b). Other modest tweaks were suggested and noted by drafting lawyers.
  - Draft rule XX.5 References on assimilated case law by law officers: no substantive comments were made, save for the view that it did not appear necessary to have a specific rule for procedure involving the court or tribunal before which the concluded proceedings took place and/or the parties to those concluded proceedings. This was duly **NOTED**.
  - Draft rule XX.6 Decisions on whether to depart from assimilated case law: it was **AGREED** to re-cast the drafting in the interests of clarity, possibly by re-structuring the rule to separate out the procedure for the party arguing the court should depart from assimilated case law, from how that question will be determined and this could include an express provision to provide for the court to give directions as to how the decision will be given, mindful that this procedure does not naturally fall

within the existing rules for mainstream appeals. In doing so, the drafting can also address concerns as to how the required notice period is provided for and the extent to which the statute needs to be explained within the rules; these revisions may result in a slightly longer rule but overall brevity should be maintained to best effect.

12. It was **RESOLVED** to agree in principle and subject to the above points and to final drafting:

- new draft CPR provisions in consequence of 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;
- the location of the new rules to be CPR Part 68, the Part which formerly contained the rules concerning the European Union;
- the central REUL secretariat email address does not need to be in the substantive rules; it can be added to the freestanding CPR email list, which can be updated without the need for any formal amending instrument;

13. It was **FURTHER RESOLVED** to:

- consider, in consultation with the UKSC and the CPRC Forms Sub-Committee, the concept of a new prescribed form or model order. The working assumption is that the general application notice (N244) is to be used. However, a bespoke solution also merited consideration.

14. **Actions:** (i) Drafting Lawyers to produce revised drafting, in consultation with DBT officials and the working group (ii) DBT officials to review, in consultation with the UKSC and CPRC Forms Sub-Committee (via the Secretariat) whether a bespoke form or model order should be proposed (iii) DBT to keep the Secretariat apprised for programming purposes.

#### **Item 4 Economic Activity of Public Bodies (Overseas Matters) Bill CPR(24)08**

15. Anna Herrmann (Drafting Lawyer at the Department for Levelling Up, Housing and Communities) and Jessica Adams (Bill Manager) were welcomed to the meeting.

16. It was explained that the Bill is intended to tackle boycotts, divestments and sanctions campaigns within public bodies. This is achieved by preventing public bodies, when making decisions about procurement and investment, from considering a country or territory of origin (or other territorial considerations) in a way that indicates political or moral disapproval of a foreign state. It is yet to receive Royal Assent, however, CPR amendments are envisaged, possibly to Part 54, particularly in consequence of clause 5(4) of the Bill. As the reforms are UK wide, officials have also been in touch with Scotland and NI and this was duly **NOTED**.

17. The Chair directed consultation with the Administrative Court in the first instance and this was **AGREED**, whereupon it was **RESOLVED** to defer the item to enable that consultation to take place. The matter can then be programmed in for further consideration.

18. **Actions:** (i) Chair to advise the President of the King's Bench Division and the judge in charge of the Administrative Court (ii) Officials to keep the Secretariat apprised for programming purposes.

#### **Item 5 Housing and Possession Sub-Committee CPR(24)09**

19. This item comprised the following business:

20. **Sub-Committee membership:** It was **NOTED** from the Chair that:

- District Judge Greenidge has been co-opted onto the sub-committee.

- His Honour Judge Luba KC is retiring. **THANKS** were conveyed for his valuable contributions as a co-opted member of the sub-committee and to civil justice generally.
- Mr Justice Meade has been co-opted onto the sub-committee. It is only for the purpose of the liaison concerning the design of the possession system. Meade J sits on the group dealing with the Online Civil Money Claims and Damages systems, chaired by Mr Justice Johnson.

**21. Aspects of eviction and other procedure:**

22. This topic was last before the CPRC in December 2023 (paragraphs 33 – 37 of those minutes refer).
23. Master Dagnall presented the matter, which concerned various queries relating to the new Notice of Eviction procedure (CPR 83.8A) and its operation in practice. A discussion ensued.
24. It was explained that, although the proposed draft text, “further notice of eviction or further notices of eviction” may appear slightly cumbersome, the amendments are designed to cure the problem that the previous short-form drafting led to an issue in practice as to whether the singular included the plural and where the aim is to require a new further notice of eviction whenever an eviction is intended to take place (following a previous failure to effect an entire eviction). Additionally, the aim is to make “further notice of eviction” a defined term.
25. Master Dagnall also highlighted that, in relation to the proposed text at the opening of r.83.8A(5) “(at the request of any person)”, this drafting solution was prepared in the light of the resolution at the December meeting to favour flexibility, but without any substantive change to the rules as to who could apply for a dispensation etc. direction. The amendments to PD 83 (writs and warrants – general provisions) are intended to make the forms prescribed; the revisions to which have been discussed with HM Courts & Tribunals Service and staff in the King’s Bench Division (KBD) Enforcement Team.
26. Mr Justice Trower raised a point concerning the transfer of enforcement activity from the County Court to the High Court. He explained the limited enforcement activity conducted in the Chancery Division of the High Court and the desirability for clarity and wider understanding of the jurisdictional differences because currently there is scope for delay if non-Chancery matters are received and then need to be further transferred to the KBD. This generated a discussion regarding the interplay between enforcement in the KBD and Chancery Division and garnered support, in principle, for the issues to be further considered. It was therefore **AGREED** that:
- the sub-committee will consider the position further and if reform would be desirable, for example, whether the default process should be that High Court enforcement matters are sent to the KBD in the first instance;
  - this is not a high priority project and would, inevitably require internal consultation in the first instance.
27. Drafting Lawyers raised two points of detail regarding the proposed revisions to PD 83. It was **AGREED** that (i) paragraph 8 required a clarificatory tweak to make clear which documents needed to be included with the application and that they needed to be filed (ii) the text in paragraphs 9 and 10 to be re-cast in the interests of clarity thus: “**which that** form...”.

28. It was **NOTED** that reference to specific form numbers will be kept for time being, given that possession enforcement involves a particularly high level of litigants in person.

29. It was **RESOLVED to:**

- **approve** amendments to CPR 83.8A (notice of execution of writs and warrants of possession) as drafted;
- **approve, subject to the above points and to final drafting**, amendments in consequence to PD 83 (writs and warrants – general provisions);
- **ratify**, the suite of five proposed court forms as agreed by the Forms Sub-Committee under delegated powers. The forms (as revised) being prescribed are:
  - N54 - Notice of Eviction
  - N54A - Further Notice of Eviction
  - PF92A - Application for a writ of possession [and of control] in the High Court to enforce a Judgment or Order for giving of possession of land in proceedings in the County Court (other than a claim against trespassers under Part 55 after the expiry of 3 months from the date of the Order)
  - MO92B - Order for permission to issue a writ of possession in the High Court to enforce a Judgment or Order for giving of possession of land in proceedings in the County Court (claim against trespassers where more than 3 months has expired since the date of the judgment or order granting possession of the land)
  - MO92C - Order for permission to issue a writ of possession in the High Court under section 33D of the Immigration Act 2014
- **agree** that no further consultation is necessary, due to the limited nature of the reforms being more clarificatory than substantive.

30. **Actions:** In consultation with the Master Dagnall (i) Drafting Lawyers and Secretariat to incorporate the amendments into the next mainstream CPR Update as part of the October 2024 common-commencement cycle (ii) MoJ/HMCTS to facilitate implementation of the revised forms and their publication online.

31. **Renters (Reform) Bill:**

32. Master Dagnall provided an oral update following HMG's presentation at the last meeting (paragraphs 29 - 37 of 2<sup>nd</sup> February 2024 CPRC minutes refer) and a recent sub-committee meeting with officials.

33. It was **NOTED** that drafting was being prepared for presentation at the April meeting, to include a transitional provision and proposed drafting to reflect the Bill's intention to abolish Section 21 of the Housing Act 1988 (which currently gives a landlord an automatic right of possession without having to give reasons, once the fixed term tenancy has expired). It was reiterated that the reforms to the tenancy system were only for England, thus the rules for Wales were to remain in place. In principle, there was no issue with this business coming before the April meeting.

34. However, a further issue had arisen which concerned HMG's interest in prioritising housing possession related anti-social behaviour (ASB) cases following issue and enforcement.

35. A discussion ensued which provided a very clear steer that the committee had a number of strong reservations regarding prioritisation and urged caution with advancing the proposition. Comments centred on the following points: listing of cases is conceptually complex and necessarily a judicial function; to prioritise a particular type of case en bloc is effectively creating a sub-category of claim without a statutory basis and risks access to justice issues; caselaw authorities are also likely to need to be considered if such a policy change was being advanced; the impact on other (non-prioritised) types of claim, such as rent arrears could be significant. It was also observed that, as a matter of principle, the concept of prioritisation is not dissimilar to having an accelerated procedure, which is what the legislation intends to remove.
36. The feasibility of the rule committee conducting an implementation related consultation arising from aspects of primary legislation which is still in its draft form, was raised as a concern. To do so would place the committee in an unusual position and any consultation would have impacts on the overall timetable. Even if such a consultation was lawful in principle, it would not be desirable, because it presumes the will of Parliament and any amendment which Parliament may make to the Bill, could change the underlying position.
37. **Actions:** MoJ officials to relay the above concerns to DLUHC officials.

#### **Item 6 Simplification (Section 2(7)) Sub-Committee CPR(24)10**

38. This item comprised two elements.

#### **39. Proposed amendments to Part 42 Change of Solicitor**

40. His Honour Judge Bird presented the matter. It was explained that an extensive revision is proposed to simplify the provisions. The approach taken is based on the premise that the utility of being on record is for service. Two drafting options were tabled, one which retains a much reduced rule within Part 42, the other option being to place the amended provisions into Part 6 (Service). At present, Part 42 is made up of four main rules and a PD. The sub-committee's view is that most of it is unnecessary or simply reflects substantive law and is thus superfluous. Under the proposals, the PD is dispensed with and Part 42 is either radically reduced, essentially in order to deal with situations where the change (of solicitor) is not voluntary and where the court needs to get involved, or to dispense with it in its entirety (relocating the remaining, simplified provisions, into Part 6).
41. A discussion ensued which raised a number of practical issues requiring further consideration, central to which was whether there was some reason of importance, other than service, to be on record. The interaction with litigants in person, counsels' instructions, wider issue of authority generally which flow from being on record (although the power is not necessarily derived from Part 42) and the practicalities that the court administration will only deal with those on record. This also highlighted that the principles applied to all authorised litigators, not only solicitors.

42. It was **RESOLVED** to:

- **note** to proposals;
- **conduct** a preliminary consultation, with a focused audience, including the Law Society;
- **matter to return** thereafter and for approval in principle, prior to publication via the usual (online) rolling consultation facility.

43. **Actions:** HHJ Bird to consult the Law Society (et al).

#### **44. Wider reforms**

45. The Chair expressed **THANKS** to Isabel Hitching KC and all sub-committee members for their very helpful work following earlier discussions (minutes of the 1<sup>st</sup> December 2023 meeting, paragraph 61, refer) regarding a potentially more extensive revision of the CPR and in light of wider reforms generally. Before developing it further, the Chair undertook to discuss the matter with the Master of the Rolls and the Online Procedure Rule Committee. **Action:** Chair.

#### **Item 7 Lacuna Sub-Committee (LSC)**

46. District Judge Clarke provided a short oral update to explain the transitional and revised housekeeping arrangements now that he has taken on the chair from Master Dagnall, which was discussed and duly **NOTED** with thanks to all concerned.

47. **Actions:** Chair to share a newly devised information sheet with the Judicial Executive Board and Designated Civil Judges, explaining how LSC referrals are dealt with.

#### **Item 8 Any other business / possible items for future business:**

48. **Annual Open Meeting on 10<sup>th</sup> May 2024:** The Chair set out the practical arrangements for the Annual Open Meeting on 10<sup>th</sup> May 2024, to be conducted in a hybrid format, whereby the committee will meet in person, with non-secretariat officials and public observers attending remotely. The aim being to maximised transparency and offer the widest possible opportunity to observe the committee in session.

49. **Disclosure in PI proceedings:** The Chair advised that correspondence had been received from a practitioner raising points regarding disclosure. However, at this stage it is was unclear whether it was rule committee business or not. A discussion ensued. The preliminary views were that value may be drawn from wider discussions within the judiciary and potentially with the Judicial College and this was **AGREED**.

50. **Valedictory Remarks:** The Chair was pleased to pay tribute to two outgoing members for their valuable service on the committee. All members and officials joined in expressing their gratitude.

- **His Honour Judge Jarman KC:** reaches his maximum term of six years on the committee this month. Having joined in March 2018, he was the first ever Welsh judicial member. The appointment was introduced pursuant to the Civil Procedure Act 1997 (Amendment) Order 2017 (which came into effect on 19<sup>th</sup> December 2017). His care, expertise and particular experience of the law applicable in Wales has been of special value to committee deliberations. The Chair relayed HHJ Jarman's thanks for the support regarding the Welsh language and Welsh matters generally. Particular highlights included his work on the changes to the rules regarding public law hearings in Wales and Welsh housing legislation, in addition to the wider work of the committee.
- **Senior Master Cook:** has served on the committee as the Master member since May 2018. His appointment as Senior Master last year necessitated the change in membership. Notable achievements included his work on the development of the Online Civil Money Claims portals; as an integral member of the Costs Sub-Committee and as Chair of the Forms Sub-Committee; as well as various other additional projects. Reflecting, the Chair observed, fondly, that the civil justice system is a better place as a result of Senior Master Cook's many and varied achievements. Responding, Senior Master Cook spoke of his interest and enjoyment in working to improve the civil justice system and how he had relished working with like-minded spirits on the committee.

March 2024

**Attendees:**

Carl Poole, Rule Committee Secretary

Master Dagnall, Chair, Housing Possession Sub-Committee

Alasdair Wallace, Government Legal Department

Andrew Currans, Government Legal Department

Katie Fowkes, Government Legal Department

Amrita Dhaliwal, Ministry of Justice

Andy Caton, Judicial Office

Rosemary Rand, HM Courts & Tribunals Service

Laurent Viac, Department of Health and Social Care (Item 2)

Oliver Lendrum, Department for Business and Trade (Item 3)

Alice Scott-Gatty Department for Business and Trade, Legal (Item 3)

Anna Herrmann, Department for Levelling Up, Housing and Communities (Item 4)

Jessica Adams, Department for Levelling Up, Housing and Communities (Item 4)