



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
Remotely via Microsoft Teams
At 11.00 a.m. on Monday 4 November 2024

Present:

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
Her Honour Judge Suh	Circuit Judge
His Honour Judge Humphreys	Circuit Judge – Judicial Member for Wales
District Judge Foss	District Judge (County)
District Judge Birk	District Judge (County)
District Judge Nelson	District Judge (Magistrates)
Poonam Bhari	Barrister
Rhys Taylor	Barrister
Laura Coyle	Solicitor
Jennifer Kingsley JP	Lay Magistrate
Shabana Jaffar	Cafcass
Rob Edwards	Cafcass Cymru
Bill Turner	Lay Member

ANNOUNCEMENTS AND APOLOGIES

- 1.1 The Chair extended a warm welcome to everyone observing the Committee meeting.
- 1.2 Observers were provided with a copy of the agenda.
- 1.3 Apologies were received from Graeme Fraser and Mrs Justice Knowles.

1.4 The Chair offered congratulations, on behalf of the Committee, to Her Honour Judge Birk on her recent appointment to the circuit bench.

1.5 The Chair reminded members that the Law Commission, would be joining to seek the Committee's views on their consultation on contempt of court.

MINUTES OF THE LAST MEETING: October 2024

2.1 The Committee approved the minutes for the October 2024 meeting.

Action Point 1: Secretariat to arrange for the October 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 October 2024 FPRC meeting.

MATTERS ARISING

4.1 MoJ had tabled a paper which contained updates on the following:

- Web Inaccuracies
- Update on FP(A) R 2024 and Practice Direction (PD) update No.6 of 2024
- Update on timing of proposed r29.1 FPR amendment
- Jade's Law
- Pathfinder

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 FP(A) R 2024 and a PD update No.6 of 2024. The Rules were signed by the President and Minister and laid on the 11 October. The changes included a new rule (6.23A) for serving documents to individuals living in a refuge; and additional powers to nominated circuit judges direct that a permission to appeal application may not be renewed at an oral hearing if it has been refused on the paper as being totally without merit.

4.5 The PD Update No.6 of 2024 included amendments to PD5B to increase the maximum size for email attachments submitted to the court. New PD6D, provides specific guidelines for serving documents to individuals in a refuge. Also, PD30A is amended in light of the new rule changes for circuit judges. These updates aim to improve document handling and streamline appeal processes in family cases.

4.6 HMCTS provided a verbal update on the timing of proposed amendment to Rule 29.1 and explained to the Committee that due to budget and scheduling constraints, HMCTS will delay implementing the proposed rule amendments related to disclosure of parties' contact details. They plan to return to the Committee in Autumn 2025 with updated timelines.

4.7 A Committee member expressed concern about the delay in implementing Rule 29.1, citing potential practical benefits in urgent situations. In response, the Chair requested the Secretariat to contact HMCTS for clarification and see if the timeline could be expedited.

Action point 2: Secretariat to contact HMCTS to seek clarification on the delay in implementing proposed amendments to Rule 29.1.

4.8 The Committee were provided with an update on Jade's Law. It was noted there would be a further update in December 2024 on policies surrounding automatic suspension of parental responsibility in cases involving the conviction of one parent for the murder of the other. In addition, work on parental responsibility restrictions for child sex offenders is progressing under the upcoming Victims, Courts, and Public Protection Bill.

4.9 The Committee received an update on the Pathfinder pilot courts. The Pilot first launched in North Wales and Dorset, and these courts have successfully improved the timeliness of private law resolutions as well as praise for the wider benefits. The pilot has since expanded to include Birmingham and South East Wales, with potential for further expansion. PD36Z which supports this pilot is set to expire in February 2025 in some court areas. Proposals for its extension and for additional amendments will be presented to the Committee for review in December.

STANDING ITEMS

PRIORITIES TABLE AND PENDING PD AMENDMENTS

5.1 MoJ Policy stated that the priorities table will be updated and published following this meeting. A Committee member raised concerns over the delay in implementing changes related to deed poll name changes, which work strand began in 2020. The Chair requested an update from the policy team for the December meeting.

Action point 3: Secretariat to update and publish the priorities table.

Action point 4: Secretariat to request an update from the policy team on the progress of implementing changes related to name changes, to be presented in the December meeting.

TRANSPARENCY IN FINANCIAL REMEDY PROCEEDINGS

6.1 The Committee were provided with an update on the transparency pilot which started in January 2024 across three financial remedies court areas. The pilot allows media coverage of court proceedings while protecting the identities of involved parties and sensitive financial information. Due to limited media interest, the pilot has been largely uneventful. Nonetheless when media representatives have attended their participation has been professional. An expansion is planned on 11 November. It was suggested that the pilot might be extended for another year, potentially covering all the courts by January 2026.

6.2 Committee members expressed concern about the practical challenges for reporters, such as, notifying courts ahead of time which might discourage media attendance. In addition, concern was raised regarding the need for training for magistrates if they are in the pilot. MoJ provided assurance that training would be provided. The Committee approved requested to continue with the current approach, with the possibility of extending the pilot for another year.

SUBSTANTIVE ITEMS

REPORTING PILOT: CHILDREN PROCEEDINGS

7.1 MoJ Policy outlined final proposals for the implementation of the new FPR and PD provisions to support the national rollout of media reporting transparency order pilot in children proceedings across England and Wales, scheduled for early 2025.

7.2 The Committee was invited to review and comment on the final proposed rule and PD provisions. This input will be essential for the December 2024 FPR amendment and PD update, which pending Committee approval will enable the pilot's extension to all courts starting in January 2025.

7.3 The Committee reviewed specific points where input was needed. A Committee member raised a concern regarding the recommendation that reporters notify the court in advance of their planned attendance. Potential issues were noted such as challenges journalists may face in contacting court staff and the risk of logistical barriers affecting media participation. The MoJ responded that while advance notification could be beneficial it need not be a strict requirement. The consensus was to amend the language to state that reports "may notify" the court.

7.4 The Committee raised concern regarding the operational burden of adding case codes to court lists, especially in private law cases where gatekeeping standards may vary between courts. It was confirmed that these codes would only apply to public law cases. It was also explained that for public law cases the gatekeeping process involves a simple tick box system, which aligns with current protocols. The Committee supported limiting this coding process to public law cases.

7.5 The Committee also endorsed the drafting approach suggested in PD14G, which sets out cases under Part 14 of the FPR to which the scheme will apply, but then states that PD12Q will apply, to those cases, rather than duplicating content in both new PDs.

7.6 The Committee also agreed on not including in the PDs under consideration express references to specific caselaw, in line with the general policy to future-proof documents.

7.7 The Committee discussed the provision which outlines circumstances for media exclusion from hearings due to commercially sensitive information. Concerns were raised that the language might set a high threshold potentially limiting exclusions to cases involving publicly listed companies only. However, members ultimately agreed that the current wording in PD27B should be retained so as to keep the threshold high to emphasise openness, leaving exclusions to be determined on a case-by-case basis.

7.8 Members noted the need for improved guidance for court staff to handle media attendance requests efficiently. Suggestions included developing information leaflets or briefings to ensure staff are well prepared to manage press attendance requests.

7.9 There was a brief discussion on verifying the accreditation of journalists at court emphasising the importance of a smooth process that does not unnecessarily affect media access.

7.10 The Committee approved the proposals for rule and PD provision, subject to the discussed amendments. Special thanks were extended to the drafting team for their efforts in developing a robust and detailed framework.

ONLINE PROCEDURE RULE COMMITTEE

8.1 The Committee received an update on a forthcoming statutory instrument, expected to be laid before Parliament by spring 2025 which will grant the Online Procedure Rule

Committee authority to make rules for property possession cases in civil law and financial remedies in family law.

8.2 It was also highlighted that the full implementation of these powers will take time, potentially several years, and the timescales for digitalisation efforts within civil justice would affect the Committee's ability to engage with civil matters.

8.3 The Committee acknowledged the update, and the phased approach required to implement these new powers effectively.

BUNDLES – FEEDBACK FROM THE PUBLIC CONSULTATION

9.1 MoJ Policy provided an update regarding the feedback from the recent consultation on the proposed new PD27A. The consultation closed on 21 October receiving over 50 responses from stakeholders. The MoJ has prepared a summary of key themes, but a full analysis will take place over the coming weeks. The working group plans to meet following this analysis with a comprehensive update scheduled for the December 2024 meeting.

9.2 The Committee was asked to confirm the proposed timeline and consider potential approaches for addressing responses. It was suggested that a phased approach might be beneficial with immediate changes where there is agreement and a second stage to address more complex issues.

9.3 The Committee discussed the working group and suggested that the Magistrates' Member provide her insights on electronic bundles in family proceedings heard by magistrates, as this would be a valuable addition. The Magistrates' Member expressed her willingness to join, noting that she represents a large panel of justices and could bring broader perspectives to the group.

9.4 The Committee highlighted issues with poorly prepared electronic bundles for cases heard by magistrates in the family court, particularly affecting cases with litigants in person and stressed the need for better HMCTS support to reduce delays. Also raised were concerns about non-digital cases potentially overlooked in the PD27A amendments, emphasising that HMCTS should remain responsible for bundle preparation in these instances if all parties are litigants in person.

9.5 The Committee will receive an update report on PD27A at the December meeting, including a phased approach to the working group's consideration of consultation responses and an analysis of initial feedback.

UPDATE ON PILOT FOR EXPERT AND READINESS CHECKLISTS

10.1 The Committee received feedback on the readiness and expert checklists pilot launched in January 2024 (PD36ZF) to enhance case preparation and communication. Due to feedback citing workload concerns and non-compliance with the requirements of the PD, the MoJ recommended not extending the pilot beyond its current end date of 31 December 2024.

10.2 The MoJ will submit a final report in February 2025 with detailed findings including both quantitative and qualitative data. The Committee will use this report to decide on any future national rollout of checklists.

10.3 The Committee agreed with the MoJ's recommendation to let the pilot lapse in December and receive a full report in the new year.

ONLINE CONTESTED FINANCIAL REMEDY SERVICE: PD36N: NEXT STEPS

11.1 HMCTS proposed making the PD provision underpinning the online contested financial remedy service a permanent PD under Part 41 of the FPR, replacing the current pilot PD36N, which applies to applications made on or before 31 December 2024. The online service for legal representatives, which has been in use since January 2023, has seen improvements such as the case file review feature which has received positive feedback.

11.2 HMCTS requested the Committee's approval to make the pilot PD provision permanent with a new Part 41 FPR PD to be submitted to the President and subsequently the Minister for final approval.

11.3 Several Committee members raised concerns about the lack of access for litigants in person to the online portal, noting the significant disadvantage faced by self-represented individuals in financial remedy proceedings. While HMCTS has prioritised developing a digital solution for litigants in person, it remains a longer-term project due to resource limitations.

11.4 Members supported making the PD provision underpinning the online service for legal representatives permanent. The Committee also highlighted the need for an accessible solution for litigants in person, possibly allowing them to upload documents directly, even if they cannot access full portal features on the online service.

11.5 Members agreed to formally note in their meeting minutes their concerns about the disadvantages faced by litigants in person in financial remedy cases due to the current lack of digital access.

11.6 The Committee approved the request to make the PD underpinning the online contested financial remedy service permanent.

LAW COMMISSION CONSULTATION – REGARDING THE LAW OF CONTEMPT OF COURT

12.1 Representatives from the Law Commission addressed the Committee on its comprehensive consultation on the contempt of court. A summary of key proposals was presented with a focus on procedural reforms aimed at simplifying and clarifying contempt proceedings.

12.2 The consultation covers various topics on contempt of court, including procedures possible penalties, temporary measures and legal aid options.

12.3 The key proposals for family law in the contempt review suggest adding new ways to enforce court orders like temporarily taking assets or passports. There is also a proposal to require court permission before starting contempt cases to prevent misuse and a proposal to use stricter evidence rules.

12.4 There was a discussion about the need for temporary detention powers to manage disruptive behaviour, though practical challenges were noted. Concerns were also raised about using contempt proceedings in family disputes especially for contact order issues as it could worsen family tensions.

12.5 The Commission highlighted the lack of data on contempt cases and proposed that the Attorney General be required to publish relevant data for transparency.

12.6 Concerns were raised regarding Litigants in Person's use of social media and the potential for unintentional contempt, underscoring the need for clearer guidance and support for Litigants in Person in navigating these issues.

12.7 The Committee thanked the Law Commission for its presentation and welcomed the review of contempt procedures recognising the challenges judges and parties can face in these cases. Members expressed support for clearer procedures and agreed to submit individual responses by the end of November. The Law Commission will circulate its slides and summary consultation paper to members via the Secretariat.

Action Point 5: Secretariat to circulate the Law Commission's slides and consultation summary to the Committee.

ADDITIONAL ITEMS

OTHER PROCEDURE RULE COMMITTEES

13. The Secretariat reported that, after discussions with other Committees' Secretariats there are no relevant updates to share with the Committee.

FORMS UPDATE

14. The Secretariat provided the Committee with an update on the Forms Working Group, noting that an email was sent to schedule the next meeting. Members are asked to confirm their availability with meeting anticipated to take place week commencing 18 November. A report from this meeting will be presented at the next FPRC meeting.

FPRC WORKING GROUPS

15. It was noted that a former working group member, is now retired, and should be removed from the Divorce Working Group. The Bundles Working Group was also acknowledged for their ongoing work.

Action Point 6: Remove the former WG member from the Divorce Working Group.

DATE OF NEXT MEETING: 9 December 2024

16. The next meeting will be held on Monday 9 December 2024 and will be a hybrid meeting both at the Royal Courts of Justice and via MS Teams.

OPEN MEETING (Q&A)

17. The Chair opened the Question and Answer session, explaining that observers who submitted questions in advance were invited to ask these questions during the meeting and a Committee member would respond.

17.1 Question 1 – Pilot for Fast Track Financial Remedy Procedure

- The observer inquired about the timing for the pilot of Fast Track procedure for small financial remedy claims and plans for national rollout. The Committee explained that a pilot is expected to launch next year to test this new procedure with national rollout to be considered, based on the pilot's success.

17.2 Question 2 – Amendment of FPR Rule 8.25

- This question addressed whether FPR Rule 8.25 would be amended following a recent Supreme Court judgement. It was noted that the Committee has been asked to consider the issues raised and that the item is on the Committee’s priority list. Further review will occur as time and resources allow.

17.3 Question 3 – Ensuring “Contemporaneous” Communication and Digital Record for Litigants in Person.

- The observer highlighted issues they faced as a litigant in person, emphasising the need for contemporaneous, digital communication to ensure fairness and a clear record. The Committee explained that while rules strive for clarity, judicial discretion plays a role in individual cases and specific enforcement methods are not always prescriptive. The Committee noted that it was not for it to comment on decisions made by judges in the observer’s case.

17.4 Question 4 – Release of Court Material and Access to Documents for Non-Parties.

- A question regarding access to court files for non-parties and how the Committee addresses open justice was raised, following the judgment in the case of *Cape v Dring*. The Committee responded that the Civil Procedure Rule Committee is working on this matter, and the Committee will await their findings before making any recommendations for changes to the Family Procedure Rules.

17.5 Question 5 – Fair Treatment for Disadvantaged Individuals in Court.

- An observer asked how procedural rules ensure fair treatment for socially and economically disadvantaged individuals. The Committee explained that the overriding objective of the FPR requires just treatment and an equal footing for all parties and that provision is made in the FPR for vulnerable individuals including the ability to require special measures to be put in place during proceedings.

FPRC Secretariat

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