

Approved

Minutes of the Civil Procedure Rule Committee

Friday 1st November 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 Johnson
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching KC
Tom Montagu-Smith KC
Ian Curtis-Nye
Elisabetta Sciallis

Apologies:

Members: District Judge Clarke, Ben Roe (annual leave)

Non-Members: Mrs Justice Collins-Rice, DBE, CB (Item 4), Bea Brown, MoJ (Item 4), Jeremy Bevan, Health and Safety Executive (Item 7), Master Kaye (Item 9), Nick Bacon KC (Item 9).

Item 1 Welcome

1. The Chair welcomed everyone to the meeting.
2. **Minutes:** the minutes of the last meeting, on 4th October 2024, were **AGREED**.
3. **Action Log and matters arising not covered by later items.** None raised.

Item 2 Law Commission consultation on the law of contempt CPR(24)44

4. Professor Penney Lewis (Criminal Law Commissioner) and Dr Lawrence McNamara (Lead Lawyer on contempt of court project at Law Commission) were welcomed to the meeting.
5. Professor Lewis gave a presentation on the Law Commission's consultation reviewing the law on contempt of court.
6. It was **NOTED** that the consultaion covers a wide range of issues. It includes substantial reform to the substantive law; identifying law reform proposals on, among other things, liability, protection and powers of courts and tribunals, procedure, representation and legal aid, sanctions, and appeals. The full consultation paper extends to over 470 pages and poses 137 questions. Chapter 8 of the Report deals with procedure. The deadline for responses has recently been extended (from 8th November 2024) to 29th November 2024.
7. A discussion ensued, in which Professor Lewis answered questions from the committee.
8. Mr Justice Pepperall highlighted the Law Commission's suggestion that a uniform procedural code is required across various jurisdictions and said that he did not favour a single procedure code, but preferred any revised procedural rules to continue to be found in the expected jurisdiction-specific rules and so, for civil, in a further revised Part 81. This garnered support. It was also explained that the Criminal Procedure Rules provide detail

as to the precise steps that should be taken by the court. However, there is, generally, a different approach to drafting the Civil Procedure Rules. The tension between keeping rules concise and avoiding unnecessary technicality and providing greater assistance to courts and parties by more prescriptive rules, was recognised.

9. Pepperall J further observed, that the law of contempt may, however, be an area of procedure which may benefit from greater detail as to what the court will do in these cases, given the serious context of imprisoning those who have not committed a crime and given that judges - especially when initiating contempt proceedings of their own motion - might be in unfamiliar territory.
10. Discussing the proposal to create an overarching Contempt Procedure Rule Committee, the overall view was towards the alternative approach, whereby the various jurisdictional rule committees could form a joint working group to standardise procedure wherever possible. This would offer a better opportunity for different jurisdictions to pool experience, learn from each other, and devise a standard procedure which is departed from only where necessary, to reflect the different needs of particular jurisdictions. The Chair provided some recent examples of very successful cross jurisdictional working groups such as those convened to consider the procedural rule implications for Domestic Abuse, the Hague Convention and for retained EU Law, where the CPRC worked with rule committees right across the UK.
11. His Honour Judge Hywel James spoke of some other experiences in practice, from sitting in both civil and crime. He also explained the position concerning anti-social behaviour proceedings.
12. The Chair urged the Law Commission to consider Bench Warrants carefully, indicating that courts needed to retain this important power.
13. Mr Justice Trower suggested the Law Commission also engage with the Insolvency Rule Committee and this was duly **NOTED WITH THANKS**.
14. It was **FURTHER NOTED** that a formal response by this committee is not envisaged. However individual members can submit personal comments if desired. A joint judicial response is likely to be prepared for consideration by the Lady Chief Justice, in due course.
15. **Action:** Secretariat to provide contact details to the Law Commission for the Insolvency Rule Committee.

Item 3 Closed Material Procedure (CMP) CPR(24)45

16. Sarah Gregory (MoJ) was welcomed to the meeting.
17. The Chair provided a brief overview of the background.
18. Ms Gregory explained the intention of the proposed reforms is to give effect to recommendations made in the 2021 Independent Report on the operation of closed material procedure (CMP) under the Justice and Security Act 2013, by Sir Duncan Ouseley. The Government response to which was presented to Parliament in May 2024 and duly **NOTED**. A suite of amendments to CPR Part 82 (closed material procedure) are envisaged in consequence and in order to codify ad hoc practices concerning CMP, which have developed over time.
19. MoJ have consulted across Government, including with the Special Advocate Support Office and with the judiciary, namely the President of the King's Bench Division, Lord Justice Singh, the Judge in charge of the Administrative Court, other members of the judiciary with experience of CMP and wider stakeholders. Engagement will be maintained throughout the drafting process.

20. It was **RESOLVED to agree in principle** that Part 82 be amended to:

- enable the court to require a draft closed defence or draft summary to be served, or a particular issue to be pleaded in draft, before it considers or rules on an application under section 6 of the Justice and Security Act 2013 (JSA);
- enable Special Advocates (SA), of their own volition or at the request of the court, to put forward closed pleadings and grounds of challenge;
- allow communication requests between the SA and the Open Representative (OR) without needing to first obtain directions from the court in certain circumstances, and to formalise the procedure by which this is done;
- permit the attendance of the OR and the specially represented party at any open part of a directions hearing or section 6 application hearing;
- exclude CMP cases from the cost management provisions in CPR 3.12 – 3.18.

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

- **APPOINT** District Judge Clarke as a CPRC representative with whom officials and drafting lawyers can liaise in order to prepare the necessary draft amendments. However, given the specialist nature of CMP and MoJ's existing channels of communication with the senior judiciary and stakeholders, it was not considered necessary to establish a formal sub-committee. However, MoJ should continue to sight Lord Justice Singh on any draft amendments.

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

- the desired timetable for implementation of the CPR amendments is April 2025. To meet that, final proposals will need to be agreed at the December meeting;
- in line with the application of CMP, Government will be seeking rule changes to be approved and implemented across the UK. As such, engagement with all relevant committees will take place.

23. **Actions:** (i) MoJ, in consultation with DJ Clarke, to prepare draft amendments (ii) Matter to return to the December meeting.

Item 4 Strategic Litigation Against Public Participation (SLAPP) CPR(24)46

24. The Chair summarised the background and current position.

25. The matter was last before the committee at its meeting on 5th July 2024 (paragraphs 52 – 57 of those minutes refer). However, due to the uncertainty concerning the legislative position following the general election and in turn, the scope of any CPR amendments, it was decided not to take any further action unless and until the legislative situation is clarified.

26. It is now understood that the Government has no intention of bringing forward additional SLAPP legislation in this Parliamentary session and thus, work can restart on considering the CPR amendments necessary to produce the minimum amendment necessary to give effect to section 194 of the Economic Crime and Corporate Transparency Act 2023. If possible, with a view to full implementation of the rules in 2025.

27. A brief discussion ensued. Ian Curtis-Nye advocated drafting amendments which provided better clarity for the lay user, observing that, "a SLAPP claim" was not sufficiently

clear and more signposting may assist. Katie Fowkes also highlighted a need to review PD 3A (striking out a statement of case) in consequence. Both points were duly **NOTED**.

28. It was **FURTHER NOTED** that Master Dagnall offered to be involved with the sub-committee work, given his practical experience as a High Court Master dealing with Media and Communications List (MAC) matters, particularly during the case management stages. The Chair will discuss this with Mrs Justice Collins-Rice, who chairs the sub-committee.
29. **Actions:** (i) Chair to discuss membership and next steps with Collins-Rice J and MoJ officials (ii) MoJ to keep the Secretariat appraised for programming purposes.

Item 5 Digital Markets, Competition and Consumers (DMCC) Act 2024 CPR(24)47

30. Dr Anja Lansbergen-Mills provided a progress report which was duly **NOTED**.
31. This matter was introduced at the committee meeting on 2nd February 2024 (paragraphs 38 – 43 of those minutes refer). In essence, there are three workstreams to this project (workstream A, B and C). In summary, the workstreams are as follows.
32. Proposals concerning workstream A were presented at the June 2024 meeting (paragraphs 47 – 56 of those minutes refer), they intend to give effect to powers of inspection and civil penalties introduced by Part 1 of the DMCC Act 2024 and involved amendments to 'Practice Direction – Application for a Warrant under the Competition Act 1998'; amendments to the example Companies Act 1998 warrant and the introduction of a new example DMCC Act warrant.
33. Workstream B concerns private redress under Part 1 of the DMCC Act 2024 and work is ongoing.
34. Workstream C, is focused on amendments in consequence of Part 3 DMCC Act concerning civil enforcement of consumer protection law and a proposed new PD. It was explained that the intention of the proposed new PD is not to create a new end-to-end process for DMCC Act actions, but rather interact with relevant CPR Parts, mainly Part 25 (interim remedies and security for costs) and Part 52 (appeals). However, it is to have specified adaptations and make bespoke provision for allocation of such applications, as well as applying CPR 38 (discontinuance) with modifications. Given the resolution of the last meeting which approved a reformed Part 25 as prepared by the simplification sub-committee, the proposed amendments under workstream C required further review to ensure they accurately reflect Part 25 in its reformed state.
35. In response to a question from Trower J regarding allocation, it was confirmed that there had been consultation with the Heads of Division. Consultation has also been undertaken with the Competition and Markets Authority (CMA) and this was duly **NOTED**.
36. Isabelle Hitching KC raised a question of process as to modification of rules by way of practice direction (given that PDs are subordinate to substantive rules). Dr Lansbergen-Mills explained that the working assumption was that as Part 25 was being applied *de novo* (afresh) in a modified form, rather than amended per se, there was no material issue; however, the position would be clarified out of committee as part of the drafting process.
37. It was **FURTHER NOTED** that the aim is for all amendments to come into force as part of the April 2025 common-commencement date; thus aligning with the coming into force of the reformed Part 25. The Chair observed that the implementation timetable appears ambitious, given the scale of the project overall and the amount of drafting the committee will need to review in time to meet the winter update cycle.

38. **Action:** (i) Officials to confirm outstanding work and discuss with the Secretariat to assess programming and implementation feasibility (ii) Sub-Committee to consult drafting lawyers before final proposals are presented (iii) Matter to return to the December meeting.

Item 6 Referral of Parole Cases to the High Court CPR(24)48

39. This item was deferred to a date to be fixed. **Action:** Officials to keep the Secretariat informed for programming purposes.

Item 7 Workplace Claims consultation outcome CPR(24)49

40. His Honour Judge Jarman KC was welcomed to the meeting. He was joined by two other members of the sub-committee, John McQuater and Brett Dixon (who, at the time the sub-committee was established were CPRC members). Two external co-opted members, Helen Devery and Huw Andrews were not present, but the Chair expressed **THANKS** to all concerned.
41. HHJ Jarman KC presented the matter. It was explained that the origins of this work date back to a presentation by the Health and Safety Executive (HSE), requesting that Annex C (standard disclosure in workplace claims) to the Personal Injury Pre Action Protocol be simplified and updated.
42. In October 2022, changes were agreed, in principle and subject to a public consultation, which took place in June 2023.
43. The sub-committee apologised for the time it has taken to report on the consultation responses, explaining that this is due to a number of issues, not least IT issues which meant that the responses were not received by the sub-committee until February of this year. The apologies were duly **NOTED**.
44. The Chair highlighted a comment raised by one respondent to the consultation who raised points of process and transparency about the involvement of the HSE in proposing changes to the civil procedure rules.
45. The Chair made clear that it is standing practice for representations to be made to the committee when revisions to the CPR are being sought and that this can come from a variety of sources. The HSE is a statutory body with specific responsibilities for and interest in, health and safety in the workplace. Accordingly, the HSE were entitled to propose amendments and this has been considered in the normal way, whereby, an introductory presentation was made to the committee and a sub-committee established. In this instance, the sub-committee comprised both internal and external members and a public consultation followed. This was all reflected in the committee's minutes which are publicly available. This matter has been dealt with in an entirely consistent and transparent manner. This was **AGREED**.
46. The consultation generated eight (8) responses, which provided a good sample of views, including from three representative bodies, three law firms, one insurer and the NHS. Views ranged from support to significant challenges. The essential divide was the extent to which the Annex should be simplified. The changes in Annex C to incorporate digital evidence were broadly welcomed.
47. The sub-committee has carefully considered the consultation responses and was willing to accommodate the views of respondents where appropriate. However, it was concluded that, on balance, no further changes are recommended. The sub-committee concluding that they support the HSE's proposal to introduce the simplified explanatory table. The sub-committee's analysis of each point raised in the consultation responses was reviewed and discussed.

48. One area on which the sub-committee had not come to a concluded view was on the extent to which, if any, the proposed changes should deal with the issue of proportionality of disclosure, namely what records should be kept and disclosed and whether this should be different depending on the size of the business concerned; this was an issue of express importance to small businesses. A discussion ensued which highlighted risk with prescriptive proportionality; members commented that guidance already exists for businesses before an accident occurs and this includes the use of subject access requests for personal information and the principle of dealing with whatever material is available at the time. Other specific points identified a need to revisit some of the drafting, particularly as regards what constitutes physical evidence in the context of the types of personal injury claim covered. Drafting Lawyers also suggested that the list of legislative references in Table 1, may benefit from further simplification.

49. It was **RESOLVED** to remit the matter to the sub-committee with the following steer:

- Not in favour of proportionality throughout;
- Not in favour of “relevant” (records) under “General Documents” at sub-paragraph (ix), meaning that “relevant” should be removed, but that it should be retained in sub-paragraph (x) (communications);
- Not in favour of expressly including “oral and physical evidence” and this should therefore be removed;
- Change, “evidence as to” to read, “documents including”;
- Matter to return to the December meeting or when ready.

50. **Action:** Sub-Committee to prepare revised final draft for the December meeting or if not ready, to keep the Secretariat appraised for programming purposes.

Item 8 PD51Z County Court Officers Pilot

51. The Chair explained that this is on the agenda in the interests of good order.

52. The pilot expires on 30th November 2024, unless varied or extended.

53. It was last mentioned at the committee meeting on 7th June 2024 (paragraph 57 of those minutes refer), when it was noted that the 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. However, it has not been put into operational practice. It was **RESOLVED** to allow the PD to naturally expire on 30th November 2024.

54. **Action:** Secretariat to liaise with MoJ Digital to update the CPR online, by removing the pilot PD when it expires.

Item 9 Civil Justice Council (CJC) Costs Report – Costs Budgeting Light CPR(24)50

55. His Honour Judge Bird presented the matter.

56. The Chair provided some introductory remarks and expressed **THANKS** to HHJ Bird and to District Judge Johnson, Master Kaye and Nick Bacon KC, who are also on the sub-committee.

57. This matter was previously before the committee on 4th October 2024 (paragraphs 48 to 56 of those minutes refer). The proposed new scheme flows from the CJC’s report on Costs, in which a simplified costs budgeting regime was recommended in certain categories of case.

58. HHJ Bird explained that the main changes since the last meeting, comprise the following: various drafting revisions generally to tidy up and simplify; the inclusion of proposed pilot

court centres are now specified within the draft PDs; the proposed Precedent Z costs form has been simplified so that it now comprises two (rather than three) pages and the proposed new Precedent RZ discussion report has been devised.

59. HHJ Bird also clarified the scope of the meaning of “Business and Property Courts (BPC) of England and Wales” in the context of the proposals, namely that this referred to the BPC within the Rolls Building, London, not all BPC matters more widely.
60. The revised draft PDs and draft Precedent forms were explained and discussed.
61. David Marshall suggested that it may be helpful to refer to the Precedents in a way that describes their purpose rather than by the current lettering system. For example, they could be referred to as the “pilot budget discussion report” and the “simplified cost budget”. The intention being to provide greater clarity and ease of drafting. Trower J suggested, as a general point, to include the full title the first time it is used and then the “Precedent xxx” in brackets thereafter.
62. The Chair also observed that the proposed labelling convention of the proposed new PDs was different from the norm, in so far as a numerical suffix had been added, thus, PD51ZG “1” and PD51ZG “2”. This was intended to demonstrate that the pilot schemes were linked. It was **AGREED** that, in the absence of any firm drafting protocol that precluded such naming, then the PDs should be so labelled. However, it may be desirable for the Precedent costs forms to have sequential labelling, in which case, the new suite of costs forms would ordinarily attract the suffix “V” because the most recent addition, the Fixed Costs Determination Precedent form is labelled Precedent “U”. Nonetheless, this was not essential.
63. Master Sullivan raised whether there needed to be an equivalent to Precedent T for varying a budget (up or down) and this will be considered out-of-committee.
64. Dr Lansbergen-Mills raised whether a table in Part 3 should be introduced to include the names and descriptions of each Precedent form and this was discussed, with some members drawing a likeness to the recent e-mail list table (underpinned by paragraph 6 of PD 5B (communication and filing of documents by e-mail)) but where the list itself is not part of the CPR. The benefit of which allowed for greater flexibility to update and amend the list, without requiring any formal updating instrument. This proposal would be considered further out-of-committee in slower time.
65. Drafting Lawyers asked about the operative period and transitional arrangements. It was clarified that the pilots are intended to operate from 1st April 2025 to 31st March 2028 i.e. for 3 years (unless varied) and thus the intention is that the pilot PDs do not apply to claims issued after 1st April 2028 and this was duly **NOTED**.
66. It was **RESOLVED to agree, subject to the following points and final drafting:**
- To introduce a new pilot PD (51ZG1) for simplified costs budgeting in certain Business and Property Courts. Drafting revisions to be made as follows:
 - i. Paragraph 3(a) to be redrafted so that “part II” is replaced by “Section II”
 - ii. Paragraph 3(a)(iii) to be redrafted to remove “as designated”
 - iii. Paragraph 8(b) to be revised thus: “...Precedent Z no later than 28 days before the start of the trial or any trial window...”;
 - To introduce a new pilot PD (51ZG2) for simplified costs budgeting in certain claims under £1m;
 - Precedent Z Costs Form (Simplified Costs Budget) subject to any revision to the suffix to maintain sequential labelling;

- Precedent RZ Form (Budget Discussion Report) subject to any revision to the suffix to maintain sequential labelling;
- Incorporate new pilot schemes into the winter update cycle for in-force as part of the April 2025 common-commencement date.

67. It was **FURTHER NOTED** that work continues on the drafting of pilot PD/s for a simplified costs budgeting regime for qualified one-way costs shifting (QOCS) cases. The aim is to present draft proposals at the December meeting.

68. **Actions:** (i) Sub-Committee to consider if an equivalent to Precedent T (budget variations) is required as part of the simplified costs budgeting regime (ii) Pepperall J and any other members' drafting points to be sent directly to HHJ Bird and drafting lawyers to consider out-of-committee (iii) once finalised, the perfected PDs and Precedent forms are to be sent to the Chair, Secretariat/Lawyers for incorporation into the next PD Update (for April 2025 in-force); (iv) Sub-Committee to consider and report back if thought desirable to introduce the suggestion of a table into Part 3; (v) Sub-Committee to prepare draft pilot PD/s for QOCS to be presented at the December CPRC meeting or when ready.

Item 10 Any other business / possible items for future business

69. The following was raised, discussed and duly **NOTED** from the Chair:

70. **Extending Fixed Recoverable Costs (FRC) – 12 month review.** When the extended FRC regime was approved, it was decided to request MoJ to report back in 12 months' time to review the new scheme and any further amendments following experience in practice. This would mean a report to the committee in February 2025. However, the emerging view, informed by feedback from some users, is a full review in February would be premature and this was **AGREED IN PRINCIPLE**. It was **RESOLVED** to revisit the position in February, at which point the scope, nature and plan for inviting views from users can be framed with a view to conducting some form of consultation in the summer. **Action:** Secretariat to programme in time for the February 2025 meeting, in consultation with the Chair and MoJ Costs Policy.

71. **MoJ Call for Evidence (CfE) - Compliance with the Aarhus Convention.** The Government has published a CfE (on 30th September) to gather views on the Aarhus Compliance Committee's recommendations regarding access to justice, to determine the best way to reach compliance, particularly in relation to costs protection in environmental judicial review claims, and, separately, on time limits in environmental judicial review claims. Views are being sought on whether the recommendations should be implemented in England and Wales in light of the potential implications, or whether there are suitable alternatives which could better deliver the desired effect of bringing the UK into compliance. The call for evidence will run until 9th December 2024. In the expectation that reforms will follow thereafter, this matter was **NOTED** as a potential topic of future business. **Action:** Secretariat to update the future work planner.

72. **Precedent U Costs form: out-of-committee amendment approved.** The new Precedent U form for Fixed Costs Determinations has been amended to aid clarification. The words, "(list VAT separately)" have been included next to, "Fixed Costs" [in cell A16 of tab/section A of the form]. This followed feedback received from the Forum of Insurance Lawyers which was carefully considered by the Costs Sub-Committee and, in turn, **APPROVED** by the Forms Sub-Committee under delegated powers. **Action:** MoJ/HMCTS and the Secretariat to facilitate publication of the updated form.

73. **Possession Enforcement - PD83 (writs and warrants of possession) and prescribed forms.** Master Dagnall explained the position as follows.

74. Two matters were raised and discussed. First, a clarificatory amendment was needed to the minutes of the 1st March 2024 meeting, because the minute inadvertently referred to documents being filed and served, but the rules provide that an application for a writ of possession may be made without notice and thus service is not required.
75. It was **RESOLVED** to **AMEND THE MINUTES of the meeting on 1st March 2024**, at paragraph 27 by removing the text, “and served” so that the text reads: “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 **and served** (ii) the text in paragraphs 9 and 10 to be re-cast in the interests of clarity thus:, “which that form...”
76. The second issue concerned the inclusion of the watermark, “Specimen” on certain prescribed forms (Form N54 (notice of eviction) and Form N54A (further notice of eviction)) which were now publicly available online via the CPR webpages.
77. It was **RESOLVED** that as the forms were not for general public use, the watermark should be retained.
78. **Action:** Secretariat to amend paragraph 27 in the minutes of 1st March 2024 and re-publish.

C B POOLE
November 2024

Attendees:

Carl Poole, Rule Committee Secretary
Kate Aujla, Deputy Committee Secretary
Nicola Critchley, Civil Justice Council
Amrita Dhaliwal, Ministry of Justice (MoJ)
Andy Caton, Judicial Office
Crystal Hung, Judicial Office
Andrew Currans, Government Legal Department (MoJ)
Katie Fowkes, Government Legal Department (MoJ)
Faye Whates, HM Courts & Tribunals Service
Professor Penney Lewis, Criminal Law Commissioner (Item 1)
Dr Lawrence McNamara, Law Commission (Item 1)
Sarah Gregory, MoJ (Item 3)
His Honour Judge Jarman KC (Item 7)
John McQuater (Item 7)
Brett Dixon (Item 7)