

Approved

Minutes of the Civil Procedure Rule Committee

Friday 6th December 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 Clarke
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching KC
Tom Montagu-Smith KC
Ian Curtis-Nye
Ben Roe

Apologies

Members: District Judge Johnson, Elisabetta Sciallis
Non-Members: Mrs Justice Collins-Rice, DBE CB (Item 5 SLAPP), Mr Justice Richard Smith (Item 9 Service).
Secretariat: Carl Poole

Item 1 Welcome

1. The Chair welcomed everyone to the meeting. The Chair introduced two new legally qualified members of the committee: Campbell Forsyth (a solicitor, joining with immediate effect, to fill the vacancy left by Virginia Jones) and Kelly Stricklin-Coutinho (a barrister, appointed to succeed Dr Anja Lansbergen-Mills, when her term comes to an end in July 2025).
2. **Minutes:** the minutes of the last meeting, on 1st November 2024, were **AGREED**.
3. **Action Log and matters arising not covered by later items:**
 - a. **AL(23)182 – Domestic Abuse Protection Orders (DAPO) pilot – template civil orders.** The pilot PD (51ZF) came into force on 27th November 2024, the Chair thanked for all the sterling work behind the scenes by District Judge Stephen Byass, His Honour Judge Graham Robinson and others. The Chair mentioned and emphasised the importance of cross-jurisdictional collaboration, particularly the relationship built up with the Family Procedure Rule Committee. It was also NOTED from the Chair, that he had approved the template orders, out-of-committee, as prepared by the judicial working group.
 - b. **AL(23)233 – PD 83 Possession Enforcement reforms and renaming of a prescribed form by omitting “A” from PF92A.** Master Dagnall, Senior Master Cook and Master Sullivan, together with Andrew Currans (GLD) have

been working extremely hard on this. The recommended changes were duly APPROVED.

- c. **AL(24)67 – Part 52 Appellant’s Notice Consultation.** This was discussed and agreed at the last meeting. The Chair has discussed the matter with the Vice President of the Court of Appeal and the Court of Appeal Masters. They are in favour of sealing the appellant’s notice but had reservations on changing the time limit. District Judge Clarke was in favour of changing the time limit to protect the court, because administratively there were processing issues with meeting the current, prescribed timetable, which place an unnecessary pressure on court resources. The matter was briefly discussed and there was still a clear view in favour of proposing an amended (extended) time limit, unless it causes unintended practical issues. It was **RESOLVED** that the proposed amendments will go out for consultation, after a final check by the Chair. These will be on the website in due course. **ACTION:** Secretariat, in liaison with the Chair.
- d. **AL (23)235 – Access to Court Documents (UKSC Cape -v- Dring).** The CPRC consultation last year received a lot of responses. Mrs Justice Sara Cockerill is now leading the project, reviewing the responses and possible rule changes in consequence. The reconstituted sub-committee comprises CPRC members and Sara Cockerill J is a member of the Lady Chief Justice’s Transparency and Open Justice Board. **ACTION:** Sara Cockerill J and the reconstituted sub-committee will look at rule changes required. This will come back to the Committee in due course.

Item 2 Referral of Parole Cases to the High Court CPR(24)51

4. The Chair welcomed Abi Marx from the MoJ.
5. Ms Marx explained the urgency driving the Lord Chancellor and Secretary of State for Justice’s desire for this to be implemented in July 2025, subject to an extra SI approval. Ms Marx had two questions for the Committee.
6. Question 1. Will the committee approve bidding for an exceptional CPR SI to be made in July 2025 to support the Secretary for State’s intention that these reforms should be implemented as soon as possible?
7. Question 2. Agree as a Committee to do everything possible to meet the July 2025 implementation date.
8. The Chair explained that the CPRC will do all that it can, although the caveat being that until the Committee know exactly what is requested, final commitment can not be given.
9. The Chair made clear the CPRC has its own formal legal obligation to consider consultation that is an important aspect of the CPRC remit and may impact on timings. It was also **NOTED** that the mechanics of Parliamentary business (obtaining additional SIs) is not a matter for the CPRC, that is a matter for Government.
10. **ACTIONS:** MoJ Policy to (i) keep in touch with the Secretariat for agenda scheduling purposes. (ii) seek SI slot and take carriage of associated work if approved.

Item 3 Closed Material Procedure (CMP) CPR(24)52

11. The Chair welcomed Sara Gregory from the MoJ.
12. It was **NOTED** that Lord Justice Singh has been consulted on this matter and has no difficulty with the proposal.
13. Chloe Wood gave an update on the proposed drafting which came from recommendations in the Ousley Report which reviewed CMP. Government is keen to implement the required changes as soon as possible.
14. At present, MoJ are asking for approval for two rule amendments to be implemented in April 2025. These have been developed with input from District Judge Clarke, Lord Justice Singh and others, including special advocates. The amendments relate to recommendation 12 (participation in section 6 directions hearings) and recommendation 15 (on cost management provisions) of the Ousley Report.
15. The amendment relating to recommendation 12 was explained, this amendment will ensure section 6 applications and direction hearings will only take place in the absence of the Specially Represented Party and/or their legal representative if this is necessary to protect national security and to make sure maximum levels of transparency wherever possible.
16. The amendment relating to recommendation 15 was explained. Two provisions have been added to r.82.5 – this has been drafted in a flexible way. Ian Curtis-Nye expressed a concern that consumers may not understand the cost of taking this litigation to trial with the current drafting.
17. It was **AGREED** to re-draft the relevant aspect of r.82.5 and change the wording in B “to the court make any other order they feel fit in relation to costs” – or words to that effect.
18. **ACTION:** Once finalised, the perfected wording to be sent to the Secretariat/Lawyers for incorporation into the next CPRC SI (for April 2025 in-force).

Item 4 Digital Markets, Competition and Consumers (DMCC) Act CPR (24)53

19. Dr Lansbergen-Mills was joined by Ian Meikle from the Department for Business and Trade (DBT) and Nadia Schaub (Senior Lawyer at DBT). It was **NOTED** that Mrs Justice Bacon has become indisposed, and Dr Lansbergen-Mills has therefore taken this on in her absence, until a new Chair is appointed.
20. A general update on the various work strands was provided. The presentation then focused on workstream C (injunctive relief and enforcement arising from amendments made by Part 3 of the DMCC Act to Part 8 Enterprise Act, namely the procedure by which to apply to the court for an order under Part 3 of the DMCC Act, or to appeal against decisions of the Competitions and Markets Authority (CMA).
21. A new Practice Direction, PD 49H Enforcement of Consumer Protection Law was presented and discussed.
22. Dr Lansbergen-Mills explained that the Sub-Committee had deliberated on the adequacy of Rule 49.1 in supporting the modifications outlined in the proposed PD. The consensus within the Sub-Committee is that Rule 49.1 continues to modify the Rules as necessitated by the PDs enacted under its authority. MoJ lawyers also

contributed to the discussion and expressed that any ambiguity is undesirable, particularly as there have been instances where the intended interaction between the Rules and PDs has effectively elevated a PD above the Rules.

23. Ms Hitching KC explained that her previous concern was that the PD should be drafted in such a way that it makes clear that any disapplication of the rule was by the covering rule so that it was the rule taking the weight. After discussion with Dr Lansbergen-Mills, Ms Hitchings KC is happy that the PD has now been drafted in this way. Ms Hitching KC also expressed concerns about changing the rule quickly and the possibility of there being cases in the pipeline on the other PD and whether there would be any implications. As this is an extension of the rule and not a reduction, the Committee do not see there will be a problem. However, MoJ legal were invited to review the drafting as part of the usual process to finalise the CPR Update.

24. **ACTION:** Once finalised, the perfected wording is to be incorporated into the next CPR SI (for April 2025 in-force).

Item 5 Strategic Litigation Against Public Participation (SLAPP) Sub Committee CPR(24)54

25. The Chair gave the background to the legislation. It was explained that the Private Member's Bill (PMB) that was going through parliament before the general election, provided wider provisions than the Economic Crime and Corporate Transparency Act 2023 and that a Sub-Committee had been constituted to consider any CPR amendments. However, that work was on hold pending decisions by the new Government.

26. The new Government has decided it is proposing to bring the existing Act into force with a view to seeing how that works. This will be monitored over a period of time.

27. Katie Fowkes (GLD) raised a drafting point on incorporating a definition for SLAPP claims. Adding to the interpretation - SLAPPs should be defined where they are mentioned in the Rules.

28. The CPRC are content to **APPROVE, subject to final drafting**, the proposed Rule changes proposed by the Sub-Committee.

29. The CPRC are content to leave the matter of monitoring the rules to MoJ. MoJ will report back a year after implementation.

30. **ACTIONS:** (i) Agreed with inclusion of drafting on SLAPP definition to be included in the next (winter) CPR update. (ii) MoJ to report back a year after implementation.

Item 6 Possible Future business

Litigant in Person (LiP) Hourly Rate CPR (24)55

31. The Chair welcomed Dr Harry Chancellor from MoJ Costs Policy.

32. It was explained that this topic flows from Ian Curtis-Nye's proposals to update LiP rates, which MoJ have considered.

33. Although the MoJ agree with Ian Curtis-Nye's recommendation, this is not something they intend to take on currently. The MoJ would prefer this to be part of a wider review which will be happening later.

34. The MoJ are, however, content for the CPRC to take this forward separately and this was discussed. It was **AGREED** that Mr Curtis-Nye will consider further and will aim to prepare a report for the next meeting. Mr Justice Pepperall commented that this has not been reviewed for nine years and will support Mr Curtis-Nye in preparing recommendations for CPRC consideration.
35. **ACTION:** (i) In consultation with Pepperall J, Ian Curtis-Nye will prepare a paper setting out proposed reforms to the LiP hourly rate. (ii) Secretariat to include this item in the February 2025 meeting.

Civil Justice Council (CJC) Report on the Procedure for Determining Mental Capacity

36. The Chair summarised the CJC Mental Capacity Report and explained the problems faced by Judges and the need to make progress. The Chair provided some introduction to the recommendations and explained that some are for Government, not the CPRC and Government should be given the opportunity to review the report in the first instance. The report was **NOTED** and no action is required at present, other than to be aware of the report.

Civil Justice Council Report on Pre-Action Protocols

37. The Chair outlined the report, and the CJC Working Group chaired by Professor Andrew Higgins.
38. **NOTE:** No action at this time, other than to be aware of the report. Given the potential interaction with wider reforms across civil and the digital landscape, the CPRC will await further directions from the Master of the Rolls.

Item 7 Online Procedure Rule Committee (OPRC)

39. The Chair advised that MoJ will provide a written update to committee members as soon as possible, out-of-committee. However, he gave a short oral update confirming that the OPRC is up and running and their work is beginning to get underway.
40. The jurisdiction of the OPRC, to deal with digital platforms includes civil, family and tribunals. However, the core membership of the OPRC is very small in comparison to the CPRC. The OPRC's work on the civil jurisdiction will begin with property and possession proceedings.
41. Liaison between the jurisdictional rule Committees and the OPRC is vital, and Lord Justice Jonathan Baker is the lead Judge for the OPRC who will act as the liaison between the OPRC and CPRC.
42. The OPRC are also focussing on drafting a set of principles and considering something intermediate for the pre-action space, for which the OPRC also have vires. A vital element of work will be on inclusion. This is supported by Sara Stevens who is the LiP representative on the OPRC.
43. Isabel Hitching KC raised concerns about the point the OPRC would hand over to the CPRC and this was duly **NOTED**.
44. His Honour Judge Hywel James has requested the OPRC have a Welsh representative, the Chair agreed with this request in principle.

45. **ACTION:** HHJ Hywel James will forward a proposed name to the Chair to act as the Welsh representative.

Item 8 Workplace Claims consultation outcome CPR(24)56

46. The Chair welcomed His Honour Judge Jarman KC to the meeting.
47. This matter was last before the Committee in November, when the proposed reforms to update Annex C (standard disclosure in workplace claims) of the Personal Injury Pre-Action Protocol (PAP) were considered, following consultation.
48. HHJ Jarman KC gave an update on the redrafting and removal of certain words (Proportionality, Relevance, and Oral Statement) requested at the November meeting.
49. Katie Fowkes (GLD) had previously suggested a Table, this suggestion has been included in part.
50. Master Sullivan questioned that the Sub-Committee had previously asked for insurance certificates to be in the disclosures list. This is still not the case. A brief discussion ensued, and it was **AGREED** that insurance certificates should be in the disclosures list.
51. It was also **NOTED** that there could be a set of changes to the PI PAP and this will need to be addressed in the context of the CJC report.
52. The Chair concluded, therefore, that this is not the correct time to finish this project and instead it should be **PAUSED** until a steer has been received from the MR regarding the CJC Report on PAPs (see Item 6 above).

Item 9 Service Sub-Committee

53. Tom Montagu-Smith KC gave the Committee an update. The Sub-Committee is looking at Part 6 (service) along with Parts 8,10,16, and 23. Mr Montagu-Smith KC has been working with Alasdair Wallace and is extremely grateful for his continued help.
54. Mr Montagu-Smith KC advised that the Sub-Committee has a provisional view on all of the issues and a fairly advanced draft. The oral update was duly **NOTED**.
55. **ACTION:** Item to listed for the February meeting.

Item 10 Lacuna Sub-Committee (LSC) CPR (24)57

56. This item comprised the following two matters, which were discussed:
57. **LSC2025/10** This concerns whether a party loses the right to challenge an order made on application without a hearing. This was previously raised by Trower J. District Judge Clarke presented the matter. The LSC propose an amendment to rule 23.8(3). After a short discussion the Committee **AGREED, subject to final drafting. ACTION:** Approved to be included in next CPR update (for April 2025 in-force).
58. **LSC2025/11** This concerns applications to vary injunctions made under the Anti-Social Behaviour, Crime and Policing Act 2014. It was explained that the LSC propose an amendment to rule 65.43(2). District Judge Clarke explained a possible error in the 2009 Act. After a short discussion the Committee **AGREED, subject to final drafting**

to simplify the wording and add signposting. **ACTION:** Approved to be included in next CPR update (for April 2025 in-force).

Item 11 Contents of the winter SI and PD update

59. The Chair summarised the items expected to be in the next (winter) SI and shared the significant dates in relation to drafting cut off for lawyers.
60. It was **NOTED** that the Secretariat is to circulate the SI to members for signature when ready and that the amendments are intended to be made in February 2025 and come into force in April 2025. This is subject to Ministerial and Parliamentary approval.

Item 12 Any Other Business

Amendments to rule 42.2 (change of solicitor) AL (24)72) and CPR(24)58

61. The Chair explained that some re-drafting was required – Andrew Currans (GLD) confirmed this is being done.
62. **ACTION:** Once finalised, the perfected wording is to be incorporated into the next CPR SI (for April 2025 in-force).

Summary Assessment – amendments arising from R(Isah) v Secretary of State [2023] EWCA Civ 268

63. The Chair gave some background and explained that Acting Senior Costs Judge Rowley has raised some questions regarding fixed cost determination.
64. Mr Justice Trower will work with Ian Curtis-Nye and SCJ Rowley so that a proper paper can be prepared for consultation. This was not considered to be urgent.
65. **ACTIONS:** (i) Secretariat to update the work-planner (ii) Trower J/Ian Curtis-Nye to update the Secretariat when ready.

CPRC Annual Report

66. The Chair made the Committee aware that the Committee's Annual Report is about to be published, and it will contain a photograph of the MR and members. All members agreed they are content for this to be published.
67. All members will receive a copy of the photograph for personal use only. **ACTION:** Secretariat to facilitate publication of the report and furnish members with a copy of the photo and report.

Disclosure in PI proceedings

68. The Chair set out the background, which originated from a letter received from a practitioner member of the public.
69. The same correspondent has requested an update. The Chair explained that this matter has been raised with the Judicial College as a possible training need. It
 - a. also has links with the Clinical Negligence FRC reforms, because when they were under discussion, it was agreed to incorporate "relevant" [Medical records] in the draft PAP. However, this work is paused as a result of the general election.

- b. **ACTION:** Secretariat to respond with the assistance of HHJ Bird.

Items raised by Association of Litigation Professional Support Lawyers (PSLs) - ALPS

70. The Chair explained that ALPS had raised three points for consideration; these were discussed. **1.** Reply to a defence CPR 15.8 provides that (where CPR 26 applies) a Reply to Defence must be filed with the Directions Questionnaire. Under CPR 26.3(6A), the parties cannot extend the deadline for the DQ. This suggests that the parties cannot agree to extend the deadline to file Reply to Defence and must seek permission from the court for any extension beyond DQ deadline, but there does not appear to be any case law on the point. **Response:** The Committee discussed this and concluded that they were not aware of any problems being caused in practice that require rule amendments. **2.** Are steps being taken to draft amendments to the CPR restricting the nature of applications made under section 67 of the Arbitration Act 1996? **Response:** The Chair confirmed that the Committee are not currently drafting amendments to the CPR in relation to the Arbitration Bill and has not been requested to do so. It is understood that the Bill was reintroduced into Parliament (after the general election) on 18th July 2024 and that the Law Commission are dealing with it under their reform mandate to enact recommendations from a Law Commission Report in September 2023. **3.** Should the presentation of rule and PD amendments be modernised and at least a link to tracked changed versions be provided? **Response:** The Committee was sympathetic to the point and recognised the desire for adjusting the way amendments are presented. However, as it was essentially a much wider issue involving Parliamentary procedures and conventions, it is a cross-government matter and not something on which the CPRC has any discretion.

71. **ACTION:** Secretariat to respond.

PD22 Statements of Truth

72. The Committee **NOTED** the letter from Global Language Services Limited about statements of truth, in relation to translations.

73. The Committee discussed and agreed unanimously that translators should not be required to sign statements of truth, as their role is solely to provide translations. This decision was based on the understanding that translators are *merely* converting the text of a document, without any involvement with its original author. No rule amendment is required in consequence.

74. **ACTION:** Secretariat to respond.

Next meeting: 7th February 2025

K AUJLA
December 2024

Attendees:

Kate Aujla, Deputy Committee Secretary
Nichola Critchley, Civil Justice Council (observer)
Amrita Dhaliwal, Ministry of Justice (MoJ)
Andy Caton, Judicial Office
Crystal Hung, Judicial Office
Andrew Currans, Government Legal Department (MoJ)
Katie Fowkes, Government Legal Depart (MoJ)
Abi Marx, MoJ (Item 2)

Sara Gregory, MoJ (Item 3)
Alice Hyde, MoJ (Item 3)
Chloe Wood, MoJ (Item 3)
Ian Meikle, DBT (Item 4)
Naia Schaub, DBT (Item 4)
Rachel Powell, MoJ (Item 5)
Dr Harry Chancellor, MoJ (Item 6)
His Honour Judge Jarman KC (Item 8)
Faye Whates, HM Courts & Tribunals Service
Campbell Forsyth (New Member)
Kelly Stricklin-Coutinho (New Member)