

Approved

Minutes of the Civil Procedure Rule Committee

Friday 7th February 2025, 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
Master Sullivan
His Honour Judge Bird
His Honour Judge Hywel James
District Judge Clarke
District Judge Johnson
Dr Anja Lansbergen-Mills
David Marshall
Isabel Hitching KC
Tom Montagu-Smith KC
Ian Curtis-Nye
Ben Roe
Campbell Forsyth

Apologies

Mr Justice Pepperall
Elisabetta Sciallis

Item 1 Welcome

1. The Chair welcomed everyone to the meeting. Specific welcomes were extended to the two new legally qualified members of the committee, joining in person for the first time:
 - Campbell Forsyth (a solicitor, joining with immediate effect, to fill the vacancy left by Virginia Jones)
 - Kelly Strickland-Coutinho (a barrister – and a qualified solicitor - appointed to succeed Dr Anja Lansbergen-Mills, when her term comes to an end in July 2025).

Mrs Justice Cockerill, member of the Lady Chief Justice's Open Justice and Transparency Board, was also welcomed to observe the meeting and serve as a link between the Committee and the Board.

2. **Minutes:** the minutes of the last meeting, on 6th December 2024, were **AGREED**.
3. **Action Log and matters arising not covered by later items.** The following was duly noted from the Chair:
 - **Annual Report.** The Committee's Annual Report 2023-24. was published online before the Christmas recess. Given that it marked the 25th Anniversary and, amongst other information, contains a commemorative Roll of past Chairs,

Deputies and Secretaries, printed versions (in English and Welsh) were provided to members. The Chair was most grateful for the extra effort undertaken by all concerned.

- **Service Sub-Committee.** The work being led by Mr Justice Richard Smith and Tom Montagu-Smith KC is progressing well and intended to return to the next meeting, as is a report regarding the **E-signature work**, led by Mr Justice Pepperall and Dr Anja Lansbergen-Mills.
- **E-Working PD 510.** The pilot PD expires on 1st November 2025 and is therefore programmed to return to the Committee in due course. Master Sullivan is leading the work, with Master Pester and others. Consultation across the civil jurisdictions concerning practical issues and integration with CE filing is ongoing and final proposals for a replacement PD are still being formulated; drafting lawyer assistance will be required soon. Master Sullivan's provisional view is that once the matter is fit for committee consideration (provisionally at the April meeting), the need for further consultation is unlikely. It is hoped that a replacement scheme can be introduced in time to avoid a further extension to the pilot PD.
Action: (i) MoJ legal to assign drafting lawyer resource (ii) Secretariat to allocate time to the April – June agenda/s.

Item 2 Extended Fixed Recoverable Costs (FRC) Stocktake CPR(25)01

4. Claire Green (MoJ) was welcomed to the meeting.
5. The Chair made some introductory remarks.
6. It was explained that, in February 2024, the Committee requested MoJ report back 12 months after the extended FRC regime was introduced, to review the new scheme and any further amendments following experience in practice. An update was provided to the 1st November 2024 meeting (paragraph 70 of those minutes refer) at which it was agreed in principle to delay conducting a full review (in February 2025) to allow more time for cases to progress through the system, but to revisit the position in February 2025 and consider the scope, nature and timetable for consultation.
7. It was **NOTED** that MoJ propose postponing this initial stocktake until June 2025; although MoJ is not wedded to that timetable. This should allow more time for the reforms to bed in. A collection of provisional topics to be included in the stocktake were tabled and discussed.
8. The Chair also advised that he had recently discussed the matter with Acting Senior Costs Judge Rowley, who made a number of points and suggested that postponing the stocktake to June 2025 may even be premature. A discussion ensued.
9. Mr Justice Trower suggested that MoJ review the residual issues the FRC Working Group undertook to revisit as part of the stocktake. Similarly, any members encountering issues in practice were invited to submit them to the Secretariat for MoJ policy to collate. Isabel Hitching KC observed there was value in producing a list of items the judiciary felt should be looked at, which would also contribute to identifying the high-level core issues, that may require particular focus.
10. Members shared their own experiences and feedback, which cemented the view that too few cases were yet flowing through the courts and as such it was **AGREED** that:

- the stocktake of the extended FRC regime, should be postponed, provisionally until October 2025;
 - the Committee's annual open meeting in May 2025, would serve as a useful opportunity to gauge interest and any views expressed can feed into framing the stocktake consultation.
12. It was **FURTHER NOTED** that, MoJ is also planning a separate, general post implementation review of the extended FRC regime, in 2026..
13. **Actions:** (i) MoJ, by 23rd May 2025, to prepare, in outline, a draft stocktake consultation (having reviewed residual issues from the FRC Working Group, any other submitted points including from the May open meeting); (ii) Secretariat to provisionally allocate time at the June 2025 meeting for the matter to return.

Item 3 Fixed Costs Medical Reports (FCMR) CPR(25)02

14. Josh Ivinson and Scott Tubbritt (MoJ) were welcomed to the meeting.
15. The Chair set out the background and advised that, following a Government consultation, it had been agreed out-of-committee, that the costs which may be recovered in respect of obtaining medical reports in low value road traffic accident-related (RTA) soft tissue and whiplash injury claims are being uprated by 25.4%. This is in line with the Services Producer Prices Inflation (SPPI) measure. This revision takes account of the impact of SPPI on the fixed cost medical reporting regime between their implementation in October 2014 and June 2024.
16. The amendments are reflected in the Civil Procedure (Amendment) Rules 2025 and 179th PD Update to come into effect on 6th April 2025. This was discussed and duly **NOTED**, along with the following points.
17. The discussion raised a query concerning the transitional provision. MoJ legal responded to explain that, in essence, the intention is that the current rates continue until the new ones come in. The Chair observed a potential presentational issue for the rules online and whether both versions of the rate can be included as part of the online CPR. District Judge Johnson asked when the figures were next expected to be uprated. The Chair was not aware of a fixed timetable, explaining that the policy recognised that there was significant value in not uprating figures too often. However, he asked that, whenever the next uprating was being proposed, MoJ present the figures in a table format, to improve usability, by clearly showing the period for which each set of figures applies.
18. Isabel Hitching KC noted a departure from the usual approach of reflecting the new rates as rounded figures. Josh Ivinson responded that the MoJ's consultation, 'Revisions to the Medial Reporting process for RTA claims' took place between July – October 2023 and the Government response was published on 16th December 2024. MoJ agreed with the majority stakeholder view, that it was appropriate to uprate the available fixed costs medical reports, but also noted that due to the passage of time since the 2023 consultation, a further inflationary uprating was needed. It is because of this time gap between the figures consulted upon and the actual uprating, that the amended figures have not followed the standard rounding formula on this occasion.
19. It was **FURTHER NOTED** that MoJ were in the process of consulting the Master of the Rolls on other procedural developments and thus further work for the Committee may be forthcoming in due course.

20. **Action:** (i) Secretariat to discuss presentation of the legacy and updated rates with the Web Team; (ii) MoJ to report back on future work programme when ready.

Item 4 PD 52D Appeals: Anaesthesia Associates and Physician Associates Order 2024 CPR(25)03

21. David Hamilton (MoJ) was welcomed to the meeting and provided a brief introduction.
22. Department of Health and Social Care (DHSC) are proposing modest amendments to PD 52D (statutory appeals and appeals subject to special provision) to bring it up to date, by reflecting the relevant articles of the Anaesthesia Associates and Physician Associates Order 2024 and to update column two of the table in the PD to include The General Medical Council (GMC). By doing so, it sets out the procedure for appeals against decisions of the GMC concerning fitness to practise. MoJ are presenting the matter because they are taking carriage of the request from DHSC, however, DHSC officials are willing to attend as required.
23. A discussion ensued, in which various points of principle and detail were made, including the possible need to review any forms and/or guidance that interacts with the proposed amendments. Each was noted by MoJ for relaying to DHSC.
24. It was **RESOLVED** to **REMIT** the matter, to enable officials the opportunity to revisit the drafting and to return when ready, provisionally the April meeting.
25. **Actions:** (i) MoJ Policy to update DHSC and put them in contact with MoJ Legal in order to prepared settled draft amendments and provide to the Secretariat by 21st March (if presenting to April meeting) or, when ready (ii) Secretariat to provisionally allocate time at the April meeting.

Item 5 Fit Kitchens -v- Relx 2023 EWHC 1954 (LSC2024/7) CPR(25)04

26. The Chair set out the background explaining that this matter formed part of a Lacuna Sub-Committee referral which was considered and resolved upon by the Committee at the July 2024 meeting. It was intended for inclusion in the Civil Procedure (Amendment) Rules 2025, but removed following issues identified by drafting lawyers in the final stages of preparing the CPR Update.
27. The amendment comprised two limbs: removal of a signpost and the inclusion of a proper cross reference in a rule and a second point concerning the requirement in Part 8 proceedings for evidence to be filed with the acknowledgement of service (AoS) and the implications for those defendants who indicate an intention to challenge the jurisdiction of the court, but ultimately choose to defend the claim, not having served the required evidence with the AoS.
28. As regards the second limb, the initial view was that r.8.3(3) (AOS) was to be amended, however, Andrew Currans (MoJ Legal) raised whether the amendment should be made to r.8.5(3) (filing and serving written evidence). Revised proposed drafting was discussed and further revised in response to Master Sullivan's proposal to retain, "If" in place of the proposed "When" in r.8.5(4) and the Committee's confirmation to include, "filling" [the AoS] at the end of r.8.5(3).
29. It was **RESOLVED** to amend CPR 8.5 (filing and serving written evidence) as follows:

- (3) A defendant who wishes to rely on written evidence must file it when they file their acknowledgment of service, unless the defendant has indicated in their acknowledgement of service an intention to contest jurisdiction, in which case the evidence must be filed within fourteen days of filing the acknowledgment of service if no such application is made.
- (4) If ~~they do so~~ a defendant files their evidence, they must also, at the same time, serve a copy of their evidence on the other parties.

30. It was **FURTHER RESOLVED** that:

- Form N210 (AOS (Part 8 claim)), specifically Section C (disputing the court's jurisdiction) and Section E (written evidence) be reviewed by the Forms Sub-Committee, in consequence of the above amendments.

31. **Actions:** (i) Drafting Lawyers and Secretariat to incorporate amendments into the next mainstream CPR Update in the summer (as part of the October 2025 in-force cycle)
(ii) Form N210 to be reviewed out of committee.

Item 6 Lacuna Sub-Committee (LSC) (LSC2025/01) CPR(25)05

32. District Judge Clarke presented the following item of LSC business, which was discussed.

33. The issue concerns the question of whether the joinder of a non-party for the purposes of costs, under rule 46.2 (costs orders in favour of or against non-parties), require further originating process. It was raised by Mr Justice Andrew Baker. However, the issue was probably more academic than practical.

34. The LSC has not been able to identify any direct authority on the point, but *The Ikarian Reefer (No.2)* [2000] 1 WLR 603 has been carefully considered.

35. The LSC concludes that CPR 46.2 envisages a simple process for joinder, which is not intended to introduce a fresh claim and that costs are a matter of the court's discretion, not usually referred to in statements of case. While the application and any supporting evidence should be served on the non-party (and, later the order setting out the court's decision), no further documents need be served.

36. DJ Clarke explained that the proposed drafting options were tentatively submitted as the sub-committee was not in unanimous agreement. Two possible new sub-rules to CPR 46.2 were tabled in the event that the Committee felt amendment would assist in order to clarify the process. Dr Anja Lansbergen-Mills explained that the first draft amendment should not be advanced because it re-stated what the rules already allowed for and by doing so, she was concerned with the degree of circularity. Tom Montagu-Smith KC clarified the position regarding service out of the jurisdiction.

37. Overall, there did not appear to be any material issue in practice. Equally, there were reservations concerning the potential for unintended consequences, because of the wide range of different contexts in which the situation arises. No further consultation is required.

38. It was **RESOLVED** to:

- Approve one of the new sub-rules and for it to be re-numbered in consequence. The clarificatory amendment is:

CPR 46.2(3)

Neither rule 19.4 nor rule 20.7 applies to the joinder of a person under paragraph (1).

39. **Action:** Drafting Lawyers and Secretariat to incorporate into the next mainstream CPR Update in the summer (as part of the October 2025 in-force cycle).

Item 7 Civil Justice Council Costs Report – Costs Budgeting Lite CPR(25)06

40. His Honour Judge Bird presented the matter.

41. This is the final of three new pilot PDs for simplified costs budgeting as recommended by the Civil Justice Council's Report on Costs. The proposed draft pilot PD is to supplement the other two pilots: PD51 ZG1 (Business and Property Court (BPC)) and ZG2 (<£1m non-BPC cases). The first two pilot PDs were agreed and included in the latest CPR Update (179th PD Update) to come into effect in April 2025. The associated new Precedent Costs forms Z, RZ and TZ have also been agreed and are the same for each of the PDs, including this final third pilot PD and this was duly **NOTED**.

42. The third proposed pilot PD is intended to apply to Part 7 multi track claim proceedings in the High Court District Registries at Manchester and Birmingham, to which CPR 44.13 (Qualified One-Way Costs Shifting ("QOCS")) applies. The pilot PD is not intended to apply to county court cases. Draft paragraphs 1 to 4 and 9 to 11 mirror terms set out in PDZG1 and PDZG2. All parties (save for Litigants in Person) will file a simplified costs budget 21 days before the first case management conference (paragraph 4 of the draft PD). In most cases, the defendant will then file Precedent RZ, within a prescribed timescale and the claimant will not do so because, save in a very small number of cases, they will have QOCS protections and will not be called on to pay the defendant's costs. The claimant does not therefore generally need to comment on the defendant's budget. The exception to this general approach is set out at in the PD (draft paragraph 5). QOCS protections means there is generally no need to costs manage the defendant's costs (because the claimant will not be called on to pay the defendant's costs). The positions of the parties are asymmetrical and the PD provides for this. In any event the court retains the power to manage the defendant's costs in appropriate cases. The sub-committee's view is that this is most likely to happen if the defendant has pleaded (or otherwise raised) a credible case that the claim (or claimant) is fundamentally dishonest. The sub-committee considered if this part of the PD should expressly limit the costs management of the defendant's costs to cases where (a) the defendant has raised fundamental dishonesty and (b) the claim could only be conducted "justly and at proportionate cost" if such an order was made. The conclusion reached was that (a) it added nothing and was included within the wider wording of (b) so was not required.

43. A discussion ensued, which raised some detailed drafting points, wherein it was **AGREED** to revise the draft pilot PD as follows:

- Insert, "or a preliminary issue trial" into paragraph 5;
- Change "7 days" to "14 days" in paragraph 6;

- Recast paragraph 8 to reflect that the court may give case management directions and may give costs management directions (including the options already drafted) so that the distinction between case management and costs management is provided for and the court is afforded wide discretion;
 - Insert, “of the” [trial] into paragraph 10(b)(i).
44. Master Sullivan raised the scope of the pilot. As currently drafted the monetary value of claims to which it applies is unlimited, which appeared to depart from the Civil Justice Council (CJC) report. HHJ Bird expressed the view that the sub-committee did not interpret the CJC report as being mandatory and they could not see that there was any reason why there should be a forced limit. Other members contributed with mixed views being ventilated. The Chair took the view that as the purpose of a pilot is to test the scheme in practice and given the pilot status, it was fine not to include a financial limit at the present time.
45. It was **RESOLVED**, subject to the above points and to final drafting:
- Approve the pilot PD 51ZG3 which is to operate for three years (to April 2028), unless modified;
 - PD 51ZG3 will have a commencement date of April 2025 to align with the other two pilot PDs, subject to Ministerial availability and approval;
 - the new Precedent Costs forms Z, RZ and TZ will be published as soon as practicable;
 - ancillary drafting points concerning possible discrepancies on the use of defined terms and the variance of in-force dates in the 179th PD Update to be considered out of committee and addressed in the next PD Update if necessary.
46. It was **FURTHER NOTED** that this phase of work concludes the sub-committee’s business, because the outstanding issues from the CJC report (concerning pre-issue costs and digitalisation) are being taken forward by others.
47. **THANKS** were conveyed to the sub-committee, comprising DJ Johnson, Chancery Master Kaye and Nick Bacon KC together with input from Master Sullivan, for their invaluable assistance.
48. **Actions:** In consultation with the sub-committee, (ii) Drafting Lawyers & Secretariat to incorporate into a standalone PD Update at the easiest opportunity to achieve an April 2025 in-force (ii) finalise and publish the new Precedent cost forms (iii) programme in a review no later than December 2027.

Item 8 Litigant in Person (LiP) Hourly Rate CPR(25)07

49. The Chair made some introductory remarks and Ian Curtis-Nye presented the proposal.
50. This matter follows the discussion at the 6th December 2024 meeting (paragraphs 31–35 of those minutes refer).

51. It was explained that the amount, which may be allowed to a self-represented LiP under r.46.5(4)(b), is provided for under PD 46 (costs special cases), paragraph 3.4. The sum has not been uprated since 2015 and is currently £19 per hour. To ensure consistency with the approach taken under the Fixed Recoverable Costs regime, the Service Producer Price Index (SPPI) has been used as the mechanism to review. From Q2 2015 to Q3 2024, the SPPI was 23.3%. It is proposed to apply the usual rounding-up so that the new rate would be £24. No further changes are proposed to PD 46, other than the hourly rate. The matter was discussed, during which the following was **NOTED**: the extent to which the rates were claimed; the regularity of reviews; the context of Guideline Hourly Rates and the need to make clear a precedent was not being set. It was **FURTHER NOTED** that MoJ were content with the proposal, having previously indicated that, because it was not a present priority for MoJ, they supported the Committee considering the matter as a standalone project.
52. The Chair reiterated that there are particular circumstances relevant to litigation conducted by a self-represented party and the LiP rate is a rate that is set in the CPR, it is not a sum awarded after an assessment of actual work done.
53. It was **RESOLVED** that:
- a consultation is not required;
 - a precedent is not being set;
 - a transitional provision does not appear necessary, but this can be confirmed out of committee as part of the final drafting exercise;
 - the LiP rate of £19 as prescribed by PD46 is to be updated to £24 per hour in accordance with the SPPI;
 - a further review is to be conducted in two years' time (c. February 2027)
54. **Actions:** (i) Drafting Lawyers and Secretariat to incorporate into the next mainstream CPR Update (subject to any transitional provision) in the summer, if not before. This being contingent upon Ministerial approval (ii) Secretariat to programme in a further review, in consultation with MoJ, in/around February 2027.

Item 9 Any other business / possible items for future business:

55. **CPR 27.8(6) and the General form of Judgment or Order:** The Chair read out an enquiry from a member of the public concerning information for litigants in person on how to obtain transcripts and the application of CPR 27.8(6) (court giving reasons for a decision). The Committee were conscious that requests for transcripts may be subject to fee/s. It was **RESOLVED** to review the template General Form of Judgment or Order (Form N24) and any associated guidance, including the equivalent in use within the digital portals. The review is to be conducted by Master Sullivan (Forms Sub-Committee Chair), DJ Johnson, Campbell Forsyth, Ian Curtis-Nye and HMCTS. **Action:** Secretariat to commission the review out of committee.
56. **Reform of Judicial Review in Nationally Significant Planning Infrastructure Cases:** The Chair noted this as a matter of potential future business.
57. **Interface between the Mediation Pilot PD and the OCMC Pilot PD:** It was **NOTED** from the Chair that His Honour Judge Ranson raised a practical drafting issue with the interface between the Small Claims Mediation Pilot PD (PD 51ZE) and the Online Civil Money Claims (OCMC) Pilot PD (PD 51R). At the moment, the provisions that apply to claims that fall under both pilots are set out in the Mediation PD, and in effect read into the OCMC PD. However, because the OCMC PD is being amended frequently, it

means that the Mediation PD provisions should be revisited each time as well, to keep pace with the changing context of the OCMC PD. However, it makes more sense, practically, to do it the other way round, i.e. include the provisions in the OCMC PD instead. The intention is not to alter the effect of the Mediation Pilot at all, simply to adjust the drafting approach. The Damages and Money Claims Committee (DMCC) concurs and has agreed the necessary amendments.

Post Meeting Note: amendments reflected in the 181st PD Update.

58. **Transparency and Open Justice Board:** Sara Cockerill J advised that the Lady Chief Justice's Transparency and Open Justice Board are seeking views on the Board's proposed key objectives. The consultation is due to close on 28th February 2025. **Post Meeting Note:** Response to consultation drafted and agreed out of committee.
59. **Renters' Rights Bill:** This is likely to form part of the agenda for the March/April meeting.
60. **Contempt of Court – Law Commission:** The Chair provided a brief oral update. The consultation closed on 29th November 2024 with over 130 written responses being received. The Law Commission is reviewing and analysing the responses, in order to prepare the final report. Although the Committee did not submit a formal response, views were incorporated within that which was provided on behalf of the judiciary. **THANKS** were noted for Mr Justice Pepperall's involvement in that.
61. **Aarhus Convention & the MoJ's Call for Evidence.** Further to this being mentioned at the November 2024 meeting (paragraph 71 of those minutes refer) It was **NOTED WITH THANKS** that Ben Roe has indicated a willingness to participate in any CPR related work.
62. **Member update:** The Chair was pleased to report that Ben Roe and Ian Curtis-Nye have both had second three-year terms approved by the Lord Chancellor. Mr Roe's term is extended to June 2028 and Mr Curtis-Nye's term is extended to Oct 2028.

Next meeting: 7th March 2025

C B POOLE
February 2025

Attendees:

Carl Poole, Committee Secretary
Kate Aujla, Deputy Committee Secretary & Policy Adviser
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)
Kelly Stricklin-Coutinho (new member - observing)
Faye Whates, HM Courts & Tribunals Service
Claire Green, MoJ (Item 2)
Josh Ivinson, MoJ (Item 3)
Scott Tubbritt, MoJ (Item 3)
David Hamilton, MoJ (Item 4)