



# Ministry of JUSTICE

FAMILY PROCEDURE RULE COMMITTEE  
In the Conference Suite, 2<sup>nd</sup> Floor Mezzanine,  
Queen's Building, Royal Courts of Justice  
At 10.30 a.m. on Monday 10 October 2016

## AGENDA

1. **Announcements and Apologies**
2. **Minutes of the last meeting: 12 September 2016**
3. **Matters arising**
  - Family Procedure (Amendment No. 3) Rules 2016
  - Amending the constitution of the Family Procedure Rule Committee to include a member of the Welsh Judiciary
  - Disclosure of information by CAFCASS
4. **Draft FPR Part 3A (Children and Vulnerable Persons: Participation in Proceedings and Giving Evidence) and Draft Practice Directions 3AA and 3AB in relation to children and vulnerable witnesses**

Update on the draft Rules and draft Practice Directions and timetable for progress
5. **Online Divorce Reform**

Update on the work of the online divorce reform project and consideration of the draft pilot Practice Directions
6. **Part 7 FPR 2010 – Statements of Truth**

Consideration of the draft Rules and draft Practice Direction amendments proposed to introduce a statement of truth into the D8 Petition
7. **Service of Protective Orders and Missed FGM Protection Order Consequential Provisions**

Consideration of draft Rule amendments to Parts 10, 11 and 16FPR in relation to service of protective orders
8. **Financial Remedies Working Group Update**

Update on the work of the Financial Remedies Working Group by HHJ Waller
9. **Any Other Business**
10. **Date of Next Meeting**

Monday 7 November 2016 at 10.30 a.m. at the Royal Courts of Justice

Secretary  
October 2016  
[FPRCsecretariat@justice.gsi.gov.uk](mailto:FPRCsecretariat@justice.gsi.gov.uk)



**FAMILY PROCEDURE RULE COMMITTEE  
In the Conference Suite, 2<sup>nd</sup> Floor Mezzanine,  
Queen's Building, Royal Courts of Justice  
At 10.30 a.m. on Monday 10 October 2016**

**Members**

<b>Sir James Munby</b>	<b>President of the Family Division</b>
<b>Mrs Justice Pauffley</b>	<b>Acting Chair of the Family Procedure Rule Committee</b>
<b>Marie Brock JP</b>	<b>Lay Magistrate</b>
<b>Richard Burton</b>	<b>Justices' Clerk</b>
<b>Melanie Carew</b>	<b>Children and Family Court Advisory Support Service</b>
<b>District Judge Carr</b>	<b>District Judge (Magistrates' Court)</b>
<b>Jane Harris</b>	<b>Lay Member</b>
<b>Michael Horton</b>	<b>Barrister</b>
<b>Hannah Perry</b>	<b>Solicitor</b>
<b>Her Honour Judge Raeside</b>	<b>Circuit Judge</b>
<b>William Tyler QC</b>	<b>Barrister</b>
<b>His Honour Judge Waller</b>	<b>Circuit Judge</b>

**ANNOUNCEMENTS AND APOLOGIES**

- 1.1** The President of the Family Division welcomed the new MoJ policy official who had joined the Family Justice Policy team from the Court of Protection and the Mental Capacity policy team, and was now working on the Children and Vulnerable Witnesses policy area having taken over from the previous official who has now left the department.
- 1.2** The President of the Family Division welcomed a new MoJ policy official who had recently joined the department and was observing this meeting.
- 1.3** Apologies were received from Lord Justice McFarlane, Mrs Justice Theis, District Judge Darbyshire and Dylan Jones.

**MINUTES OF THE LAST MEETING: 12 SEPTEMBER 2016**

- 2.1** The minutes of the last meeting were circulated on 5 October 2016 and were approved as a correct and accurate record of that meeting.

## **MATTERS ARISING**

### ***Family Procedure (Amendment No. 3) Rules 2016***

- 3.1** The President of the Family Division thanked all members of the Committee who signed the Rules out of Committee. These Rules amended Rule 14.2 of the FPR to provide for the automatic assignment of serial numbers in adoption applications. The Statutory Instrument will be sent to the Minister for consideration and approval on 11 October 2016 with a view to the amendment Rules being laid in Parliament on 17 October 2016 so they can come into effect on 7 November 2016.
- 3.2** Officials are working with HMCTS and the Design 102 team to undertake associated form and guidance notes amendments to facilitate the changes made by the Rules. These changes will not require any Practice Direction amendments.

### ***Amending the constitution of the Family Procedure Rule Committee to include a member of the Welsh Judiciary***

- 3.3** CAF/CASS Cymru have now agreed to seek full membership to the Family Procedure Rule Committee. This amendment will require an amendment to the constitution of the Committee. This will be made by an amending statutory instrument.
- 3.4** At the same time as this amendment is being made, the President of the Family Division recommended the removal of the position of District Judge (Principal Registry of the Family Division) from the Committee. This position has been vacant since Judge Waller's term ended and the creation of the single family court has led to a reduced number of judges available to fill this post making it redundant.
- 3.5** Judge Raeside raised concerns regarding the removal of a judicial post and its replacement with a CAF/CASS Cymru member and its potential impact on other members of the Committee. She noted that there is a call for members to be involved in working groups and the loss of a judicial member may require other judicial members to be more involved in working parties which has time constraints. She considered another District Judge member may be helpful in this regard. This was endorsed by Judge Waller who noted that the change of terminology to a District Judge would enable District Judges sitting in the family court to

be eligible for appointment to the Committee in their capacity as a District Judge as opposed to their eligibility by the court in which they sit.

- 3.6** The Secretary noted that a Judge from Wales will be being brought onto the Committee at the same time as the CAFCASS Cymru member as well which would also be an additional judicial member on the Committee.
- 3.7** Members agreed that there should be an additional district judge, a member of CAFCASS Cymru and a member of the judiciary from Wales brought into the Committee with the Committee's constitution amended accordingly. Officials will prepare a paper setting out the proposed changes for the Committee's consideration at the November meeting and it is anticipated that the new members will be attending meetings from April 2017.

**Conclusion: Members agreed the Family Procedure Rule Committee's constitution should be amended to remove the position of District Judge (PRFD) but include an additional District Judge, a member of the judiciary from Wales and a member of CAFCASS Cymru.**

***Disclosure of information by CAFCASS***

- 3.8** The President of the Family Division reminded members that this item was raised by Melanie Carew at the June 2016 meeting. He updated members that this item has not been progressed as it raised issues related to a case currently being heard before him. This case was last before him on Wednesday 5 October 2016 for an interim hearing and will be returning before him for a substantive hearing later in the year.
- 3.9** Melanie Carew confirmed Cafcass are not seeking an urgent resolution of this issue at this time and will await the outcome of the case before the President of the Family Division to progress this matter.

**DRAFT FPR PART 3A (CHILDREN AND VULNERABLE PERSONS: PARTICIPATION IN PROCEEDINGS AND GIVING EVIDENCE) AND DRAFT PRACTICE DIRECTIONS 3AA AND 3AB IN RELATION TO CHILDREN AND VULNERABLE WITNESSES**

- 4.1** The President of the Family Division noted the decision of the Minister, conveyed by letter from the Minister and the Deputy Director of MoJ Policy. The Minister's decision means that it is possible to proceed with the Vulnerable Witnesses Practice Direction on a quicker timetable and the Committee's views were sought on whether the two Practice Directions

should be separated at this stage. The President of the Family Division considered it to be preferable to proceed with the Vulnerable Witnesses Practice Direction on the timetable proposed by officials.

- 4.2** This was endorsed by Jane Harris who was conscious that the Committee had been dominated by discussions about the Children Practice Direction for some months with the Vulnerable Witness Practice Direction being given second priority. She considered it better to proceed with Vulnerable Witnesses Practice Direction on the timetable set out by officials whilst further consideration was given to the Children Practice Direction. This was endorsed by Will Tyler and Richard Burton.
- 4.3** Mrs Justice Pauffley noted that the Children and Young People’s Board will need notice of the Minister’s decision prior to the Children and Young People’s Annual Conference on 27 October 2016. She re-iterated delicate handling of this matter is required. This was endorsed by Hannah Perry who noted that other agencies will also need notification of the decision and will question why the two Practice Directions are now being separated. The President of the Family Division questioned whether the Minister will be attending the Children and Young People’s Annual Conference. The Committee were informed that no ministerial decision has been made about this yet.
- 4.4** The President of the Family Division noted that officials have suggested the potential types of changes to the Children Practice Direction which the Committee may wish to consider. The President of the Family Division invited Members’ comments on these proposals.
- 4.5** Hannah Perry raised concern that the proposed changes to the Children Practice Direction meant any re-draft would not be compliant with Article 12 of the United Nations Convention on the Rights of the Child. She noted that the proposed changes do not comply with the principle that all children should be given the opportunity to give their views in all areas of family law.
- 4.6** [REDACTED]  
[REDACTED] He considered the main question is whether the Committee asks the Minister to put forward revised proposals to the Committee for

consideration, or whether the Committee should use their skills and expertise to come up with ideas for the Minister to find a way forward.

**4.7** Will Tyler indicated that any proposed changes will not be compliant with the United Nations Convention on the Rights of the Child. However, he further considered that it is difficult to come up with proposals when full scope of the Minister’s concerns are unclear to the Committee. He considered the Committee had drafted a Practice Direction to cover children affected by proceedings and it was hard to see what scope there was for compromise. He suggested that more information is needed about what the Minister’s concerns are in order to come out with clear, alternative workable proposals. This was endorsed by Hannah Perry who noted that, in practice, guidance from the Family Justice Council is not being followed which is why it is essential to have changes embedded in the Rules and a supporting Practice Direction.

**4.8** Will Tyler considered it may be possible to excise aspects of the Children Practice Direction to create a final version that is amenable to the Minister, but this could not be stated to be Convention compliant. Michael Horton noted that it would be better to have a Practice Direction providing some facilities and protections that none at all as that would be more Convention compliant than the current position.

**4.9** [REDACTED]  
[REDACTED] He [District Judge Carr] considered that the less intensive measures could remain in the Practice Direction with further options being explored in respect of the more resource intensive areas. He questioned whether lessons could be learned from other countries which are Convention compliant.

**4.10** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] She [Deputy Director, MoJ Policy] further noted that the options proposed are intended to be constructive suggestions to assist the Committee but further suggestions would be welcomed by officials.

- 4.11** Mrs Justice Pauffley questioned whether the analysts who prepared the figures had a good understanding of what is required when children give evidence to a judge. She noted that in the future, the technology required will be available in the courtrooms for use, therefore it made little sense to not use it in cases involving children as well as in cases involving adult vulnerable witnesses.
- 4.12** Melanie Carew noted that the Children’s Practice Direction is drafted far wider than the issue of children giving evidence in family proceedings. She considered it to be necessary to implement what can be done now within the available resources and focus on the practicalities involved in children giving evidence within the proceedings. She further noted that the suggestions set out by the Deputy Director of MoJ Policy are a reflection of the current practice as most children who are the subject child of proceedings or a party to proceedings already have their views put before the court by Cafcass.
- 4.13** Michael Horton noted that the definition of a vulnerable witness does not need to exclude a child as a child can still be vulnerable. MoJ Legal responded that the intention in the Vulnerable Witnesses Practice Direction as currently drafted is that a child witness would not be included. The President of the Family Division noted the irrationality of this situation in practice and this was endorsed by Mrs Justice Pauffley, Judge Waller and Marie Brock. Will Tyler noted that if the Vulnerable Witnesses Practice Direction is to be proceeded with separately at this stage, it needs to include children as a vulnerable witness so children are eligible for the protections afforded by this Practice Direction. This was supported by Richard Burton who noted that one of the criteria for vulnerability is age which would include children. The Deputy Director of MoJ Policy noted that if the Practice Direction is to be re-drafted in this manner, it will need to be re-submitted to the Minister for approval prior to consultation.

**4.14** The President of the Family Division questioned what concerns have been raised by Cafcass and CAF/CASS Cymru. Melanie Carew noted that Cafcass have always raised concerns from the beginning about the resource implications from the Children Practice Direction as currently drafted which was not restricted to the area of children giving evidence in a contested hearing. However, she endorsed concerns of other Committee Members that if the Vulnerable Witnesses Practice Direction is not amended to include children, it will create an unprecedented situation in practice resulting in some persons being protected in family proceedings but children not being protected.

**4.15** Marie Brock recommended that children should be included within the Vulnerable Witnesses Practice Direction. Judge Raeside noted that Cafcass are still required to conduct assessments of suitability for Re W hearings. Mrs Justice Pauffley noted that there was a time when judges made such assessments without any input from Cafcass although conceded that such reports are very helpful in practice.

**4.16** Judge Raeside noted that the two Practice Directions should only be separated if children can be included in the definition of a vulnerable witness. She further noted that if this can be done then consideration needs to be given to how to proceed with work on the Children Practice Direction. [REDACTED]

**4.17** The President of the Family Division noted that it could be questioned whether the costings prepared by analysts were prepared on accurate assumptions. This was endorsed by Mrs Justice Pauffley who noted that it was possible that assumptions based on children wanting to see judges could have been taken to be far higher than would actually be the case in practice as the pilot in York showed fewer children wanting to see the judge than anticipated. Melanie Carew noted it was inevitable that all figures will be based on assumptions because no one can predict accurately the impact of the Practice Directions particularly in relation to how many judges will make directions in relation to a directly affected child.



- 4.18** The President of the Family Division questioned whether children could be included within the Vulnerable Witnesses Practice Direction with the drafting making it clear that this was not intended to put any extra resource implications on Cafcass or CAFCASS Cymru.
- 4.19** Judge Raeside noted that if the Practice Direction was drafted in such terms, where a subject child was a party to the proceedings there would be a Guardian appointed for the child therefore no further Cafcass input would be required. If the child was over eighteen (18), they would have a lawyer of their own to assist them in putting their evidence to the court. Melanie Carew observed in cases of a directly affected child under the age of eighteen, they could be considered a vulnerable witness and measures under this Practice Direction could be utilised to assist them in giving evidence to the court if required, without requiring Cafcass input. This was endorsed by Hannah Perry who noted that such children may be eligible for an intermediary if they required that level of support, although funding issues may exist in a situation where the child was not a party to the proceedings.
- 4.20** Judge Raeside observed that in practice, drafting in the manner suggested by the President of the Family Division could work. This was endorsed by Melanie Carew who noted that in cases of a third party non-subject child wanting to give evidence Cafcass would not be required to give a report on whether they should be giving evidence if this was provided for in the Practice Direction. The President of the Family Division acknowledged that in the absence of a statutory power, Cafcass cannot be compelled to provide a report in such circumstances, although judges may invite or request Cafcass to write a report. Jane Harris noted the extension of including children within the vulnerable witnesses practice direction would include a small but important group of people eligible for the protections included within this practice direction.
- 4.21** The President of the Family Division asked officials to re-draft the Vulnerable Witnesses Practice Direction to include children and seek the Minister's approval to the policy bringing Article 12 of the United Nations Convention of the Rights of the Child to his attention when doing so. The President of the Family Division re-iterated that it was Wednesbury irrational to distinguish between witnesses on the ground of age.

**4.22** The Deputy Director of MoJ Policy agreed that officials would bring an amended Vulnerable Witnesses Practice Direction back to the Committee to ensure Members were happy with the re-drafted wording prior to seeking Ministerial approval. Hannah Perry raised concerns about delay and questioned whether the policy outline could be given to the Minister and a decision sought on the outline. Judge Waller considered it better for the Minister to have sight of the final draft that the Committee have agreed so he is aware of the exact policy proposed by Members. Members agreed the re-drafted Vulnerable Witnesses Practice Direction would be agreed out of committee by the Children and Vulnerable Witnesses Working Group and then submitted to the Minister for approval.

**4.23** MoJ Legal noted that the discussion had centred on a wish for the Rules and Practice Direction on vulnerable persons as witnesses to be extended to children as witnesses. The Committee were asked whether they also wanted the draft rule on the participation of vulnerable persons in proceedings to be extended to cover children, or whether that aspect would be addressed as the work on the “children” side of the project proceeds. The President of the Family Division noted that children as parties to proceedings is already covered by the draft rules and the draft Practice Direction relating to children, therefore the draft vulnerable witness rules need not be amended to cover child participation. This was endorsed by the Committee.

**4.24**

[REDACTED]

**4.25** Hannah Perry questioned what information is to be shared at the Children and Young People’s Board and conference and other bodies that ask Committee members for information about the progress of work in this area. This was endorsed by Judge Raeside who noted she regularly receives requests for updates from the Judicial College.

**4.26** The Secretary informed Members that she will liaise with Private Office and Press Office to form agreed lines which can be shared with interested stakeholders by Committee members. This information will be shared with members as soon as possible and before the Children and Young People’s Conference.

- 4.27** Will Tyler questioned whether it was possible for the costings by analysts to be shared with the Children and Vulnerable Witnesses working group on a confidential basis so that any false assumptions could be corrected. The Deputy Director for MoJ Policy explained that analysts work to an agreed methodology and their assumptions are tested by policy advisers to make sure the estimated figures which are then put to Ministers are reasonable.
- 4.28** Marie Brock questioned whether it was possible to be given an indication of the key areas of concern then consideration could be given by the Committee to amending those areas. Judge Raeside endorsed this by noting it would then be possible to know what analysts consider to be the most expensive areas which could then be re-visited by the working group.
- 4.29** District Judge Carr questioned whether there has been any research in this area to inform the work and figures undertaken by the analysts. Marie Brock noted there was the research from the Yorkshire pilots which should have been used as the foundation for the figures compiled by the analysts. The President of the Family Division acknowledged there is no real research in this area.
- 4.30** Judge Raeside questioned whether it would be possible to invite analysts to provide more information about the methodology they used to gain a steer as to what is the most expensive aspect of the Children Practice Direction to the Children and Vulnerable Witness Working Group can determine what aspects should be prioritised. The Deputy Director of MoJ Policy agreed to speak to analysts and discuss what, if any, information could be shared with the Committee prior to the next meeting.

**Conclusion: Members agreed that the two Practice Directions for Children and Vulnerable witnesses should be separated and proceed on separate timetables**

**Actions:**

- 1) Officials to prepare re-drafted Vulnerable Witnesses Practice Direction for approval by Children and Vulnerable Witnesses Working Group out of committee prior to the November 2016 meeting**

- 2) **Once approval to amended Vulnerable Witnesses Practice Direction has been obtained from the Working Group, officials to commence work with analysts with a view to obtaining Ministerial approval in preparation for consultation**
- 3) **Secretary and MoJ Policy Officials to liaise with Private Office and Press Office for lines to present to interested stakeholders about the separation of the two Practice Directions and send to all Committee Members**

[REDACTED]

[REDACTED]

[REDACTED]

## **ONLINE DIVORCE REFORM**

- 5.1 The President of the Family Division updated Members that the Family Procedure Rules allow for the making of a Pilot Practice Direction in specific circumstances. Pilot Practice Directions will be being employed through each of the stages of the online divorce reform process. As the series of pilot Practice Directions updating each stage of the reform process will be fairly rapid, the Committee may not have the opportunity to consider the draft pilot practice directions in advance in the usual way. It has been agreed with policy officials that the President of the Family Division will sign new Pilot Practice Directions as required. The Committee will continue to be updated at meetings as to the progress of the online divorce reform project.
- 5.2 Judge Raeside endorsed this approach as long as the Committee is kept informed about the progress of the project. Judge Waller noted that the developments in the Pilot Practice Directions are largely technical in nature as it is about building a robust scheme that works and there would be little for the Committee to consider in any event at this stage as it is initially limited to certain categories of cases.
- 5.3 The President of the Family Division noted that initial stage of the reform process will only apply to litigants in person seeking a divorce. When the process commences in January 2017 it will be restricted to one divorce centre which is yet to be identified.
- 5.4 Hannah Perry questioned whether a sufficient subject sample will be obtained by using only one divorce centre, particularly taking into account that some people may require more IT

assistance with an online process than others. HMCTS responded that they will be working with Citizens Advice and Public Support Units to assist people with the online process and court staff will also be able to provide assistance where required. Feedback from court staff indicate that there are sufficient numbers of people calling up and seeking assistance with the process of commencing divorce procedures so HMCTS are satisfied that they will be able to obtain a sufficient sample to test the initial stages of the online divorce pilot. The aim is to get sufficiently low numbers using the system at the start to test the system in a live environment to identify any errors which can be corrected quickly.

- 5.5** Marie Brock questioned whether there will be testing across different platforms. HMCTS confirmed this will be occurring imminently. There will be a meeting occurring later in the week to undertake testing across different platforms and with different aids for those users who may require different types of assistance such as larger screens to ensure accessibility. This would ensure that the needs of different users are all taken into account with the online service.
- 5.6** Judge Waller noted that he has been working closely with HMCTS in developing the programme and started the process with a degree of scepticism as to whether it would all work. However, he has been impressed by the amount of work done by officials in trying to bring the language used up to date and the various practices involved in making the paper processes electronic. He acknowledged there remains a lot of work to do but believed it was the start of the way forward.
- 5.7** Hannah Perry questioned whether case workers would see the same screen as the user, particularly if assistance is to be offered over the phone. HMCTS responded that initially the user will not be required to save any documents. Instead there are a series of questions which will create a D8-like form at the end which the user will print and post to the court. As the process develops further through the online process, HMCTS intend to create a workable system which will build on lessons learned from other projects to create a user friendly system which will in time also be extended to professional court users.
- 5.8** Michael Horton questioned whether a decision has been made for how marriage certificates will be dealt with. HMCTS noted the process for dealing with marriage certificates has been guided by discussions with the President of the Family Division and policy colleagues. MoJ

Policy noted that the online system has been built in a manner that prescribes what users need to send in as part of the process. The process may initially require certificates to be posted, but is likely in time to allow for scanned copies to be submitted with the online application.

- 5.9** Queries were raised by Michael Horton about whether allowing scanned copies of certificates could lead to fraud. Judge Raeside questioned how fraud would be committed if an original marriage certificate was not submitted to the court. The President of the Family Division acknowledged there is a surprising amount of fraud in divorce cases. Judge Waller noted the supply of an original marriage certificate by the applicant does not always prevent fraud. Michael Horton conceded that there was no practical purpose in requiring an original marriage certificate as part of the online process when a scanned copy served the same purpose.
- 5.10** HMCTS further noted that currently a database of marriages in England and Wales is being built up and there will come a point when all marriages in England and Wales can be checked electronically. However, until this time the requirement for a marriage certificate is required. When marriages can be checked against this database it will then be the foreign marriages that become more difficult to manage through the process to ensure no fraudulent applications are made.
- 5.11** HMCTS talked members through the prototype of the online divorce application form. Comments were invited from members during the demonstration which HMCTS informed members would be taken into account in further updates of the product. The President of the Family Division noted that he had tested the product and deliberately used wrong dates and whilst some error messages pop up, in other areas it allowed the application to proceed and this would need to be corrected. HMCTS noted that they were aware of this and informed the Committee that the product will have all validation checks undertaken completely prior to release to the public.

**Conclusions:**

- 1. No comments were raised by members on the draft Pilot Practice Directions circulated prior to this meeting.**

2. **The President of the Family Division will consider and sign all Pilot Practice Directions and the Committee will be kept updated with the progress of the Online Divorce Reform project at meetings.**

## **PART 7 FPR 2010 – STATEMENTS OF TRUTH**

- 6.1 The President of the Family Division noted there will remain a D8 petition in paper alongside the proposed electronic online process. The proposed Rule amendments will enable a statement of truth to be added to the paper D8. Officials noted that when the paper D8 is amended, the online system will also then be amended to require a statement of truth.
- 6.2 The President of the Family Division considered wider questions linked to the divorce process and questioned when officials propose to uncouple divorce from financial applications. MoJ Policy responded there is no policy objection to this. This was further endorsed by HMCTS. However, HMCTS noted it is about being able to implement it in a manner which is cost efficient. A proposal has been submitted to HMCTS's IT suppliers and HMCTS are awaiting a response as to final costs and potential timescales before a decision is made as to whether this is something that can be proceeded with.

**Conclusion: No objections were raised by members to the draft rule amendments in relation to statements of truth which it is currently planned will come into effect in April 2017**

## **SERVICE OF PROTECTIVE ORDERS AND MISSED FGM PROTECTION ORDER CONSEQUENTIAL PROVISIONS**

- 7.1 Members considered Paper 7 and annexes Papers 7a – 7c.
- 7.2 MoJ Legal noted that at the September 2016 meeting, Members agreed that applicants should not serve applications or orders under Part 10 – that is the applicant him/herself should not be the person to hand papers to the respondent. The Rule amendments have been drafted for Members approval at this meeting. Members' views were sought in respect of Part 11 and how to address protection for applicants in the circumstances set out in the paper.

- 7.3** Michael Horton questioned the rationale behind the proposed Rule amendments as an occupation order does not require domestic violence to exist to be made although conduct is a factor to be taken into account by the court. He further questioned whether the Committee were being overly paternalistic as there may be circumstances where an applicant may be happy to hand over papers.
- 7.4** Judge Waller questioned whether there should be a discretion to allow service by the applicant him/herself. He noted there are situations where bailiff service is not satisfactory and legal aid no longer pays for process servers to attend court to collect papers which means courts will need to be more creative in how it thinks about service. Judge Raeside questioned whether judges really want to retain a discretion for service given most cases involve domestic violence in some way. She noted the aim of the amendments was to provide clarity that applicants seeking a protective order should not serve the application and order on the respondent themselves, as this would potentially be placing them more at risk, but that they should be making use of the alternative bailiff service. HMCTS confirmed that financial reasons (saving the costs of a process server) should not be a reason to not protect someone at risk. Hannah Perry noted that she was not aware of a problem getting legal aid funding for a process server to come to court to collect papers, but that did not prevent future problems occurring with future legal aid reductions.
- 7.5** District Judge Carr queried whether it was possible to order a friend of the applicant to serve the papers. Michael Horton considered there to be no problem with this in principle provided the friend would be willing to be a witness at court in the event of there being a dispute about service in the proceedings at a later stage.
- 7.6** Members agreed that Part 11 should be amended so that an individual who is an applicant (rather than, for example, a local authority applicant) should not hand papers over to a respondent, and that this should be the case whether the applicant was represented legally or not. The Committee further considered it was not necessary to consult on these changes given the minor nature of the proposed changes. Officials will present the draft statutory instrument to the November 2016 meeting and the proposed changes will come into effect in April 2017.



**Conclusion: The draft Rules for Parts 10 and 16 were approved and Part 11 should be drafted so that an applicant who is an individual cannot him/herself hand papers to a respondent. Members further agreed these changes do not require consultation.**

#### **FINANCIAL REMEDIES WORKING GROUP UPDATE**

- 8.1** Judge Waller noted there has been no significant progress made in this area over the summer period due to other work taking priority. There remains work outstanding to implement some of the recommendations of the Financial Remedies Working Group. The Working Party has not been able to meet to consider the way forward.
- 8.2** There is also on-going work to consider reforms of Form E. MoJ Policy updated the meeting that following lessons learned from the Form E and Form E1 errors it has become clear that Form E needs a complete overhaul but this is a substantial piece of work which will require input from the policy team. Ideas are needed from the Working Group after which a timetable of proposed reform can be devised.
- 8.3** The Working Party will meet prior to the November 2016 meeting and set out the outstanding issues and look at what ideas might be implemented in what timescale. Consideration will also be given to what Rule changes can be implemented for April 2017 and on a longer term scale and what Practice Direction amended may be needed.

**Conclusion: Working Party to meet and set out a list of outstanding issues with proposed timescales for implementation and identifying whether Rule and/ or Practice Direction amendments are required**

#### **ANY OTHER BUSINESS**

- 9.1** Judge Raeside questioned whether the Committee need to consider any work in preparation for Brexit. Judge Waller noted that there is an International Family Law Committee which is responsible for considering the implications of Brexit for family law, particularly the international elements of family law. He did not consider there to be anything for the Committee to commence work on at this stage. He updated Members that there are a lot of pieces of European legislation affecting family law which will need to be preserved in

domestic law and there remains a lot of work to be done in this area. Judge Waller confirmed he is on this Committee along with MoJ officials and will refer any matters requiring consideration by the Committee as required.

#### **DATE OF NEXT MEETING**

**10.1** The next meeting will take place on Monday 7 November 2016 at 10.30 a.m. at the Royal Courts of Justice.

**10.2** There will be an open meeting of the Family Procedure Rule Committee on Monday 5 December 2016 at 10:30 a.m. at the Royal Courts of Justice.

#### **Secretary**

[FPRCsecretariat@justice.gsi.gov.uk](mailto:FPRCsecretariat@justice.gsi.gov.uk)