



# 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 3 April 2017

## AGENDA

1. **Announcements and Apologies**
2. **Minutes of the last meeting: 6 March 2017**
3. **Matters arising**
  - *Extradition in criminal and family proceedings*
  - *Administrative de-linking of divorce and financial remedy proceedings*
  - *Vulnerable Witnesses Practice Direction*
  - *Financial Remedies Working Group Update*
4. **Functions of the family court that may be carried out by Justices' Clerks and Assistant Justices' Clerks**

Consideration of the draft statutory instrument authorising legal advisers to carry out certain functions within family proceedings
5. **Disclosure of Information to persons who are not a party to the proceedings**

Consideration of how the Committee may resolve issues relating to the disclosure of information about proceedings to adult children who are the subjects of the case and allocation of priority and timescales
6. **Amendments to MIAM Provisions in family proceedings**

Consideration of the forthcoming amendments to the legal aid domestic violence provisions, and potential amendments to Practice Direction 3A (which largely mirrors the legal aid provisions)
7. **Any Other Business**
8. **Date of Next Meeting**

Monday 8 May 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee  
April 2017

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



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**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 3 April 2017

## Members

<b>Sir James Munby</b>	President of the Family Division
<b>Mrs Justice Pauffley</b>	Acting Chair of the Family Procedure Rule Committee
<b>Marie Brock JP</b>	Lay Magistrate
<b>Richard Burton</b>	Justices' Clerk
<b>Melanie Carew</b>	Children and Family Court Advisory Support Service
<b>District Judge Carr</b>	District Judge (Magistrates' Court)
<b>District Judge Darbyshire</b>	District Judge (County Court)
<b>Jane Harris</b>	Lay Member
<b>Michael Horton</b>	Barrister
<b>Mrs Justice Theis</b>	High Court Judge

## **ANNOUNCEMENTS AND APOLOGIES**

- 1.1 The President of the Family Division welcomed all members to the meeting.
- 1.2 Apologies were received from Lord Justice McFarlane, HHJ Raeside, HHJ Waller, Will Tyler, Hannah Perry and Dylan Jones.

## **MINUTES OF THE LAST MEETING: 6 MARCH 2017**

- 2.1 The minutes of the meeting of 6 March 2017 were circulated on 28 March 2017.
- 2.2 District Judge Carr had one amendment to the minutes. The last sentence in paragraph 5.8 now reads, "*He noted that there is a protocol for disclosure in relation to immigration which may not always be followed in practice if it is not sufficiently known to practitioners and court users.*"
- 2.3 Subject to this amendment, the minutes were approved as a correct and accurate record of that meeting.

## **MATTERS ARISING**

- ***Extradition in criminal and family proceedings***
- 3.1 The Secretary to the Family Procedure Rule Committee informed members that the minutes of the Criminal Procedure Rule Committee meeting held on 3 February 2017 (Paper 3) had been circulated to all members. She referred members to Section 11 on page 7 of those minutes which set out that Committee's view on the paper about the impact of extradition in concurrent criminal and family proceedings. The Criminal

Procedure Rule Committee have requested the authors of the paper to provide further information, including draft amendments, which will be submitted before its next meeting on 28 April 2017 for further consideration at that meeting. The Secretary of the Family Procedure Rule Committee will await those proposals and the minutes of that Criminal Procedure Rule Committee meeting during which these proposed amendments are discussed and share those with this Committee in due course so members may consider how to proceed with this item.

- 3.2** Mrs Justice Theis questioned whether this matter would remain an agenda item. The Secretary to the Family Procedure Rule Committee responded that the matter will be placed on the agenda for either June or July 2017 once further information is known about the intended response of the Criminal Procedure Rule Committee.

- ***Administrative de-linking of divorce and financial remedy proceedings***

- 3.3** Members considered the contents of paper 3a which provided an update of the progress in relation to the implementation of administrative de-linking in family proceedings.
- 3.4** HMCTS informed members that the costs of enhancements to Familyman to enable administrative de-linking to occur in practice have been approved. This enhancement will be implemented towards the end of April 2017.
- 3.5** HMCTS intend to launch a pilot once the enhancement has been implemented. This will be tested in the South West Region which has been approved by the President of the Family Division as being the pilot site. HMCTS will work with the President of the Family Division to agree the contents of a letter to Designated Family Judges updating them about this change. HMCTS updated members that the pilot period will give staff and judiciary the opportunity to resolve unforeseen issues that may arise. HMCTS acknowledged the importance of getting the right information on the financial file upon issue of the application at hearing centres.
- 3.6** HMCTS referred members to paper 3a and the details contained therein about the preparatory work being undertaken to facilitate a smooth transition. A single point of contact has been set up for each area and guidance for court staff is currently being drafted. At the moment, it is intended for the pilot to last one month subject to any issues that may arise. In the event of a successful pilot, HMCTS intend to roll out administrative de-linking to the other regions shortly thereafter.
- 3.7** District Judge Darbyshire questioned the exact date the changes to Familyman would be implemented. HMCTS noted that the changes relating to administrative de-linking are being implemented alongside other maintenance enhancements to the system. There are releases launched every weekend in April 2017 and it is not possible to determine which release will contain the enhancement in relation to administrative de-linking. HMCTS confirmed the latest date this change could be implemented would be 30 April 2017 if not sooner.
- 3.8** Michael Horton asked whether, when an applicant lives in a different region to where the application is issued, the whole paper file will be moved to the other

court. HMCTS confirmed this would be the practice. He [Michael Horton] queried who would decide the local court for the parties. HMCTS noted that this is a delegated administrative decision which will be made by court staff issuing the application. Michael Horton further questioned whether there are any plans to amend the financial application forms to give applicants the opportunity to identify the court where they wish their case to be heard. HMCTS noted that there is a wider review being planned for financial remedy forms and this is something that could be considered as part of that review. He [HMCTS] also noted that the lack of customer choice as to the hearing venue may be something that is raised as part of the feedback during the pilot period.

**3.9** Jane Harris questioned whether any feedback had been received from court users in the pilot area. HMCTS noted that the pilot is due to commence in May 2017 and only then will the amendments be used by service users. However, staff have been talked through the new process so they can understand how it will work in practice and the benefits of the new system.

**3.10** Richard Burton questioned the length of the pilot. HMCTS confirmed that the pilot is intended to last for four weeks as the changes being made are not significant to the operation of the business by judiciary and court staff. The pilot is being undertaken as a precaution to ensure there are no unforeseen issues and that the enhancements provided are fit for purpose. Richard Burton also queried when HMCTS intend to roll out the changes nationally. HMCTS responded that the intention is to roll out the changes nationally from June 2017 provided the pilot does not raise any unforeseen issues. The impact on the user will be that they have two different addresses to send their divorce and financial applications. Whether this causes any difficulties to the court user in practice will be determined by the pilot. HMCTS further noted that this is a temporary process within the current structure as divorce reforms continue with Familyman and the Online System to move towards a reformed service. HMCTS acknowledged that the process for the user will change again when the family jurisdiction embraces a more digital way of working. The President of the Family Division noted that this is a welcome advance to commence the process of separating money and financial remedy proceedings.

- ***Vulnerable Witnesses Practice Direction***

**3.11** MOJ policy updated members that the consultation on the Vulnerable Witnesses Practice Direction closed on 17 March 2017. A total of 20 responses were received from the following persons / organisations:

- The Official Solicitor
- CAFCASS Cymru
- Family Justice and Young Person's Board
- Resolution
- Legal Action for Women (and others)
- JCS
- NSPCC
- Families Need Fathers
- Magistrates' Association
- Family Law Bar Association (2 responses)

- Michael Walsh (American Bar)
- Association of District Judges
- Family Justice Council
- Northumbria Centre for Evidence and Criminal Justice Studies
- Rights of Women
- Society of Professional McKenzie Friends
- Danny Debideen (litigant in person)
- K. Kelleher
- Penny Williams (retired family panel chair)
- The Law Society

**3.12** Officials are analysing the responses received and will provide members with a full update on the consultation responses and any proposed revisions to the Practice Direction at the meeting in May 2017. MoJ Policy noted that part of the analysis will be to identify recurring themes within the consultation responses so members can consider what drafting amendments may be required.

**3.13** The President of the Family Division questioned whether the responses suggest the need for a fundamental change or minor drafting amendments. MoJ Policy responded that the analysis of responses has only just commenced but one recurring theme so far is a fundamental issue in relation to litigants in person. The responses have not suggested any particular amendments but instead raise concerns about whether litigants in person would be able to understand the Practice Direction as currently drafted.

- ***Financial Remedies Working Group Update***

**3.14** Further to the paper presented to the March meeting, officials are dividing the Financial Remedies Working Group work into two tranches, each with two elements:

- (1) strengthening the need for a FDR and amending the rules around applications under Part 3 Matrimonial and Family Proceedings Act 1984 so the default position is that permission applications are made without notice
- (2) full procedural delinking, and a revised Part 9 “fast-track” procedure.

**3.15** On the first tranche, officials have considered the working group’s draft amendments and have some queries in relation to the draft rules on Part 3 Matrimonial and Family Proceedings Act 1984, which have been put to Judge Waller. Officials will discuss with the President of the Family Division the proposed amendments to this Part which relate to the allocation of these cases in the High Court. On receipt of Judge Waller’s comments and following discussion with the President of the Family Division, officials propose to put revised drafts to the Committee for approval at the May meeting, with a view to rule amendments coming into force in / around July. Officials are also looking at what form amendments are required to support this tranche of work.

**3.16** On the second tranche above, officials hope to put draft amendments to the May meeting, although this tranche is not currently planned to come into force until at least the end of the year. This timescales takes into account that there are elements which are likely to require a consultation exercise as well as quite detailed form,

leaflet, HMCTS job card and Gov.uk changes, as outlined in the paper for the March meeting.

- 3.17** The President of the Family Division re-iterated the need to implement full procedural de-linking by the end of 2017 with any new rule changes to take effect early January 2018. Whilst he welcomed the advance of administrative de-linking, he considered there to be three important reasons why procedural de-linking was essential to divorce reforms:
- (1) this was a past recommendation by the Financial Remedies Working Group
  - (2) it is not possible to create a new online divorce system without implementing full procedural de-linking as to do so would result in the creation of a system which would need to be revised within a short period of time
  - (3) there is a pressing need to have a standard form of application for use in relation to all financial remedy applications in the family court.
- 3.18** The President of the Family Division brought to members' attention an article in family law by His Honour Judge Hess and Jo Miles. He noted their recommendation for national specialised family financial remedy units which would assist the work loads of other family courts across the country. The President of the Family Division supports this idea and intends to launch a consultation on this proposal in the coming months. The President of the Family Division also noted plans to expand the financial remedies unit in the Central Family Court to apply to all courts within London. This expansion is supported by all the London Designated Family Judges.
- 3.19** The President of the Family Division acknowledged the importance of administrative de-linking, as this will recognise for the first time that money and divorce are two separate things. He considered it imperative that the any rule and practice direction amendments required to support procedural de-linking should be identified by the end of 2017 for implementation in early 2018. Whilst recognising that form changes are required, the President of the Family Division considered it necessary that the implementation of these form amendments be delayed until full procedural de-linking can be achieved.
- 3.20** The President of the Family Division questioned whether the Ministry of Justice would be able to support procedural de-linking to this timetable. MoJ Legal noted that the first tranche of work is currently being worked on and it is intended that draft rule amendments would be put before members for consideration at the May meeting. In relation to the second tranche of work, officials are working to the timetable set out in the paper produced for the March FPRC meeting. That work is likely to require consultation which will need to be factored in when deciding any final implementation date. The key element of the consultation will relate to the proposed changes to Part 9 FPR, to ensure the right cases are allocated to the correct track to enable a speedier resolution of the proceedings. District Judge Darbyshire and Michael Horton endorsed this as being the purpose of the consultation in relation to the fast track procedure.
- 3.21** District Judge Darbyshire also noted that the proposed figure of £25,000 for lump sum claims falling into the fast-track procedure (which was chosen by the working

party as being similar to the fast track limit in civil proceedings) was an arbitrary figure. Pending the outcome of the consultation, the working party would not oppose a different figure being used.

- 3.22** The President of the Family Division questioned the frequency with which cases in the sum of £25,000 appear before the courts. District Judge Darbyshire and Michael Horton noted that these proceedings occur particularly in relation to Schedule 1 Children Act 1989 cases. District Judge Darbyshire noted that it particularly arises in maintenance enforcement applications due to the amount of the arrears.
- 3.23** MoJ Legal noted that the aim to get the required rule and practice direction amendments in place for the end of 2017 is currently considered to be realistic and achievable provided support is provided for form amendments and consideration of the gov.uk content. Officials will work to the timetable outlined in the March 2017 meeting milestone paper. This timetable was endorsed by MoJ Policy.
- 3.24** The President of the Family Division questioned whether work has commenced in relation to the second tranche. MoJ Legal noted that the Committee's Financial Remedies Proceedings Party has drafted rules in relation to procedural de-linking and a shortened Part 9 procedure but this remains to be considered by MoJ Legal. Michael Horton noted that the working group prepared draft rules in relation to an amended Part 9. District Judge Darbyshire noted that the rules will need to be checked for any consequential amendments that may be required. MoJ Legal agreed to consider these drafts and would endeavour to provide draft rules for the May meeting.
- 3.25** The President of the Family Division noted that the family court continues to have no jurisdiction over proceedings brought under the Trusts of Land and Appointment of Trustees Act 1996. These proceedings can only be issued in the county court or the Family Division of the High Court. It is possible for a family judge capable of sitting in both the civil and family jurisdictions to hear these cases. Michael Horton noted that this practice works quite well in joint county court/ family court centres even though it is not an ideal situation. MoJ Legal noted that the Family Procedure Rules cannot amend the existing position in relation to jurisdiction. The President of the Family Division noted that there are particular problems at the Central Family Court which is not a county court.
- 3.26** Mrs Justice Theis questioned whether a judge with a civil ticket may still hear the case at a venue which is not a county court. MoJ Legal confirmed this was possible as the location does not affect the validity of the proceedings provided an appropriately authorised judge is hearing the case.
- 3.27** The President of the Family Division questioned whether it would be possible for an amendment to the 1996 Act to be provided for in the Prisons and Courts Bill. MoJ Legal noted that it is very likely that this would not be within the scope of the current Bill.

- 3.28** District Judge Darbyshire noted that it is important that the county court retains jurisdiction over these types of proceedings as not all cases issued under the 1996 Act will relate to family proceedings. Michael Horton endorsed this noting that the lack of a clear proceedings for dealing with types of proceedings may result in people issuing in a jurisdiction they consider to be favourable to their interests. He further endorsed the need for a clear procedure within the Family Procedure Rules specifying how these types of proceedings should be dealt with in practice to ensure a consistent national approach.
- 3.29** The President of the Family Division questioned the extent of the amendments in relation to applications under Part 3 of the Matrimonial and Family Proceedings Act 1984. MoJ Legal noted that this remains under consideration by officials who have sought Judge's Waller's views in relation to the proposed amendments. Following conversations with Judge Waller, officials will write to the President of the Family Division with a proposal prior to the May 2017 meeting.

#### **FUNCTIONS OF THE FAMILY COURT THAT MAY BE CARRIED OUT BY JUSTICES' CLERKS AND ASSISTANT JUSTICES' CLERKS**

- 4.1** Members considered the contents of Paper 4 and its annexes (Papers 4a and 4b).
- 4.2** The Secretary of the Family Procedure Rule Committee drew members' attention to the draft statutory instrument which was prepared based on functions members had considered to be capable of being performed by a Justices' Clerks or Assistant in December 2015. Members did not raise any amendments to the draft statutory instrument.
- 4.3** The Secretary of the Family Procedure Rule Committee sought members' views on two additional functions under Rule 7.10 (3) (a) and Rule 7.14 following further policy consideration of John Baker's proposals.
- 4.4** In relation to the function under Rule 7.10 (3) (a) which relates to directing that a named person should not be a co-respondent (the default position is that they would be), the Secretary of the Family Procedure Rule Committee noted that MoJ's view is that this function could be capable of being performed by a justices' clerk or assistant where the parties agree to a direction being made that a named person should not be a co-respondent. A similar provision exists in relation to proceedings covered by Part 12 of the Family Procedure Rules 2010: see Rule 12.3 (3) of the Family Procedure Rules 2010.
- 4.5** In relation to the function under Rule 7.14 which relates to permitting an extension of time beyond 21 days to allow a respondent to file their own application for a matrimonial or civil partnership application, the Secretary of the Family Procedure Rule Committee noted that MoJ's view is that this function could be capable of being performed by a justices' clerk or assistant. This function requires justices' clerks and assistants to consider the giving of permission to a respondent to file their own application for a matrimonial or civil partnership dissolution after the prescribed time for filing one has passed. In the event of permission being granted, the



substantive application will still need to be dealt with by a judge. This stage of the proceedings does not necessarily require consideration of the prospects of success. In the event of an extension being granted having considered the reason for the delay, the court can consider the merits of the application at the same time when considering the applicant's application.

- 4.6** The Secretary of the Family Procedure Rule Committee noted that in relation to both proposed new functions, the justices' clerk and assistant retain the discretion to refer the matter to the court if, in their opinion, it is inappropriate for them to deal with it. Additionally, these functions are likely to be exercised in a small number of cases.
- 4.7** Marie Brock, Richard Burton and District Judge Darbyshire endorsed the proposal for these two additional functions to be capable of being performed by a justices' clerk or assistant.
- 4.8** District Judge Carr questioned whether, in relation to the function under Rule 7.10 (3) (a), parties could collude to exclude a valid co-respondent. MoJ Legal noted that in all likelihood there are only a small number of cases where co-respondents are named in the petition as the tenor of the rules is to avoid naming co-respondents where possible. The function is more likely to be exercised in a situation where the petitioner has included a co-respondent's name initially but at a later date considers it unnecessary for that person to be a party in the proceedings.

**Conclusion: Members agreed that these two additional functions should be capable of being performed by a justices' clerk or assistant.**

- 4.9** The Secretary of the Family Procedure Rule Committee informed members that upon preparing the amended statutory instrument, this will be sent to the President of the Family Division for consultation, prior to being submitted to the Minister.
- 4.10** Marie Brock questioned the impact of the forthcoming changes to the role of the Justices' clerk and legal advisers in the Prisons and Courts Bill. The Secretary to the Family Procedure Rule Committee responded that she has met with members HMCTS and policy colleagues working in the court reform team to discuss how the bill provisions may be implemented in practice. It is currently in its early stages and no decisions have been made. MoJ Legal noted that although the existing provisions relating to Justices' Clerks and Assistants will be removed, it is likely that there will be something identical setting out the functions capable of being performed by persons who are not judicial members.

## **DISCLOSURE OF INFORMATION TO PERSONS WHO ARE NOT A PARTY TO THE PROCEEDINGS**

- 5.1** Melanie Carew sought members' views on how it may be possible to resolve issues relating to the disclosure of information about proceedings to adult person(s) who were the subject child (ren) of the case. The President of the Family Division acknowledged that the case he is dealing with which considers this issue remains on-

going and that the Committee need not await his judgment in that case before proceeding to consider the issue raised by Melanie Carew.

- 5.2** Melanie Carew accepted this issue is not widespread and only applies to a small number of cases. She considered, as a matter of principle, young adults should be allowed to access records about proceedings which they are the subject of. She noted that children who are the subject of public law proceedings are able to receive this information as they were a party to the proceedings and it is unsatisfactory to be unable to disclose information to adult persons who as a child were the subject of private law proceedings.
- 5.3** Melanie Carew questioned whether it would be possible to amend Practice Direction 12G to permit Cafcass and Cafcass CYMRU to disclose to a subject child information about the proceedings. She noted that they have a right under the Data Protection Act 1998 to access their personal information but the current bar on disclosure means documents provided under the 1998 Act are redacted to prevent them from accessing the details of their own case. She further considered it would place Cafcass and CAFCASS Cymru on a more equal footing with Local Authorities who are permitted to disclose information about proceedings where the child is a party to them.
- 5.4** The President of the Family Division considered that there may be a problem with the term “subject child” and its interpretation in practice. He noted that in care cases, although the child who is the subject of the proceedings will be a party, there may be an investigation into other children in the family who are not a party to proceedings but central to the findings made by the court. This also applies to wardship proceedings where the child is not a party but clearly the subject of the proceedings. Melanie Carew proposed focusing on the child whose welfare is in question in a particular case. She acknowledged that this issue is most likely to be raised in relation to adult children who were the subject of private law or wardship proceedings.
- 5.5** Michael Horton noted that Practice Direction 12G is permissive in that it permits specified persons to disclose information to specified others for specific purposes without that disclosure being a contempt of court. If this amendment was to be made, CAFCASS would not be committing a potential contempt were they to disclose information in response to requests received, but they would be under no obligation to do so. Melanie Carew acknowledged this point but considered it necessary for the drafting to be clear to avoid satellite litigation between Cafcass (or CAFCASS Cymru) and the person who is unhappy with any decision by the organisation not to disclose the requested information. MoJ Legal noted that the extent of the Practice Direction 12G is to say that it would not be a potential contempt to make a disclosure, but Cafcass would need to implement clear guidelines setting out the circumstances in which disclosure would be permitted. Melanie Carew accepted the need for this.
- 5.6** The President of the Family Division noted that an additional problem may be in cases where the supporting material discloses to the adult requester for the first

time that there was another child involved in the proceedings in relation to whom the adult's parents had serious findings made against them. District Judge Darbyshire endorsed this noting that there may also be serious concerns or issues in the parents' past which the court may not necessarily expect a child to later be aware of. District Judge Darbyshire further noted that as the Practice Direction's purpose is allow a specified body to disclose information for the purposes specified within the Practice Direction, any amendments to allow Cafcass to disclose information without it amounting to a contempt of court would in practice mean that courts would rely on Cafcass to ensure appropriate information is provided based on the circumstances of the request.

- 5.7** The President of the Family Division noted that if this amendment was proceeded with, the issues are likely to arise in more contentious and controversial cases. Particular difficulties may arise where there is disclosure of information about other parties in the proceedings. This may have an adverse impact on those other parties particularly if the information is shared without giving that party prior notice of the intended disclosure. Mrs Justice Theis noted that there would need to be a transparent policy providing guidance so people making applications for information will know what guidance is being applied in the determination of what information is disclosed.
- 5.8** Melanie Carew acknowledged the need for this and noted that the interaction between family proceedings and obligations under the Data Protection Act 1998 is not very clear. Currently, on receipt of requests for disclosure, Cafcass are sending documents with all third party information redacted which may not necessarily make sense to the person receiving disclosure. She questioned whether it would be preferable to include a list of specified documents which may be shared within the Practice Direction. The President of the Family Division noted that an arbitrary list of documents will not solve the problem as the sensitive material may be within any document so prescribed.
- 5.9** Melanie Carew conceded that there are difficulties in relation to this but the underlying principle is that young people need to know who they are. She considered it would be a rare situation where there is an issue in the case that is so controversial that it is in the young person's interest for this to be withheld. She acknowledged the need for clear guidance and that welfare would be a factor in deciding what information, if any should be disclosed.
- 5.10** Jane Harris noted that a further concern arises in relation to an adult asking for information which could adversely impact on other children still living with one parent. This raises risk about the child being severely affected by information that would not otherwise have been disclosed to them until they were an adult. In this situation it is not possible to rely on the expectation not to disclose information received further. She considered this risk to further support the need for Cafcass to have discretion over what information is disclosed. District Judge Darbyshire noted that it is not possible to place any reliance on the provision in the Practice Direction that information disclosed in accordance with the Practice Direction cannot be

disclosed further. He noted that in practice, the threat of contempt of court will not make a difference to people's actions.

- 5.11** Melanie Carew agreed that any discretion conferred on Cafcass could be used widely. Mrs Justice Theis questioned whether the provisions would apply to surrogacy cases where the child is a subject of the proceedings but not a party to them. Melanie Carew noted that the 1998 Act does not apply to surrogacy or adoption proceedings but any guidance prepared by Cafcass to support this would need to make this clear.
- 5.12** The President of the Family Division considered that an amendment to the Practice Direction so that it would not be a potential contempt of court for Cafcass to disclose in specified situations would be helpful. He noted that children are entitled to know why a decision has been made; and therefore in principle, children as adults should be able to access information about the proceedings with a transparent policy for why such requests may be refused. He further noted that whilst welfare may be a criteria, it cannot be the sole criteria due to the need to take into account third party interests and the need to balance the competing Article 8 rights between the person requesting the information and the rights of other children and adults in the proceedings. He believed it necessary for there to be a draft of the proposed amendment before the Committee can consider this further. The draft would need to address concerns about what constitutes a subject child and which proceedings are included or excluded. It will then be for Cafcass to consider what guidance is needed to support this amendment.
- 5.13** Mrs Justice Theis endorsed this noting that there is an inconsistency and lack of credibility within the existing system which distinguishes between children who are a party to the proceedings and children who have decisions made about them but are not a party to the proceedings. Mrs Justice Pauffley noted that Cafcass may find it helpful to find out what policies local authorities utilise when they exercise their decision making function to either allow (or not allow) an adopted child to have access to their records.
- 5.14** District Judge Carr noted that the disclosure in the circumstances described is very different in nature to the types of disclosure within the Practice Direction which relates to disclosure to officials or for the purposes of proceedings. He further noted that this differences pushes onto Cafcass a very important and significant decision-making role which would not apply to other bodies within the table. He considered it essential that Cafcass have a carefully drafted policy capable of withstanding judicial review which is the ultimate remedy for a person aggrieved by a decision not to disclose information.
- 5.15** Melanie Carew conceded that there is more work to do before the Committee can progress this matter. Members agreed that this matter would be returned to the Committee with fuller draft proposals once Cafcass have considered their position.

## **AMENDMENTS TO MIAM PROVISIONS IN FAMILY PROCEEDINGS**

- 6.1** Members considered Paper 6.
- 6.2** MoJ Policy noted that the legal aid evidence criteria in cases of domestic violence are likely to be widened. Officials are currently awaiting a decision from the Secretary of State for approval of the proposed changes. Members were invited to consider whether the MIAM exemption provisions within Practice Direction 3A should continue to mirror the legal aid domestic violence evidential requirements. If members agreed this should continue, members were asked to consider agreeing the changes in principle at this meeting with a final Practice Direction amending document being submitted to the President of the Family Division for approval with a view to this being implemented in June 2017. This would be in line with the intended date of implementation for the legal aid evidential provisions. If time permitted, officials would endeavour to return a draft amending document to the May meeting, but if this is not possible, members will be updated of the outcome.
- 6.3** The President of the Family Division questioned the rationale for not continuing to mirror the legal aid provisions into the MIAMs provisions. MoJ Policy noted that there is no rationale for this and through the proposed amendments officials are endeavouring to avoid the situation where someone has legal aid granted to them on grounds of domestic abuse but are still required to attend a MIAM.
- 6.4** All members agreed that the MIAM exemption provisions in relation to domestic abuse should continue to mirror the legal aid evidential requirements for domestic abuse. Members also agreed that pending the timescales for implementation, the Practice Direction amending document may be submitted to the President of the Family Division for consideration and approval with members being updated at the next meeting.
- 6.5** Melanie Carew questioned whether there is a MIAM exemption in the situation where grandparents are seeking a section 8 Order which is not opposed. The President of the Family Division noted that there is provision for a MIAM exemption order where a consent order is submitted to the court. Members agreed it may be appropriate to extend the definition of a consent order to include cases where the application is not opposed. MoJ Legal noted that further consideration of this issue is required by officials before a definitive answer can be provided.

## **ANY OTHER BUSINESS**

- 7.1** No other business was raised at the meeting.

## **DATE OF NEXT MEETING**

- 8.1** The next meeting will be held on Monday 8 May 2017 at 10.30 a.m. at the Royal Courts of Justice

Secretary to the Family Procedure Rule Committee  
April 2017

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