



Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In the Conference Suite, 2nd Floor Mezzanine,
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 8 October 2018

AGENDA

- 1. Announcements and Apologies**
- 2. Minutes of the last meeting: 16 July 2018**
- 3. Matters arising**
 - a) Update on pilot practice direction 36H to improve notification to the police when a FGM or FM protection order is made
 - b) Family Procedure (Amendment) No 2 Rules 2018
- 4. Priorities of the Family Procedure Rule Committee**
Review of outstanding work before the Committee.
- 5. Questions to the Committee**
Questions to members of the Family Procedure Rule Committee from guests attending the open meeting
- 6. Presentation of Digital Working pilots**
 - Virtual walk through of the digitisation of the online financial remedy process by HMCTS
 - Presentation of C100 digital pilot
 - Presentation of C110A digital reform pilot

BREAK FOR LUNCH

- 7. Proposed changes to make deduction orders for Child Maintenance payments from jointly held bank accounts**
A proposal from Department of Work and Pensions to amend Practice Direction 30A to ensure the appeal rules apply to joint account and unlimited partnership account holders, to reflect the changes being made to the Collection and Enforcement Regulations.
- 8. Pilot Practice Direction 36J – Legal Bloggers Pilot to allow persons colloquially referred to as “legal bloggers” to attend family court hearings on a similar basis to accredited media representatives**
Discussion on additional safeguards to support the pilot

9. Children and family proceedings

Review of existing measures and guidance available to give children a voice in the proceedings.

10. Scientific evidence in family proceedings

Consideration of the paper from MoJ policy and to identify next steps.

11. Any Other Business

- a) Form C110A amendments in light of Re A-F (Children(No.2) [2018] EWHC 2129
- b) FPRC Working Groups

12. Date of Next Meeting

Monday 12 November 2018 at 11.00 a.m. at the Royal Courts of Justice

Simon Qasim – Secretary

September 2018

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Ministry of Justice

FAMILY PROCEDURE RULE COMMITTEE
In the Conference Suite, 2nd Floor Mezzanine Level
Queen's Building, Royal Courts of Justice
At 11.00 a.m. on Monday 8 October 2018

Present:

Sir Andrew McFarlane	President of the Family Division
Lord Justice Baker	Acting Chair
Mrs Justice Theis	High Court Judge
Melanie Carew	Cafcass
Rob Edwards	Cafcass Cymru
His Honour Judge Godwin	Circuit Judge
District Judge Hickman	District Judge
Fiona James JP	Lay Magistrate
Hannah Perry	Solicitor
Her Honour Judge Raeside	Circuit Judge
Michael Seath	Justices Clerk
District Judge Suh	District Judge
William Tyler QC	Barrister
His Honour Judge Waller	Circuit Judge

ANNOUNCEMENTS AND APOLOGIES

- 1.1** The Acting Chair welcomed stakeholders to the annual open meeting of the Family Procedure Rule Committee. He informed the meeting that this would be his last meeting as Acting Chair although he would remain on the Committee as the Lord Justice of Appeal member.
- 1.2** Apologies were received from Dylan Jones and Michael Horton.
- 1.3** The Committee was informed that the Lay Member, Jane Harris, had tendered her resignation over the summer. Mrs Harris had written to inform the Committee of her decision to step down and to voice her disappointment at the lack of progress made on the issue of children's participation in proceedings. The Acting Chair thanked Mrs Harris for her valuable contribution during her tenure. The Acting Chair will write to Mrs Harris after the meeting expressing the Committee's thanks for her contribution to the work of the Committee.
- 1.4** Ministry of Justice (MoJ) Policy reported that the process of finding a replacement had begun and the Public Appointments Team had been notified accordingly.

ACTION:

The Acting Chair to write to Jane Harris to thank her for her time as a Committee Member.

MINUTES OF THE LAST MEETING: 16 JULY 2018

- 2.1** The minutes were approved as a correct and accurate record of the meeting.

MATTERS ARISING**Update on pilot practice direction 36H to improve notification to the police when a Female Genital Mutilation (FGM) or Forced Marriage (FM) protection order is made**

- 3.1** HM Courts and Tribunal Service (HMCTS) informed the Committee that the evidence suggested that neither local authorities nor many court staff had read the pilot practice direction. To resolve this, all courts have been contacted and guidance has been re-issued to teams. Hannah Perry suggested that a standard paragraph be inserted into the order to raise awareness of the service obligations on the parties.
- 3.2** Judge Waller said that this was a significant issue at the court in Luton and asked if the current practice where the Bailiff sends emails to the Police following the serving of a FGM protection Order should be reviewed.
- 3.3** HMCTS stated that they would take this up with the Head of Tribunals but in the interim they were obtaining each month a list of cases in which FGM/FM protection orders have been made and checking that the central police team had received them. The pilot concludes on the 25 January 2019 and Committee requested a further update from HMCTS at the December 2018 meeting.

Family Procedure (Amendment) No 2 Rules 2018

- 3.4** MoJ Policy provided the Statutory Instrument which related to previously agreed rule amendments on appeals in the High Court being heard in public, and incorporating the provisions of the Welsh Language requirement, as set out in primary legislation, into court rules. The Statutory Instrument will be laid on the 12 November and come into force on 10 December 2018.
- 3.5** **Members of the Committee signed the Statutory Instrument at the meeting.**
- 3.6** The President of the Family Division noted that it would be helpful to incorporate the judicial titles where applicable to show the range of membership on the Committee. This was endorsed by Committee members. MoJ Policy will reflect this in the final Statutory Instrument that is presented to the Minister for signing and will adopt this approach in all future Statutory Instruments.

PRIORITIES OF THE FAMILY PROCEDURE RULE COMMITTEE

- 4.1 For the benefit of observers,** The Acting Chair explained that the priorities table had been devised to reflect all outstanding workstreams of the Committee and the task for each stage to progress it to conclusion, as well as enable the Committee to identify its priorities based on the available resources.
- 4.2** MoJ Policy explained that Lines 10 and 13 had now been concluded and would be removed for the November meeting. Lines 9 and 21 related to the Family Procedure Amendment Rules and the table would be reflected accordingly when they come into force in December 2019. Two new workstreams at Lines 15 and 16 had been added to reflect work on dealing with sensitive information in family proceedings and the reform of requirements for divorce. MoJ Policy sought the Committee's views on whether it was helpful to include work such as the reform of requirements for divorce in the table, even though there was no substantive work for the Committee at this point. The President of the Family Division recognised the need to take into account the other priorities of the department but felt that the table should be restricted to work before the Committee.
- 4.3** MoJ Policy stated that the work detailed at lines 7 and 8 relating to financial remedies and enforcement had implications for the same policy and legal teams. MoJ Policy requested input from the Committee as to what they regard as the highest priority, so that the timetable could be amended. Judge Waller stated that his preference would be to have the Financial Remedy work conclude before commencing work on enforcement. He recognised the importance of enforcement and recommended that the Working Group begin scoping potential reforms in this area. Judge Raeside considered enforcement work to be as much a priority because of the challenges posed by the complexities of the system to women who primarily seek enforcement of these orders. The Acting Chair agreed with this view and was reluctant to put one area above another. He suggested that the Working Group convene for a preliminary meeting to begin scoping these areas, and to include MoJ Policy. The President of the Family Division said that if the two Working Groups were comprised of the same personnel then both areas could be looked at in tandem. The Acting Chair suggested that Judge Raeside be included to ensure that the area she raised for concern be given proper consideration.
- 4.4** MoJ Policy stated that the links to both areas, especially when considering the required work on forms, were obvious although this meant that careful scheduling was needed.

QUESTIONS TO THE FAMILY PROCEDURE RULE COMMITTEE

- 5.1** Stakeholders were then invited to put questions before the Committee.

- 5.2** Robert Hill, one of the editors of the Family Court Practice” (“The Red Book”) submitted a paper in March 2018 to the FPRC suggesting an amendment to Rule 16 and wanted to know how it was received and whether an amendment is likely. He proposed that either rule 16.6 (1) (b) be amended to include applications under Part 4 Family Law Act 1996 or that rule 16.6 be amended to include a general provision as in rule 21.2 (3) CPR 1998 whereby the court has a general power to dispense with the need for a litigation friend.
- 5.3** Judge Waller stated that this issue was already under consideration and that the paper was discussed at the Committee meeting in April 2018. The Committee recognised the gap raised by Mr Hill and intend to progress this issue but will need to do so alongside other pressing work priorities.
- 5.4** Richard Strong of Oyez Forms then asked whether the Committee could advise if the various changes to the rules would be completed in time to meet HMCTS’ proposed timescales for digital adoption, family law and divorce cases next year.
- 5.5** The President of the Family Division replied that the various reform projects were being supported through a series of pilot practice directions and the Committee will consider which rule amendments are required to embed the pilot schemes within the family justice systems. Digital products are being developed, based on user needs, but it is important to underline that their progress is dependent on resources being freed up following prioritisation of other workstreams.
- 5.6** Finally, Eileen Pereira, the Chief Executive of the Personal Support Unit asked how much consideration the committee gave to the ability of litigants in person to understand, interpret and apply the rules in their own cases.
- 5.7** Mrs Justice Theis stated that a primary purpose of the Committee was to ensure that procedural rules were simple and accessible to all court users, which included litigants in person. When consulting on draft rules, the Committee took account of consultation responses, particularly those which suggested re-drafting of rules. There is also a lay member of the Committee whose contributions are invaluable in ensuring technical changes are comprehensible to court users who are unfamiliar with the terminology. Where appropriate, the Committee engaged with Plain English to ensure rules are clear and accessible. Mrs Justice Theis referred to a previous offer from the Personal Support Unit to put forward its services in helping adhere to the commitment towards clear language. In response to an inquiry from the Acting Chair, Ms Pereira stated that the Personal Support Unit had the resources to undertake this commitment. The Committee thanked the Unit for their kind offer.

PRESENTATION OF DIGITAL WORKING PILOTS

- 6.1** Three virtual presentations were then delivered by MoJ and HMCTS on the digitisation of the online financial remedy process; the C100 digital pilot and the C110A digital reform pilot.

- 6.2** The President of the Family Division thanked those that presented and noted the ‘Agile’ approach they employed, whereby projects are divided into short phases of work and plans reassessed and adapted based on user feedback and trial findings.
- 6.3** The Acting Chair referred to the presentation on the C110A digital reform pilot and asked whether consideration would be given to change the areas on domestic violence and domestic abuse in line with the new practice direction.
- 6.4** Melanie Carew asked whether the C110A digital reform would have a “don’t know” function built in and that the reference to a known guardian would need further consideration. The President of the Family Division compared the PDF version and that provided online and noted that they are slightly different and sought assurances whether this had been considered. MoJ Policy stated that users of a hard copy service could receive a paper version of the digital pilot and could then work from either medium.
- 6.5** Mrs Justice Theis referred to the C100 pilot and said that the assumption that mediation was the sole cause in the decline in numbers was not accurate as there was evidence to show that the physical process of completing the form could also be a reason why numbers are lower. MoJ Policy said that they would continue to use the paper form to counteract this issue and would look to work with advisory groups so that they could examine this issue in greater detail. Mrs Justice Theis suggested that the Personal Support Unit be enlisted to help in this area.
- 6.6** MoJ Policy stated that the C100 Working Group would pick up on the points raised and would feed back to the Committee. District Judge Suh stated that she had been able to talk to the team on an informal basis and was able to represent Members’ interests in those discussions.
- 6.7** Judge Godwin referred to both the C110 and C110A presentations and asked whether consideration had been given to including the Welsh language. MoJ Policy said that the intention was that a Welsh version will follow but not necessarily within the pilot phase.

PILOT PRACTICE DIRECTION 36J – LEGAL BLOGGERS TO ALLOW PERSONS COLLOQUIALLY REFERRED TO AS “LEGAL BLOGGERS” TO ATTEND FAMILY COURT HEARINGS ON A SIMILAR BASIS TO ACCREDITED MEDIA REPRESENTATIVES

- 7.1** This item was moved up the agenda from item 8. The Acting Chair noted that concerns had been raised by Dr Julia Brophy, Senior Researcher in socio-legal studies at the Centre of Law at Oxford University in relation to the pilot allowing “legal bloggers” to attend hearings on an authorised basis similar to that of accredited media personnel. These concerns were, in particular, that the pilot proposes a substantial change in policy regarding access and reporting from family court proceedings without being the subject of prior public or stakeholder consultation. Concerns had been considered out of Committee. After discussion of Dr Brophy’s

comments, Committee Members had agreed to proceed with the pilot, and to carry out a consultation at the end of the pilot.

- 7.2** MoJ Policy reported that the criteria for recording feedback was laid out at paper 5B. In the first week of the pilot two bloggers had observed proceedings before Her Honour Judge Atkinson and His Honour Judge Wildblood. There had been three tweets, all from the Transparency Project. Further, there had been articles promoting the pilot from the Law Society Gazette and the Transparency Project. Hannah Perry questioned whether the evaluation criteria could be amended to include the product of the blog of the person attending court. MoJ Policy noted that this would amount to policing of bloggers which is not done for accredited media representatives. The Committee would need a clear rationale for differentiating between the two, particularly as there had been no changes to the reporting restrictions. The pilot only permits access to the court and the judge retains the discretion to exclude a legal blogger following representations from the parties. The Acting Chair noted that the need to police legal bloggers came from the need to protect the privacy of children and to ensure they were not identified. Will Tyler questioned whether this raised freedom of speech arguments. The President of the Family Division suggested that “legal bloggers” could be invited to share links to their blog with his office.
- 7.3** Judge Raeside noted that some bloggers set their blogs as private when reporting on their court appearance and conceded there could be difficulties in compelling them to share this information. Hannah Perry raised the issue that there was no requirement on bloggers to state their qualifications when declaring their status. The Acting Chair added that the lack of a code of conduct made some degree of policing necessary to ensure children were protected. He suggested that a link providing reporting restrictions be included and Will Tyler said that this could be covered by a link to the practice direction and the rule if this was likely to be an issue. MoJ Policy stated that the link would only be possible on the web page, not on the form.
- 7.4** Melanie Carew suggested that the Solicitors Regulatory Authority and the Charity Commission could be approached for their evaluation of bloggers conduct before the end of the pilot.
- 7.5** Mrs Justice Theis suggested that the Transparency Working Group take this forward and also agree a process for consultation at the conclusion of the pilot.

ACTION

MoJ Policy to amend the form to include a section where “legal bloggers” send an update to the President of the Family Division’s office giving detail for the product of their attendance at court.

The Secretary to the President of the Family Division to report back to the Committee on evaluation of bloggers update sent to their office

The President's Office, in consultation with the Acting Chair, to respond to Dr Brophy.

The Transparency Working Group to agree the details and timetable for the consultation process at the conclusion of the pilot.

PROPOSED CHANGES TO MAKE DEDUCTIONS ORDERS FOR CHILD MAINTENANCE PAYMENTS FROM JOINTLY HELD BANK ACCOUNTS

- 8.1** Department of Work and Pensions (DWP) Legal presented a paper describing the proposed regulation amending the Child Support (Collection and Enforcement) Regulations 1992 to allow the Secretary of State to make deductions from joint accounts and specified business accounts in order to collect ongoing maintenance and arrears from non-resident parents (NRPs) who are legally obliged to pay maintenance for their children but who refuse to do so voluntarily.
- 8.2** The Committee acknowledged that the paper addressed many of the concerns raised previously. However, as the draft affirmative regulations had now been laid in Parliament, District Judge Suh asked whether any changes highlighted by the Committee would not now be reflected. DWP Legal said that any substantive changes required could be made in amending regulations.
- 8.3** Judge Waller asked for clarification on PD30A, para 9.19 (limit on court's power to extend time for appeal) as to the rationale for restricting the limiting the power of the court to extend time for appeal in relation to a final lump sum deduction order and whether there was any legislative provision requiring this. DWP Legal said that the regulations provide that the period of time for making representations against an interim lump sum deduction order was 28 days, but did not believe there was any other provision in relation to the time for appeal. Judge Waller said that PD30A, para. 9.17 provided for the appeal period of 21 days, but it was unclear why in the case of lump sum deduction orders the restriction in para. 9.19 has been included. He thanked the DWP officials for their clarification.
- 8.4** District Judge Suh asked for more information as to the estimated numbers where a joint account holder appeals a decision of a district judge and whether there would be any training. DWP Legal said that they would take these points back to their policy team for an update.
- 8.5** Judge Raeside suggested that any District Judge, not just family judges, could be faced with these cases and that this should be drawn to the attention of Court Managers. She suggested that it would be useful to include publicity in the Civil and Family newsletters published monthly by the Judicial College.

- 8.6** The President of the Family Division proposed that, as all were now content, that approval be given to the amendments suggested by DWP, the amendment suggested by District Judge Suh, and for the amendments to come into effect with reference to the coming into force of the Regulations, bearing in mind that the Affirmative Debates were either going to be at the end of October or the beginning of November.

CHILDREN AND FAMILY PROCEEDINGS

- 9.1** Melanie Carew presented a paper outlining a list of measures Cafcass had put in place to ensure the voice of the child is heard in court. Judge Raeside asked whether Cafcass could include a report to the Court as to what their interaction had been. Melanie Carew stated that this had resource implications but developments such as the 'Voice of the Child' app would be a positive step forward.
- 9.2** The President of the Family Division suggested that the next stage would be for the Children Working Group to meet and using the list as detailed on the Cafcass paper, propose positive ways in which the culture could be changed. Melanie Carew said that a meeting detailing the new Child Impact Assessment Framework was due to take place shortly and that any meeting of the Working Group should be convened when a more complete read-out from that pathways forum is received.
- 9.3** Judge Godwin asked whether the wording referred to as 'nationwide' could be amended, as it didn't cover Wales. The President of the Family Division suggested that both himself and Judge Godwin be added to the Working Group.

ACTION

Melanie Carew to inform the Children's Working Group when Cafcass have an update from the Child Impact Assessment meeting.

SCIENTIFIC EVIDENCE IN FAMILY PROCEEDINGS

- 10.1** MoJ Policy referred members to Paper 10 and the supporting Annex. As the criminal investigation is ongoing, the proposal was that preliminary work with the Committee be started to consider how rules of court could be amended in respect of the admissibility of scientific evidence in family proceedings. This would require forming a working group and adding this to the Priorities Table, with the Committee's agreement.
- 10.2** MoJ Policy stated draft rules would need drawing up as the accredited list makes no provision to ensure against unrecognised experts providing evidence in respect of scientific tests. Currently non-United Kingdom Accreditation Service providers are able to provide expert evidence although their accredited list makes no provision for areas such as on toxicology. Judge Waller stated that this Committee did not have the scientific expertise to signpost the rules. Judge Raeside suggested that a paper be put together stating the issues and possible suggestions. The President of the

Family Division stated that this should be considered as medium priority and the Acting Chair proposed that this should be re-visited after Christmas.

ACTION

MoJ Policy to devise draft rules and prepare a supporting paper of recommendations for the Committee's consideration.

ANY OTHER BUSINESS

- 11.1** The Committee agreed that Form C110A amendments proposed in Re A-F (Children(No.2)) [2018] EWHC 2129 should be deferred. This was due to another case currently before the Supreme Court with similar issues. The form may therefore require further additional changes depending on the judgement.
- 11.2** Committee Members discussed membership of the Family Procedure Working Groups as detailed at Paper 11b.
- 11.3** The Transparency Working Group consists of The President of the Family Division; Lord Justice Baker; Mrs Justice Theis; His Honour Judge Waller; District Judge Suh and Michael Horton.
- 11.4** The Forms Working Group consists of Mrs Justice Theis; His Honour Judge Waller; District Judge Suh; Melanie Carew; Michael Seath and Dylan Jones.
- 11.5** The Financial Remedy Working Group which includes work on enforcement and consists of Lord Justice Baker; His Honour Judge Waller; Her Honour Judge Raeside; District Judge Suh and Michael Horton.
- 11.6** The Finance Cost Rules Working Group consists of Mrs Justice Theis, His Honour Judge Waller; District Judge Suh and Michael Horton.
- 11.7** The Closed Material Procedure Working Group consists of the President of the Family Division; Lord Justice Baker; District Judge Suh and William Tyler.
- 11.8** The Children's Working Group consists of the President of the Family Division; Mrs Justice Theis; Her Honour Judge Raeside; His Honour Judge Godwin; Melanie Carew; Dylan Jones; Hannah Perry; William Tyler and Rob Edwards.
- 11.9** Mrs Justice Theis asked whether further consideration could be given to the possibility of setting up a video-link for future Committee meetings.
- 11.10** The Acting Chair announced that Jo Thambyrajah, the MoJ Policy Lead-Secretariat, is moving to another area within the Ministry of Justice. He thanked her for her outstanding contribution to the work of the Committee and wished her every luck for the future from past and present Members.

DATE OF NEXT MEETING

- 12.1** The next meeting will be held on Monday 12 November at 11.00 a.m. at the Royal Courts of Justice.

Simon Qasim – Secretary

October 2018

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